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Tuesday
September 21, 1982

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Agricultural Marketing Service

Air Pollution Control
Environmental Protection Agency

Coal Mining
Surface Mining Reclamation and Enforcement Office

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Selected Subjects

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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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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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 82-336]

Mediterranean Fruit Fly; Removal of Quarantine Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document removes the Mediterranean fruit fly quarantine and regulations which quarantined California and imposed restrictions on the interstate movement of regulated articles from regulated areas in California. The quarantine and regulations were established for the purpose of preventing the artificial spread of the Mediterranean fruit fly into noninfested areas of the United States. It has been determined that the quarantine and regulations are no longer necessary for this purpose. Various areas were designated as regulated areas under the quarantine and regulations. However, immediately prior to the effective date of this document, only one area, a portion of San Joaquin County, was listed as a regulated area. Based on trapping and sampling surveys, it has been determined that the Mediterranean fruit fly does not occur in San Joaquin County and has been eradicated from all of California. The effect of this action is to delete restrictions on the interstate movement (movement from California into or through any other State, Territory, or District of the United States) of previously regulated articles from the previously regulated area in San Joaquin County.

DATES: Effective date of amendment September 21, 1982. Written comments concerning this rule must be received on or before November 22, 1982.

ADDRESSES: Written comments should be submitted to Thomas Lanier, Assistant Director, Regulatory Services Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 643 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 641 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Emergency Programs Coordinator, Plant Protection and Quarantine, Animal and Plant Health Inspection Sevice, U.S. Department of Agriculture, Room 610 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This interim rule is issued in conformance with Executive Order 12291, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule would have an annual effect on the economy of less than $100,000; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291. Also, the Assistant Secretary for Marketing and Inspection Services has waived the requirements of Secretary's Memorandum 1512-1.

Certification Under the Regulatory Flexibility Act

Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action affects the interstate movement of regulated articles from a portion of San Joaquin County in California. There are thousands of small entities that move such articles interstate from California and many more thousands of small entities that move such articles interstate from other States. However, based on information compiled by the U.S. Department of Agriculture, it has been determined that fewer than 30 small entities move such articles interstate from the previously regulated area in San Joaquin County. Further, the overall economic impact from this action is estimated to be less than $100,000.

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication of this document without opportunity for a public comment period because otherwise there would be unnecessary restrictions imposed on the interstate movement of certain articles. This situation requires immediate action to delete such unnecessary restrictions.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this action effective less than 30 days after publication of this document in the **Federal Register**. Comments have been solicited for 60 days after publication of this document, and a final document discussing comments received and any changes required will be published in the **Federal Register** as soon as possible.

Background

Because of infestations of the Mediterranean fruit fly found in areas in California, the Mediterranean fruit fly quarantine and regulations were made effective on July 20, 1981 (46 FR 37706-37713), and amendments to the quarantine and regulations were made effective on August 7, August 19, and

September 2, 1981, and on June 1, June 17, July 2, July 6, August 6, and September 3, 1982 (46 FR 40203–40205, 42072–42073, 44144–44145; 47 FR 23682–23683, 26121–26122, 29207–29209, 28909–28911, 34109–34111 and 38861–38862). The quarantine and regulations were set forth in 7 CFR 301.78 through 301.78–10.

For the purpose of preventing the artificial spread of the Mediterranean fruit fly to noninfested areas in the United States, the quarantine and regulations restricted the interstate movement (movement from California into or through any other State, Territory, or District of the United States) of articles designated as regulated articles from areas designated as regulated areas. The list of regulated articles included a large number of fruits, nuts, vegetables, and berries. Various areas were designated as regulated areas under the quarantine and regulations. However, immediately prior to the effective date of this document only one area, a portion of San Joaquin County, was listed as a regulated area.

Based on trapping and sampling surveys conducted by inspectors of the U.S. Department of Agriculture and State agencies of California, it has now been determined that the Mediterranean fruit fly does not occur in San Joaquin County. Only one fly was found in the affected area in San Joaquin County. No evidence of infestation has been found since that one fly was found on June 24, 1982. Based on departmental expertise, it has been determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that an infestation does not occur in that area.

Further, based on trapping and sampling surveys, it has now been determined that the Mediterranean fruit fly has been eradicated from all of California.

Under these circumstances there is no longer a basis for imposing restrictions on the movement of articles from any area in California because of the Mediterranean fruit fly. Therefore, in order to relieve unnecessary restrictions on the interstate movement of certain articles, it is necessary as an emergency measure to amend 7 CFR Part 301 by removing the Mediterranean Fruit Fly quarantine and regulations.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

§§ 301.78–301.78–10 [Removed]

Accordingly, "Subpart—Mediterranean Fruit Fly" (7 CFR 301.78 through 301.78–10) is removed.

(Secs. 8 and 9, 37 Stat. 318, as amended (7 U.S.C. 161, 162); secs. 105 and 106, 71 Stat. 32, 71 Stat. 33 (7 U.S.C. 150dd, 150ee); 7 CFR 2.17, 2.51, and 371.2)

Done at Washington, D.C., this 13th day of September 1982.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 82-25888 Filed 9-20-82; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 982

Handling of Filberts/Hazelnuts Grown in Oregon and Washington; Administrative Rules and Regulations; Establishment of Different Marketing Year Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action changes the marketing year dates from May 1–April 30 to July 1–June 30. Under the current marketing year dates, compliance with any withholding obligation must occur no later than the last day of February. This change would give handlers more time to meet their respective obligations and allow them more time to plan their packing and shelling operations for the coming season.

EFFECTIVE DATE: September 21, 1982.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified a "non-major" rule under criteria contained therein.

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 because it would result in only minimal costs being incurred by the regulated nine handlers.

It is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553]. USDA action authorizing the Filbert/Hazelnut Marketing Board to incur necessary program operating expenses during the 1982–83 season and to collect assessments from handlers regulated under the order to pay those expenses was delayed pending any change in the marketing year period, to avoid any further delay in the approval of the Borad's 1982–83 season expenses and assessment rate, the marketing year change, hereinafter discussed, must be made as soon as possible.

Notice inviting written comments on this action was published in the **Federal Register** on July 13, 1982 [47 FR 30258]. No comments were received.

This action would amend Subpart—Administrative Rules and Regulations [7 CFR 982.432–982.471] by adding a new § 982.417 entitled "Marketing Year". That section would change the definition of marketing year contained in § 982.17 to mean the 12-months from July 1 to the following June 30, both inclusive, except that the marketing year ending June 30, 1983, should begin May 1, 1982.

This subpart is issued under the marketing agreement and Order No. 982, both as amended (7 CFR 982), regulating the handling of filberts/hazelnuts grown in Oregon and Washington. The marketing agreement and order, hereinafter referred to as the "order", are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based on a unanimous recommendation of the Filbert/Hazelnut Marketing Board, hereinafter referred to as the "Board", which works with USDA in administering the order.

When marketing percentages for inshell filberts are established for a marketing year, the inshell filberts that must be withheld from handling in the domestic inshell market are designated as "restricted filberts". Restricted filberts may be exported or shelled.

An order amendment effective May 11, 1981, changed the beginning date of the marketing year from August 1 to May 1 to permit handlers with excessive inventories of filberts to shell or export these filberts during the months of May, June, and July. Credit for the disposition in these restricted outlets would be available for use if volume regulations were established later for that marketing year. The purpose of the change was to encourage handlers to shell or export filberts during those months, thus lessening the chances of excessive inventory burdening new crop sales, and cutting handlers' inventory costs.

However, during the 1981–82 marketing year, some handlers experienced unanticipated problems in meeting their withholding obligations under the May 1–April 30 marketing year. Pursuant to § 982.54, a handler can defer meeting this withholding obligation up to 60 days prior to the end of the marketing year, by posting bonds as surety that the handler will have satisfied fully his withholding obligation by the date specified in the undertaking. Under the current marketing year period, compliance with any withholding obligation must occur no later than the last day of February.

Those handlers experiencing problems during the 1981–82 season had difficulty meeting this deadline because of limited processing facilities and the short time interval between the peak inshell shipping season and the last day of February. The marketing period for inshell filberts occurs primarily during the fall and winter holiday season. Consequently, handlers concentrate on shipping to this market, which is of comparatively short duration, before meeting their withholding obligations.

The change in the marketing year period to July 1–June 30 gives handlers an additional two months to meet their withholding obligations when volume regulations are in effect for a marketing year. This additional time will allow handlers to schedule their processing operations more efficiently to take full advantage of the inshell marketing season and still meet their withholding obligations in a timely fashion by shelling. This change will also lessen the chances of inadvertent noncompliance with seasonal withholding requirements.

The current 1982–83 marketing year under the order began May 1, 1982, and ends April 30, 1983. Under this action, the next marketing year would begin July 1, 1983. Thus, the action also provides for an extension of the current marketing year by an additional two months through June 30, 1983.

After consideration of all relevant matter presented, including that in the notice issued in connection with the change of the marketing year dates, the information and recommendation of the Board, and other available information, it is further found that the change in the marketing year period, set forth below, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 982

Marketing agreements and orders, Filberts, Hazelnuts, Oregon and Washington.

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

Therefore, § 982.417 is added to Subpart—Administrative Rules and Regulations as follows:

Subpart—Administrative Rule and Regulations

§ 982.417 Marketing year.

"Marketing year" means the 12-month period from July 1 to the following June 30, both inclusive, except that the marketing year ending June 30, 1983, shall begin on May 1, 1982.

Dated: September 15, 1982.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 82-26000 Filed 9-20-82; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

Clarification of Export Controls on Petroleum Transmission and Refining Equipment to the U.S.S.R.

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: Effective December 30, 1981, the Office of Export Administration announced new controls on exports to the U.S.S.R. of commodities for transmission (including transportation) and refinement of petroleum or natural gas and technical data related to oil and gas transmission or refinement. The controls, which also apply to Estonia, Latvia, Lithuania, and Afghanistan, were published the in the **Federal Register** of January 5, 1982, pages 141–144. The regulations were amended in a **Federal Register** notice published on June 24, 1982 (47 FR 27250).

This rule clarifies the scope of those controls by revising an entry on the Commodity Control List (Supplement No. 1 to § 399.1 of the Regulations); by adding a footnote to another entry; by revising the heading of Commodity Interpretation 24 (Supplement No. 1 to § 399.2) in order to refer exporters to those chemicals requiring a validated export license to the U.S.S.R., Estonia, Latvia, Lithuania, and Afghanistan; and by adding a new Commodity Interpretation 33 to Supplement No. 1 to § 399.2.

DATE: Effective September 21, 1982. This rule may be further revised in light of any comments received. Comments must be received by November 22, 1982.

ADDRESSES: Written comments (five copies when possible) should be sent to: Richard J. Isadore, Director, Operations Division, P.O. Box 273, Office of Export Administration, Washington, D.C. 20044.

The public record concerning these regulations may be inspected at the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377–4811).

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (Pub. L. 96–72, 50 U.S.C. app. 2401 *et seq.*) ("the Act"), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act.

However, because of the importance of the issues raised by these regulations and the intent of Congress set forth in section 13(b) of the Act, these regulations are issued in interim form and comments will be considered in developing final regulations. These regulations may be revised before the end of the comment period. Accordingly, interested persons who desire to comment are encouraged to do so at the earliest possible time to permit the fullest consideration of their views.

2. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. This rule is exempt from the requirements of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation" because it relates to a foreign affairs function of the United States.

The period for submission of comments will close November 22, 1982. All comments received before the close of the comment period will be considered by the Department in the development of final regulations. While comments received after the end of the comment period will be considered if

possible, their consideration cannot be assured. Public comments that are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

List of Subjects in 15 CFR Part 399

Exports.

PART 399—COMMODITY CONTROL LIST AND RELATED MATTERS

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

§ 399.1 [Amended]

1. In Supplement No. 1 to § 399.1, in CCL entry No. 6699G, a footnote is added following the entry designation "6699G" and following the "SZ" designation in the Validated License Required column reading as follows:

A validated license is required for export of commodities to the U.S.S.R., Estonia, Latvia, Lithuania, and Afghanistan if intended for use in the production, transmission or transportation of petroleum or natural gas, or in the refining of petroleum, petroleum products or natural gas for energy usage, *excluding petrochemical feedstock*. (See Supplement No. 1 to § 399.2, Interpretation 33, for an illustrative list of such commodities.)

2. In Supplement No. 1 to § 399.1, CCL entry No. 6780F is revised to read as follows:

Export control commodity number and commodity description	Unit	Validated license required	GLV $ value limits T&V	Processing code	Reason for control
6780F Chemicals and materials intended for use in the production, transmission or transportation of petroleum or natural gas, or in the refining of petroleum, petroleum products or natural gas for energy usage, *excluding petrochemical feedstock*. (See Supplement No. 1 to § 399.2, Interpretation 33, for an illustrative list of commodities included in this entry.).		SZ, Afghanistan and the USSR [3]		MG	3

[3] Including Estonia, Latvia, and Lithuania.

3. In the section titled "Inorganic chemicals, elements, acids, oxides, hydroxides, peroxides, and halogen salts, as follows:" of Supplement No. 1 to § 399.2, Interpretation 24, the footnote to the entry "Phosphoric acid" is removed.

§ 399.2 [Amended]

4. The introductory paragraph of Commodity Interpretation 24 of Supplement No. 1 to § 399.2 is revised to read as follows:

Interpretation 24: Chemicals

The commodities listed below require a validated license for export to Country Groups S and Z. See Interpretation 33, Oil and Gas-related Chemicals and Materials, for a list of chemicals requiring a validated license for export to the U.S.S.R., Estonia, Latvia, Lithuania and Afghanistan. (Interpretation 33 is an illustrative list only, and does not include all chemicals and materials that require a validated license for export to the U.S.S.R., Estonia, Latvia, Lithuania and Afghanistan.)

* * * * *

5. An Interpretation 33 is added to Supplement No. 1 to § 399.2 reading as follows:

Interpretation 33: Oil and Gas-related Chemicals and Materials.

The following is an illustrative list of chemicals and materials intended for use in the production, transmission or transportation of petroleum or natural gas, or in the refining of petroleum, petroleum products or natural gas for energy usage, *excluding petrochemical feedstock*. This list is illustrative only. It does not include all commodities covered by CCL entries 6699 and 6780.

Activated carbon for petroleum or chemical processing
Additives for fuels and fuel oils
Alumina
Aluminosilicate
Aluminum carbide
Aluminum chloride, anhydrous
Aluminum ethylhexoate
Aluminum nitrate
Aluminum silicate
Aluminum sulfate
Chromia-Alumina
Cobalt, n.e.s.
Cobalt molybdate
Copper sulfate
Corrosion-inhibiting compounds
Cuprous sulfate
Ferrocene
Hydrofluoric acid
Magnesium silicate impregnated silica gel adsorbent
Molecular sieves
Molybdenum oxides
Monocrystalline and polycrystalline forms of molybdenum & tungsten
Nickel compound catalysts
Nicomo-12 (nickel, cobalt and molybdenum on alumina)
Phospholeum (super phosphoric acid)
Phosphoric acid
Platinum
Potassium phosphate, tribasic
Rust-preventive compounds
Silica gel
Sulfuric acid
Triethyl aluminum
Triisobutyl aluminum
Zeolite A
Zinc chloride
Zinc silicate

(Sec. 6, 13 and 15, Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. § 2401 *et seq.*; E. O. No. 12214 (45 FR 29783, May 6, 1980); Dept. Org. Order 10-3 (45 FR 6141, January 25, 1980); International Trade Organization and Function Orders 41-1 (45 FR 11862, February 22, 1980) and 41-4 (45 FR 65003, October 1, 1980))

Dated: August 25, 1982.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 82-25929 Filed 9-20-82; 8:45 am]

BILLING CODE 3510-25-M

FEDERAL TRADE COMMISSION

16 CFR Part 803

Premerger Notification Rules; Waiting Period Termination

AGENCY: Federal Trade Commission.

ACTION: Formal interpretation of rule; correction.

SUMMARY: This document corrects a Commission document previously published in the **Federal Register** on Monday, Sept. 13, 1982. An incorrect version of the "Formal Interpretation" was submitted for publication.

EFFECTIVE DATE: Date Commission approved interpretation with the concurrence of the Assistant Attorney General for Antitrust. (August 20, 1982)

FOR FURTHER INFORMATION CONTACT: FTC-CDM, Patricia A. Foster, Washington, D.C. 20580. (202) 523–3894.

SUPPLEMENTARY INFORMATION: In FR Doc. 82–25116, appearing in the **Federal Register** issue for Monday, Sept. 13, 1982, 47 FR 40159, all material on pages 40159–40160, up to the "Formal Interpretation" (first column, page 40160) remains unchanged. The correct version of the "Formal Interpretation" reads as follows: Formal Interpretation Pursuant to § 803.30 of the Premerger Notification Rules, 16 CFR 803.30, Concerning Early Termination of the Waiting Period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

This formal interpretation of the Premerger Notification Rules concerning "early termination" of the waiting period provided by the Hart-Scott-Rodino Act is issued by the Federal Trade Commission pursuant to 16 CFR 803.30. It supersedes a formal interpretation issued by the staff of the Federal Trade Commission on April 10, 1979. That interpretation announced criteria that would be used by the Federal Trade Commission and the Department of Justice in determining whether a request under 16 CFR 803.11 for early termination would be granted. One of those criteria was a requirement that the parties demonstrate some special business reason that warranted early termination of the waiting period.

After experience with the standard for early termination announced on April 10, 1979, the agencies have determined that early termination requests may be appropriately granted in a wider range of circumstances without diminishing the effectiveness of the enforcement process. In the future, the agencies will normally grant a request for termination of the waiting period under the following circumstances:

1. At least one party to the proposed transaction has requested early termination in writing;

2. All parties to the proposed transaction have submitted notification and report forms and any other information required; and,

3. The Federal Trade Commission and the Antitrust Division of the Department of Justice have determined not to take any enforcement action during the waiting period.

Thus, it will no longer be necessary to include in a request for early termination a statement of reasons why the requesting party wishes to consummate the transaction before the end of the waiting period. The amount of time needed to act upon such requests cannot be predicted with precision. It will necessarily vary according to several factors, including the workload of the agencies, the complexity of the proposed transaction, and the seriousness of the antitrust concerns (if any) raised by the proposed transaction.

Notification of each grant of early termination will be published in the **Federal Register** as required by section 7A(b)(2) of the Clayton Act. 15 U.S.C. 18a(b)(2). In addition, if any party's request for early termination has been granted, it is the practice of the Federal Trade Commission to so notify by telephone all parties who have filed in connection with that acquisition.

The Assistant Attorney General in charge of the Antitrust Division of the Department of Justice concurs in this interpretation.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82–25980 Filed 9–20–82; 8:45 am]

BILLING CODE 6750–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Minimum Financial and Related Reporting Requirements for Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is amending certain of its minimum financial and related reporting requirements for futures commission merchants ("FCMs"). The amendments will alter, for certain FCMs, the amount of adjusted net capital which must be maintained. The minimum adjusted net capital requirement for FCMs is currently the greatest of (1) the minimum dollar amount, or (2) four percent of all customer funds required to be segregated by the Commodity Exchange Act ("Act") and the Commission's regulations, or (3) for those FCMs which are also registered as brokers or dealers with the Securities and Exchange Commission ("SEC"), the amount of net capital required by Rule 15c3–1(a) of the SEC's rules. Under the rules as amended, an FCM can exclude the market value of exchange-traded commodity options purchased by the FCM's option customers when calculating segregation requirements for purposes of Commission Rule 1.17, except to the extent that such market value exceeds the amount of customer funds in the option customer's account. The new minimum adjusted net capital requirement for most FCMs will therefore be the greater of the minimum dollar amount or four percent of the following amount: the funds required to be segregated less the market value of exchange-traded commodity options purchased by the FCM's option customers, however, the amount deducted with respect to each option customer shall not exceed the amount of customer funds in such option customer's account.

In conjunction with the amendment to the minimum adjusted net capital requirement for FCMs, the Commission is also adopting a new safety factor charge, or "haircut," which must be applied to the net capital of FCMs when computing adjusted net capital. The new haircut is four percent of the market value of exchange-traded commodity options granted (sold) by the FCM's option customers.

The effect of the amendments is to require a greater amount of capital to be maintained by FCMs for each short option customer position carried on its books, and to require less capital for each long option customer position. The Commission believes that these amendments reflect more accurately the relative risks to the financial condition of an FCM resulting from carrying customer exchange-traded commodity option positions than do the present rules. The impact of the amendments on the adjusted net capital requirement or on the actual adjusted net capital of any particular FCM will depend, of course, upon the option customer positions carried at any given point in time.

EFFECTIVE DATE: September 21, 1982.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

On July 13, 1982, the Commission published proposed amendments to certain provisions of the minimum financial and related reporting requirements for FCMs pertaining to the treatment of exchange-traded option transactions, and permitted thirty days for public comment thereon (47 FR 30261). The Commission received eight written comments on the proposals. The commentators included two FCMs, three contract markets, one clearing organization, one trade association, and the National Futures Association, an industry self-regulatory organization. Based upon the comments received and its own review of the issues involved, the Commission has determined to adopt the proposed amendments with certain revisions described below.

II. Amendments to FCM Capital Requirements

The minimum adjusted net capital requirement for FCMs is set forth in § 1.17(a)(1) of the Commission's regulations, which currently reads as follows:

> Except as provided in paragraph (a)(2) of this section, each person registered as a futures commission merchant must maintain adjusted net capital equal to or in excess of the greatest of $50,000 ($100,000 for each person registered as a futures commission merchant who is not a member of a designated self-regulatory organization), or 4 percent of the funds required to be segregated pursuant to the Act and these regulations, or, for securities brokers and dealers, the amount of net capital required by Rule 15c3–1(a) of the regulations of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).[1]

Thus, for any FCM whose minimum adjusted net capital requirement exceeds the minimum dollar amounts set forth in § 1.17(a)(1) (*i.e.*, an exchange-member FCM with segregation requirements in excess of $1,250,000 and a non-member FCM with segregation requirements in excess of $2,500,000), as segregation requirements increase, the amount of adjusted net capital which must be maintained increases.[2] As the Commission has stated previously, a minimum financial requirement based upon the amount of funds required to be segregated reflects the volume of an FCM's customer business and helps to safeguard customer funds. The Commission has stated further that because one of the principal elements of the financial early warning system is also based upon the amount of funds required to be segregated, the system of early warning of the deterioration of an FCM's financial condition is enhanced.[3]

The Commission has adopted regulations to govern a three-year pilot program under which options on certain commodity futures contracts will be permitted to be traded on and through the facilities of domestic boards of trade designated by the Commission as contract markets for option trading.[4] The Commission has also recently proposed a limited expansion of the pilot program which would allow for exchange trading of options on physicals.[5]

The Commission's Division of Trading and Markets interprets an FCM's segregation requirements in connection with exchange-traded option transactions, whether options on futures contracts or options on physicals are involved, to require an option customer's account to be marked to the market.[6] This interpretation means that FCMs must include the market value of each open commodity option purchased by an option customer in the customer's account equity, and deduct the market value of each open commodity option granted by an option customer from the customer's account equity, based on the contract market's daily settlement price for such options. This interpretation assures that option customers are accorded the same protection as futures customers.

Under the current minimum financial requirement, that segregation interpretation would result in an increase in the minimum amount of adjusted net capital which must be maintained by an FCM for each open commodity option purchased by an option customer. The Commission believes that the financial risk to an FCM would be reflected more accurately if the FCM's financial condition was affected by the market value of each open commodity option granted by an option customer, rather than the market value of each open commodity option purchased by an option customer. The Commission believes that there is relatively less risk associated with a long option position than with a short option position because an option customer must pay the full premium at the time the option is purchased,[7] while an option grantor typically would margin his position.

Certain commentators stated that there should be no haircut based on the market value of options granted by an FCM's option customers because granting an option is no more risky than taking a short futures position. However, the Commission believes that the haircut on granted options is necessary to ensure that option customers are not afforded less protection than futures customers. Four percent of all money, securities or property held by FCMs for futures customers must be reflected in an FCM's capital computation and it is appropriate that four percent of all money, securities and property of option customers be similarly reflected.

Certain other commentators stated that the proposed financial rule changes and the Division of Trading and Markets' Interpretation No. 8 require complex and duplicative calculations, and that leaving the market value of options out of the segregation computation would be simpler and achieve the same result. The Commission believes that the examples set forth in this release and in the Division of Trading and Markets' Interpretation No. 8 illustrating the financial and segregation treatment of exchange-traded option transactions should be understood by all interested parties. Indeed, the Commission's staff has received comments from several members of the industry that they would have established the segregation treatment of exchange-traded options in an identical manner. Moreover, the Commission believes that a failure to recognize the market value of options in the segregation computation would represent a significant divergence from the customer protection principles which to date have guided its promulgation of rules concerning the financial and segregation treatment of customer funds held by FCMs.

Accordingly, the Commission has determined: (1) To amend § 1.17(a)(1) to allow an FCM to exclude the market value of exchange-traded commodity options purchased by the FCM's option customers when calculating segregation requirements for purposes of § 1.17,

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[1] 17 CFR 1.17(a)(1) (1981), as amended, 47 FR 22352 (May 24, 1982).

[2] The remainder of this discussion assumes that any FCM referred to has segregation requirements in excess of the amounts cited in the text and that such an FCM's adjusted net capital requirement would be affected by option customer transactions. The Commission recognizes, however, that FCM/broker-dealers with such segregation requirements may have higher minimum net capital requirements than FCMs which are not broker-dealers due to the volume of their securities business.

[3] 45 FR 42633, at 42635 (June 25, 1980); 45 FR 79416, 79418 (December 1, 1980).

[4] 46 FR 54500 (November 3, 1981).

[5] 47 FR 28401 (June 30, 1982).

[6] Division of Trading and Markets, "Financial and Segregation Interpretation No. 8—Proper Accounting, Segregation and Net Capital Treatment of Exchange-Traded Option Transactions" (August 12, 1982).

[7] *See* regulation 33.4(a)(2), 46 FR 54500, 54530 (Nov. 3, 1981).

provided, however, that the amount excluded with respect to each option customer shall not exceed the amount of customer funds in such option customer's account; and (2) to add a new safety factor charge, or "haircut," against an FCM's net capital of four percent of the market value of exchange-traded commodity options granted (sold) by the FCM's option customers (*see* § 1.17(c)(5)(iii).

The following example will demonstrate the effect of the rule changes. Assume that there ar two FCMs, Firm A and Firm B, which are clearing members of the same contract market, and that Customer C has an account at Firm A with a $5,000 cash ledger balance and Customer D has an account at Firm B with a $1,000 cash ledger balance. Customer C enters an order to buy a commodity option, and the order is executed with Customer D being the grantor. The premium is $5,000. As of the date of the option purchase, Firm A transmits $5,000 to the clearing organization as full payment of the premium to purchase the option for its Customer C. The clearing organization in turn passes on the $5,000 to Firm B. As a result of this transaction, Firm A debits Customer C's account $5,000 for the purchase of the option, reducing Customer C's account to a cash ledger balance of $0, and Firm B credits Customer D's account with $5,000 which represents the proceeds of the granted option, increasing the cash ledger balance in Customer D's account to $6,000.

To determine the segregation requirements for Firm A and Firm B resulting from this hypothetical transaction, assume that the daily settlement price for the option in question was $5,000, the same as the premium paid to purchase the option. Firm A's customer, Customer C, has a zero cash ledger balance and an option with a market value of $5,000, so Firm A's segregation requirement is $5,000. Firm B's customer, Customer D, has a $6,000 cash ledger balance less a $5,000 unrealized obligation with respect to the option which he granted (sold), so Firm B's segregation requirement is $1,000.

The effect of this hypothetical option transaction on the financial position of Firms A and B would be as follows. Under the present minimum financial rules, Firm A's adjusted net capital requirement would be $200 (4% of $5,000) and Firm B's adjusted net capital requirement would be $40 (4% of $1,000). Under the new rules, Firm A's adjusted net capital requirement will be $0, since Firm A can exclude the market value of the option ($5,000) when calculating four percent of segregation requirements. Since the new haircut will not apply to exchange-traded options purchased, Firm A's excess adjusted net capital will be enhanced by $200 under the new rules in comparison to the results under the current rules. On the other hand, Firm B's adjusted net capital requirement will still be $40 under the new rules and, in addition, Firm B's computation of its actual adjusted net capital will be reduced by $200 based on the new haircut. As a result, the new rules will cause a decline in Firm B's adjusted net capital of $200. To sum up, the hypothetical option transaction will require additional capital of $240 between the two firms involved under the current rules as well as under the new rules. However, while the current rules would place a $200 burden on the firm whose customer purchased the option and a $40 burden on the firm whose customer granted the option, the proposed rules will shift the entire $240 burden to the latter firm.

In response to certain comments and as a result of the Commission's reconsideration of this matter, the Commission has determined to further revise the proposed amendment to § 1.17(a)(1) to make it clear that the market value deducted by an FCM, with respect to each option customer, can not exceed the amount of customer funds in the account of such option customer. Without this revision, an FCM could actually enhance its capital position for short periods of time by selling options to customers and not collecting the premiums. Such a result is clearly not desirable. To illustrate the effect of the amendment as revised on the required minimum adjusted net capital computation, assume that an option customer purchased but did not pay for an option with a premium of $5,000 and that the market value of the option at the end of the trading day (based on the settlement price) was $5,000. In this situation the customer would have a $5,000 debit cash ledger balance and an option worth $5,000, resulting in a zero net equity. Pursuant to the revised amendment, the FCM could not deduct any portion of the market value of the option when determining its capital requirement.

III. Other Matters

A. *Conforming Amendments.* Several provisions of the Commission's minimum financial rules for FCMs, as well as one provision of the financial early warning system, make references to specified adjusted net capital levels. Certain actions are restricted, or, in the case of the early warning system, required, if those specified levels are breached. (In all cases, the specified adjusted net capital levels exceed the minimum adjusted net capital requirement.) Because the Commission is amending the minimum adjusted net capital requirement contained in § 1.17(a)(1), conforming changes are also being adopted in the following provisions which refer to specified adjusted net capital levels: Paragraph (e) of § 1.17 (restricting withdrawal of equity capital); paragraphs (h)(2)(vi)(C), (h)(2)(vii), (h)(2)(viii), (h)(3)(ii) and (h)(3)(v) of § 1.17 (concerning subordinated debt); and § 1.12(b) (one component of the financial early warning system). Also, amendments will be made in Form 1–FR, the basic financial reporting form for FCMs. These include Items 22 and 25 of the Statement of the Computation of the Minimum Capital Requirements. In addition, a new item will be added to that Statement under the heading "Charges to Net Capital" for the new charge of four percent of the market value of commodity options granted (sold) by option customers on or subject to the rules of a contract market. Also, changes will be made in the schedule of segregation requirements and funds in segregation. The changes to the Form 1–FR which are necessitated by the new financial rules discussed herein are not being published in this release since those changes simply follow the rule amendments discussed herein and because Form 1–FR does not appear in the Code of Federal Regulations. Anyone interested in further information regarding the changes to Form 1–FR may contact Mr. Patent at the address or telephone number listed in this release. Form 1–FR is available upon request from the Commission.

B. *Contract market rules.* The Commission wishes to reiterate that central to the operation of the financial surveillance system for FCMs are the requirements in § 1.52(a) of the regulations (17 CFR 1.52(a)) that each contract market have in effect, and be responsible for enforcing, financial and reporting rules for their member FCMs which are at least as stringent as those contained in §§ 1.10 and 1.17 of the Commission's regulations, and that each contract market's definition of adjusted net capital be the same as that provided in § 1.17(c). Most of the contract markets' rules in this regard incorporate, by reference, the requirements of §§ 1.10 and 1.17 and, hence, any amendments to § 1.17 are incorporated automatically into the rules of those contract markets upon the effective date of such amendments. Two contract markets do not follow this approach, however, and

instead have detailed financial and reporting rules. The new safety factor charge based on four percent of the market value of exchange-traded commodity options granted by option customers (§ 1.17(c)(5)(iii)) affects the definition of adjusted net capital, and the rules of those two contract markets must be amended so that their definition of adjusted net capital will remain the same as the Commission's definition.

In the **Federal Register** release announcing the proposal of the amendments discussed herein, the Commission stated that those two contract markets should begin the preparations necessary to effectuate an appropriate change in their rules in the event the Commission adopts such an amendment. In this regard, the Commission understands that both exchanges are proceeding to conform their net capital rules to the rules which the Commission has adopted here. Since the Commission is making the amendments to its rules effective immediately, however, the Commission has authorized its Division of Trading and Markets to take a "no-action" position regarding the two contract markets in question for thirty days following publication of this notice in order to allow those contract markets to complete the process of amending their rules. The Commission understands that the "no-action" position which the Division may take under this authorization will allow the two contract markets not to enforce their existing net capital rules so long as the contract markets enforce capital rules as stringent as the Commission rules adopted here until such time as each exchange adopts its own rules amendments and those amendments are approved by the Commission.

C. *Certification Under the Regulatory Flexibility Act.* The Commission does not believe that the rule amendments discussed herein will have significant economic impact on small entities. As discussed above, the only regulated entities which will be affected by the rule amendments are FCMs. The Commission has recently published its determination that a registered FCM not be considered a "small entity" within the meaning of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1165, 1166 (5 U.S.C. 601 (3) and (6)). 47 FR 18618, 18619 (April 30, 1982). Accordingly, pursuant to Section 3(a) of the Regulatory Flexibility Act, 94 Stat. 1168 (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that the rule amendments being adopted will not have a significant economic impact on a substantial number of small entities.

D. *Effective Date.* The Commission, in accordance with 5 U.S.C. 553(d)(3), finds good cause for making the rule amendments described herein effective upon publication in the **Federal Register**. The exchange-traded option pilot program will become operational shortly.[8] If FCMs must begin the pilot program using one accounting system and then are required to switch to a different accounting system, confusion and additonal expenses could result. The Commission believes that this would be detrimental to FCMs, the exchanges and the trading public. The Commission has determined, therefore, to make the rule amendments described herein effective upon publication in the **Federal Register** so that all interested parties will know with certainty the accounting system to be used for exchange-traded options.

List of Subjects in 17 CFR Part 1

Commodity futures, Financial requirements, Reporting requirements.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

In consideration of the foregoing, the Commission, pursuant to the authority contained in Sections 4c, 4d, 4f and 8a of the Act, 7 U.S.C. 6c, 6d, 6f and 12a (1976 and Supp. IV 1980), hereby amends 17 CFR Chapter I in the manner set forth below.

1. 17 CFR Part 1 is amended by revising paragraph (b) of § 1.12 to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants.

* * * * *

(b) Each person registered as a futures commission merchant, or who files an application for registration as a futures commission merchant, who knows or should have known that its adjusted net capital at any time is less than:

(1) The greatest of 150 percent of the appropriate minimum dollar amount required by § 1.71(a)(1)(i);

(2) 6 percent of the following amount: the customer funds required to be segregated pursuant to Section 4d(2) of the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, provided, however, the deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or,

(3) For securities brokers or dealers, the amount of net capital specified in Rule 17a–11(b) of the Securities and Exchange Commission (17 CFR 240.17a–11(b)) must file written notice to that effect as set forth in paragraph (g) of this section within five (5) business days of such event. Such applicant or registrant must also file a Form 1–FR (or, if such applicant or registrant is registered with the Securities and Exchange Commission as a securities broker or dealer, it may file, in accordance with § 1.10(h), a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, in lieu of Form 1–FR) or such other financial statement designated by the Commission and/or the designated self-regulatory organization, if any, as of the close of business for the month during which such event takes place and as of the close of business for each month thereafter until three (3) successive months have elapsed during which the applicant's or registrant's adjusted net capital is at all times equal to or in excess of the minimums set forth in this paragraph (b) which are applicable to such applicant or registrant. Each financial statement required by this paragraph (b) must be filed within 30 calendar days after the end of the month for which such report is being made.

* * * * *

2. 17 CFR Part 1 is amended further by revising paragraph (a)(1), by adding a new paragraph (c)(5)(iii), and by revising paragraphs (e),(h)(2)(vi)(C), (h)(2)(vii)(A), (h)(2)(vii)(B), (h)(2)(viii), (h)(3)(ii) and (h)(3)(v) of § 1.17 to read as follows:

§1.17 Minimum financial requirements—futures commission merchants.

(a)(1) Except as provided in paragraph (a)(2) of this section, each person registered as a futures commission merchant must maintain adjusted net capital equal to or in excess of the greatest of:

(i) $50,000 ($100,000 for each person registered as a futures commission merchant who is not a member of a designated self-regulatory organization), or

(ii) 4 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the

[8] On August 31, 1982, the Commission designated four exchanges, effective October 1, 1982, as contract markets to trade options on commodity futures. Two of those exchanges (Coffee, Sugar and Cocoa Exchange, Inc. and Commodity Exchange, Inc.) automatically incorporate changes in the Commission's net capital rules into their own rules.

rules of a contract market, provided, however, the deduction for each option customer shall be limited to the amount of customer funds in such option customer's account, or

(iii) For securities brokers and dealers, the amount of net capital required by Rule 15c3–1(a) of the regulations of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).

* * * * *

(c) * * *

(5) * * *

(iii) Four percent of the market value of commodity options granted (sold) by option customers on or subject to the rules of a contract market;

* * * * *

(e) No equity capital of the applicant or registrant or a subsidiary's or affiliate's equity capital consolidated pursuant to paragraph (f) of this section, whether in the form of capital contributions by partners (including amounts in the commodities, options and securities trading accounts of partners which are treated as equity capital but excluding amounts in such trading accounts which are not equity capital and excluding balances in limited partners' capital accounts in excess of their stated capital contributions), par or stated value of capital stock, paid-in capital in excess of par or stated value, retained earnings or other capital accounts, may be withdrawn by action of a stockholder or partner or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor, or employee if, after giving effect thereto and to any other such withdrawals, advances, or loans and any payments of payment obligations (as defined in paragraph (h) of this section) under satisfactory subordination agreements and any payments of liabilities excluded pursuant to paragraph (c)(4)(vi) of this section which are scheduled to occur within six months following such withdrawal, advance or loan:

(1) Either adjusted net capital of any of the consolidated entities would be less than the greatest of (i) 120 percent of the appropriate minimum dollar amount required by § 1.17(a)(1)(i); (ii) 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, provided, however, the deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or (iii) for securities brokers or dealers, the amount of net capital specified in Rule 15c3–1(e) of the Securities and Exchange Commission (17 CFR 240.15c3–1(e)); or

(2) In the case of any applicant or registrant included within such consolidation, if equity capital of the applicant or registrant (inclusive of satisfactory subordination agreements which qualify as equity under paragraph (d) of this section) would be less than 30 percent of the required debt-equity total as defined in paragraph (d) of this section.

Provided, That this paragraph (e) shall not preclude an applicant or registrant from making required tax payments or preclude the payment to partners of reasonable compensation. The Commission may, upon application of the applicant or registrant, grant relief from this paragraph (e) if the Commission deems it to be in the public interest or for the protection of nonproprietary accounts.

* * * * *

(h) * * *

(2) * * *

(vi) * * *

(C) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (h)(2)(vi)(B) of this section, the lender, with the prior written consent of the applicant or registrant and the designated self-regulatory organization, or, if the applicant or registrant is not a member of a designated self-regulatory organization, then the Commission, may reduce the unpaid principal amount of the secured demand note: *Provided,* That after giving effect to such reduction the adjusted net capital of the applicant or registrant would not be less than the greater of: *(1)* 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, provided, however, the deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or *(2)* for securities brokers or dealers, the amount of net capital specified in Rule 15c3–1d(b)(6)(iii) of the regulations of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b)(6)(iii)): *Provided, further,* That no single secured demand note shall be permitted to be reduced by more than 15 percent of its original principal amount and after such reduction no excess collateral may be withdrawn. No designated self-regulatory organization shall consent to a reduction of the principal amount of a secured demand note if, after giving effect to such reduction, adjusted net capital would be less than 120 percent of the appropriate minimum dollar amount required by this section.

(vii) *Permissive prepayments and special prepayments.* (A) An applicant or registrant at its option, but not at the option of the lender, may, if the subordination agreement so provides, make a payment of all or any portion of the payment obligation thereunder prior to the scheduled maturity date of such payment obligation (hereinafter referred to as a "prepayment"), but in no event may any prepayment be made before the expiration of one year from the date such subordination agreement became effective: *Provided, however,* That the foregoing restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (h)(3)(v) of this section nor shall it apply to "special prepayments" made in accordance with the provisions of paragraph (h)(2)(vii)(B) of this section. No prepayment shall be made if, after giving effect thereto (and to all payments of payment obligations under any other subordination agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months afters after the date such prepayment is to occur pursuant to this provision, or on or prior to the date on which the payment obligation in respect to such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the applicant or registrant, the adjusted net capital the applicant or registrant is less than the greatest of: *(1)* 7 percent of the following amount: The customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, provided, however, the deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; *(2)* for securities brokers or dealers, the amount of net capital specified in Rule 15c3–1d(b)(7) of the regulations of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b)(7)); or *(3)* 120 percent of the appropriate minimum dollar amount required by paragraph (a)(1)(i) of this section. Notwithstanding the above, no prepayment shall occur without the prior written approval of the designated

self-regulatory organization and the Commission.

(B) An applicant or registrant at its option, but not at the option of the lender, may, if the subordination agreement so provides, make a payment at any time of all or any portion of the payment obligation thereunder prior to the scheduled maturity date of such payment obligation (hereinafter referred to as a "special prepayment"). No special prepayment shall be made if, after giving effect thereto (and to all payments of payment obligations under any other subordination agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such special prepayment is to occur pursuant to this provision, or on or prior to the date on which the payment obligation in respect to such special prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the applicant or registrant, the adjusted net capital of the applicant or registrant is less than the greatest of: *(1)* 10 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, provided, however, the deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; *(2)* for securities brokers or dealers, the amount of net capital specified in Rule 15c3–1d(c)(5)(ii) of the regulations of the Securities and Exchange Commission (17 CFR 240.15c3–1d (c)(5)(ii)); or *(3)* 200 percent of the appropriate minimum dollar amount required by paragraph (a)(1)(i) of this section, nor shall any special prepayment be made if pre-tax losses during the latest three-month period were greater than 15 percent of current excess adjusted net capital. Notwithstanding the above, no prepayment shall occur without the prior written approval of the designated self-regulatory organization and the Commission.

(viii) *Suspended repayment.* (A) The payment obligation of the applicant or registrant in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to payment of such payment obligation (and to all payments of payment obligations of the applicant or registrant under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such payment obligation), the adjusted net capital of the applicant or registrant would be less than the greatest of: *(1)* 6 percent of the following amount: The customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, provided, however, the deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; *(2)* for securities brokers or dealers, the amount of net capital specified in Rule 15c3–1d(b)(8)(i) of the regulations of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b)(8)(i)); or *(3)* 120 percent of the minimum dollar amount required by paragraph (a)(1)(i) of this section: *Provided,* That the subordination agreement may provide that if the payment obligation of the applicant or registrant thereunder does not mature and is suspended as a result of the requirement of this paragraph (h)(2)(viii) for a period of not less than six months, the applicant or registrant shall then commence the rapid and orderly liquidation of its business, but the right of the lender to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this section.

* * * * *

(3) * * *

(ii) *Notice of maturity or accelerated maturity.* Every applicant or registrant shall immediately notify the designated self-regulatory organization and the Commission if, after giving effect to all payments of payment obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the applicant or registrant, its adjusted net capital would be less than: (A) 120 percent of the minimum dollar amount required by paragraph (a)(1)(i) of this section; (B) 6 percent of the following amount: The customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, provided, however, the deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or (C) For securities brokers or dealers, the amount of net capital specified in Rule 15c3–1d(c)(2) of the regulations of the Securities and Exchange Commission (17 CFR 240.15c3–1d(c)(2)).

* * * * *

(v) *Temporary subordinations.* To enable an applicant or registrant to participate as an underwriter of securities or undertake other extraordinary activities and remain in compliance with the adjusted net capital requirements of this section, an applicant or registrant shall be permitted, on no more than three occasions in any 12-month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date the subordination agreement became effective: *Provided,* That this temporary relief shall not apply to any applicant or registrant if the adjusted net capital of the applicant or registrant is less than the greatest of: (A) 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, provided, however, the deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; (B) For securities brokers or dealers, the amount of net capital specified in Rule 15c3–1d(c)(5)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(c)(5)(i)); or (C) 120 percent of the appropriate minimum dollar amount required by paragraph (a)(1)(i) of this section; or the amount of equity capital as defined in paragraph (d) of this section is less than the limits specified in paragraph (d) of this section. Such temporary subordination agreement shall be subject to all the other provisions of this section.

* * * * *

Issued in Washington, D.C. on September 15, 1982, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82–25914 Filed 9–20–82; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 82–165]

Generalized System of Preferences; Evidence of the Country of Origin; Correction

AGENCY: Customs Service; Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in the effective date of a final rule relating to the Generalized System of Preferences which appeared at page 40160 in the Federal Register of Monday, September 13, 1982 (47 FR 40160).

FOR FURTHER INFORMATION CONTACT: Todd J. Schneider, Regulations Control Branch, U.S. Customs Service (202–566–8237).

The following correction is made to the document:

On page 40160, right-hand column, the date under the caption **EFFECTIVE DATE:** is corrected to read "September 13, 1982, * * *".

Dated: September 15, 1982.

Marvin M. Amernick,

Acting Director, Regulations Control and Disclosure Law Division.

[FR Doc. 82–25998 Filed 9–20–82; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 131

[Docket No. 77N–0143]

Cultured and Acidified Milks, Cultured and Acidified Buttermilks, Yogurts, and Eggnog; Confirmation of Effective Date and Further Amendments; and Stay of Effective Date of Certain Provisions

AGENCY: Food and Drug Administration.

ACTION: Final rule; stay of effective date; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of and further amending certain provisions of the standards of identity for acidified milk, acidified lowfat milk, acidified skim milk, cultured milk, cultured lowfat milk, cultured skim milk, eggnog, yogurt, lowfat yogurt, and nonfat yogurt. FDA also is staying certain provisions of these standards and confirming the redesignation of the standard of identity for skim milk.

DATES: Compliance with the provisions being revised herein may begin November 22, 1982. Effective July 1, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date.

Objections to the provisions being revised herein by October 21, 1982.

Except as to those provisions stayed or amended, compliance with the January 30, 1981 final rule may have begun March 31, 1981, and all products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1983, shall fully comply.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Eugene T. McGarrahan, Bureau of Foods (HFF–215), Food and Drug Administration, 200, C St. SW., Washington, DC 20204, 202–245–1155.

SUPPLEMENTARY INFORMATION: A final rule was published in the Federal Register of January 30, 1981 (46 FR 9924), redesignating 21 CFR 131.145 *Skim milk* as 21 CFR 131.143 *Skim milk* and establishing standards of identity for acidified milk (21 CFR 131.111), cultured milk (21 CFR 131.112), acidified lowfat milk (21 CFR 131. 136), cultured lowfat milk (21 CFR 131. 138), acidified skim milk (21 CFR 131.144), cultured skim milk (21 CFR 131.146), eggnog (21 CFR 131.170), yogurt (21 CFR 131.200), lowfat yogurt (21 CFR 131.203), and nonfat yogurt (21 CFR 131. 206). The final rule provided that any person who would be adversely affected could at any time, on or before March 2, 1981, file written objections to the final rule and request a hearing on the specific provisions to which there were objections.

Twenty-one responses were filed objecting to specific provisions of the final rule and in most cases requesting a hearing. Under section 701(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)) (the act), FDA has considered the objections and requests for a hearing and the conclusions are as follows:

Objections and Requests for a Hearing

General

1. *Other Milk-derived Ingredients.* Objectors assert that replacing the phrase "other milk-derived ingredients" in §§ 131.111(e)(1), 131.112(d)(1), 131.136(e)(1), 131.138(d)(1), 131.144(e)(1), 131.146(d)(1), 131.170(e)(1), 131.200(c)(1), 131.203(c)(1), and 131.206(c)(1) with a limited list of names of milk-derived ingredients, does not promote honesty and fair dealing in the interest of consumers because this interpretation of the phrase bars the use of other safe, nutritional, and functional milk-derived ingredients. The objectors also assert that exclusion of traditional milk-derived ingredients, e.g., partially delactosed skim milk, partially hydrolyzed whey, partially hydrolyzed skim milk, low sodium milks, casein, and caseinates, does not appear to have any rational factual basis, in light of FDA's past interpretation of the phrase to include many or all of these ingredients. The objections also maintain that a definition of the phrase "other milk-derived ingredients" should be established at a hearing.

FDA believes that the objectors raise a genuine and substantial issue of fact that must be resolved at a public hearing as provided for in 21 CFR 12.24. Therefore, FDA is staying the effective date of the provisions of §§ 131.111(e)(1), 131.112(d)(1), 131.136(e)(1), 131.138(d)(1), 131.144(e)(1), 131.146(d)(1), 131.170(e)(1), 131.200(c)(1), 131.203(c)(1), and 131.206(c)(1) that restrict the kinds of safe and suitable milk-derived ingredients that may be used as optional ingredients to increase the nonfat solids contents of these foods, pending the outcome of a public hearing. It should be noted that if no adverse comments are received to the amendment discussed in item 2, below, the paragraphs in all of the yogurt standards will be redesignated, so the paragraphs listed above which are affected by this stay will be changed from § 131.200(c)(1)to § 131.200(d)(1); § 131.203(c)(1) to § 131.203(d)(1); and § 131.206(c)(1) to § 131.206(d)(1).

2. *Optional Addition of Vitamins A and D to Yogurts and Eggnog.* Objectors assert that the standards of identity for eggnog (§ 131.170), yogurt (§ 131.200), lowfat yogurt (§ 131.203), and nonfat yogurt (§ 131.206 (should be amended to provide for the optional addition of vitamins A and D, as the other standards in the final rule do. Reasons given for the amendments are that yogurts are often used as dietary replacements for milk, particularly in the diets of children, and that the requested amendments would be consistent with other milk product standards of identity and would prevent the possibility that a yogurt manufacturer's product would be out of compliance with these standards if the manufacturer uses milk with added vitamins as an ingredient to produce yogurts.

FDA is persuaded that there is merit in permitting the addition of vitamins A and D to yogurt, lowfat yogurt, and nonfat yogurt, but not to eggnog. The agency is aware that children may consume significant amounts of yogurt products, especially flavored yogurts. In addition, many children who cannot tolerate milk physiologically or who dislike milk, are encouraged to consume yogurts and other products. Permitting the addition of vitamins A and D to these products would offer consumers an alternative group of dairy products as

a source of these vitamins. At the same time, the levels being proposed for addition of the vitamins do not provide a significant potential for excess consumption of these nutrients.

It is FDA's current policy to permit the addition of a nutrient to a food to correct a dietary insufficiency recognized by the scientific community to exist and known to result in nutritional deficiency disease. FDA only applies the policy where sufficient information is available to identify the nutritional problem and the affected population groups and where the food is suitable to act as a vehicle for the added nutrient. Because no information on eggnog was submitted to support the inclusion of vitamins A and D to eggnog and inasmuch as eggnog is a seasonal product, FDA concludes that eggnog is not a significant vehicle for added vitamins A and D.

Accordingly, FDA is revising §§ 131.200, 131.203, and 131.206, by adding a new paragraph (b), to each of the three standards for yogurts. This change will necessitate redesignating each subsequent paragraph and including labeling provisions in each standard, as set out below. FDA is allowing interested persons until October 21, 1982 to submit written objections to this amendment.

Cultured and Acidified Milks

3. *Color Additives.* Objectors contend that the provisions in §§ 131.111(e)(4), 131.112(d)(4), 131.136(e)(4), 131.138(d)(4), 131.144(e)(4), and 131.146(d)(4) which limit the type of color additives to those that do not impart a color simulating the color of milkfat or butterfat are unreasonable. The objectors maintain that it is common practice to use color additives to assure uniform color in flakes or granules of milkfat and butterfat.

FDA advises that the basis for the color additive limitation may not have been clear in the preamble to the January 30, 1981 final rule because a sentence was inadvertently dropped from the text. The sentence explained that the intent of the limited use of color additives imposed in §§ 131.111(e)(4), 131.112(d)(4), 131.136(e)(4), 131.138(d)(4), 131.144(e)(4), and 131.146(d)(4) is to prohibit the addition of yellow color, directly to the fluid products, in a manner that could give the products the appearance of containing more milkfat than they actually do, thus misleading consumers about the value of the products. The intent, therefore, was not to prohibit the use of color additives in butterfat or milkfat in the form of flakes or granules which may be added to acidified and cultured buttermilks. However, when butterfat or milkfat flakes or granules are used in acidified or cultured buttermilks, all of the ingredients, including color additives, in the flakes or granules must be declared in the ingredient statement. In order to clarify these provisions, FDA is revising §§ 131.111(e)(6), 131.112(d)(6), 131.136(e)(6), 131.138(d)(6), 131.144(e)(6), and 131.146(d)(6) to read "Butterfat or milkfat, which may or may not contain color additives, in the form of flakes or granules". In light of the foregoing explanation and clarification, FDA believes that the objection does not raise an issue of fact that warrants a hearing.

Eggnog

4. *Minimum Milk Solids Not Fat Requirement.* Objectors assert that a milk solids not fat minimum requirement is not necessary in the standard of identity for eggnog (§ 131.170(a)). The objectors point out that the definition on which this standard is based, found in the "Grade A Pasteurized Milk Ordinance—1965 Recommendations of the U.S. Public Health Service" (PMO), and most State standards for eggnog only require minimum levels of milkfat and egg yolk solids. The objectors further assert that an eggnog containing the minimum 8.25 percent milk solids not fat required by the standard would be too viscous for consumers' tastes.

FDA believes that the objectors raise a genuine and substantial issue of fact that must be resolved at a public hearing as provided for in 21 CFR 12.24. Therefore, FDA is staying the effective date of that portion of § 131.170(a) that sets a minimum milk solids not fat level of 8.25 percent in eggnog, pending the outcome of a public hearing.

5. *Limitation of the Use of Color Additives.* Objectors argue that the limitation established in § 131.170(e)(4) on the use of color additives that simulate the color of egg yolk, butterfat, or milkfat is unreasonable and not in the best interests of consumers. The objectors maintain that States have permitted the use of color additives in eggnog for years and, furthermore, consumers have come to expect a deeper yellow color than could be normally obtained from egg yolks and milkfat alone. One objector asserts that it is fairer to permit manufacturers the use of color additives to give eggnog an improved, uniform appearance year round than it is to create a situation in which highly colored egg yolks obtained from specifically fed laying flocks would be used to color the food, since color from the later source would not be required to be declared on the label of the food.

FDA believes that the objectors raise a genuine and substantial issue of fact that must be resolved at a public hearing as provided for in 21 CFR 12.24. Therefore, FDA is staying the effective date of that portion of § 131.170(e)(4) that prohibits the use of color additives that simulate the color of egg yolk, butterfat, or milkfat, pending the outcome of a public hearing. Until such time as this issue is resolved, the safe and suitable use of color additives that simulate the color of egg yolk, milkfat, or butterfat will not be the basis for regulatory action.

6. *Post-pasteurization Addition of Color Additives and Flavoring Ingredients.* Objectors state that the provision in § 131.170(a) requiring that color additives and, more importantly, flavoring ingredients be added prior to pasteurization of the final product is reasonable and that it will result in less palatable and/or more expensive products. The objectors maintain that eggnog characteristically contains rum flavor, which is volatile, and nutmeg, which becomes lodged in the pasteurization equipment. One of the objectors argues that it is the responsibility of manufacturers, in line with good manufacturing practice, to take the precautionary measures necessary to assure that a safe product reaches the consumer and offers the past record of eggnog as evidence that these measures have been taken. The objectors agree that the egg ingredient should be added prior to pasteurization, and state that this procedure is consistent with good manufacturing practices and would adequately protect consumers against any potential health hazard resulting from use of the egg ingredient.

FDA believes that the objectors have presented sufficient information to justify revising § 131.170(a) to permit addition of color additives and flavoring ingredients after pasteurization or ultra-pasteurization. This is predicated on the fact that these ingredients, as well as the finished food, must be free from physical, chemical, or microbiological contamination as required by the act. FDA is allowing interested persons until October 21, 1982 to submit written objections to this amendment.

Yogurts

7. *Heat-treatment after Culturing.* Objectors state that §§ 131.200(a) and (e)(1)(ii), 131.203(a) and (e)(1)(iii), and 131.206(a) and (e)(1)(ii) (redesignated as §§ 131.200(a) and (f)(1)(ii), 131.203(a) and (f)(1)(iii), 131.206(a) and (f)(1)(ii) in the final rule set forth below), which provide for the heat-treatment of yogurts

after culturing, will confuse and mislead the public into believing that these products have been manufactured in the traditional way. The objectors also contend that the heat-treatment provisions benefit only those processors who operate under less than satisfactory sanitary conditions.

This issue was discussed in the preamble to the final rule published in the **Federal Register** of January 30, 1981 (46 FR 9924). FDA maintains its position that informative labeling, such as the mandatory declaration "heat-treatment after culturing" which must appear on the label of all yogurts that have been heated after culturing, provides sufficient information for consumers to differentiate the traditional product from the heat-treated product. The agency does not agree that use of a post-culturing heat treatment will cover up unsanitary manufacturing conditions and no evidence to support this view was provided. FDA concludes that this objection does not raise an issue of fact that warrants a hearing.

8. *"Heat-treated After Culturing" Labeling.* (a) One objector asserts that the required labeling in §§ 131.200(e)(1)(ii), 131.203(e)(1)(iii), and 131.206(e)(1)(ii) (redesignated as §§ 131.200(f)(1)(ii), 131.203(f)(1)(iii), and 131.206(f)(1)(ii) in the final rule set forth below) is unnecessary when yogurts are heat-treated only enough to destroy part of the total microbial population. Under such circumstances, the shelf life of the product is extended and the microbial population often regenerates to preexisting levels by the time the yogurt is purchased. The objector maintains that consumers will be misled into thinking that all of the microorganisms have been destroyed whenever they see the phrase on a label.

FDA does not agree and reiterates its position that product labeling must be factual and that any heat-treatment applied to yogurt after the food is cultured triggers the "heat-treated after culturing" labeling requirement, regardless of the extent of bacterial destruction. This issue was discussed in the preamble to the final rule published in the **Federal Register** of January 30, 1981 (46 FR 9924). FDA explained that the purpose of the phrase is to alert consumers to the fact that the traditional food has been subjected to heat treatment which may have caused changes such as partial or complete reduction in the number of characterizing microorganisms or changes in enzyme content, aroma, or flavor. The objector does not suggest any alternative labeling that would inform consumers of these changes. FDA concludes that this objection does not raise an issue of fact that warrants a hearing.

(b) One objector also asserts that it is unnecessary to include the "heat-treated after culturing" labeling as part of the name of a yogurt when that yogurt is used as an ingredient in another food. The objector interprets the standards to mean that the phrase must accompany the names of heat-treated yogurts when they are used as ingredients in other foods.

FDA advises the objector that his interpretation is incorrect and that the "heat-treated after culturing" phrase need not appear in a label statement of ingredients when a heat-treated yogurt is used as an ingredient in another food. FDA concludes that this objection does not raise an issue of fact that warrants a hearing.

9. *Milkfat Minimum in "Yogurt".* An objector states that the 3.25 percent minimum milkfat requirement in § 131.200(a) should apply only when the optional dairy ingredients provided for in paragraph (b) of § 131.200 (redesignated as § 131.200(c) in the final rule set forth below) are used to meet the minimum fat (3.25 percent) and minimum milk solids not fat (8.25 percent) requirements for yogurt. The objector states that the language in paragraph (a) of § 131.200 implies that the milkfat minimum must be met after any addition of other optional ingredients to increase the milk solids not fat content of yogurt above the minimum requirement. The objector maintains that applying the milkfat minimum to yogurt which has been made to contain milk solids not fat at a level higher than the minimum requirement of the standard will discourage manufacturers from using higher levels of milk solids not fat in yogurt because such addition would then require the use of more milkfat. The objector wants § 131.200(a) amended so that the minimum milkfat requirement only applies to the optional dairy ingredients utilized in accordance with paragraph (b) of § 131.200 (redesignated as § 131.200(c) in the final rule set forth below).

FDA agrees that § 131.200(a) requires that the milkfat minimum of 3.25 percent must be met after any addition of other optional ingredients. (FDA points out, however, that § 131.200(a) also provides that the minimum 3.25 percent milkfat and 8.25 percent milk solids not fat requirement applies prior to the addition of any bulky flavors.) While paragraph (a) of § 131.200 provides for the use of other optional dairy ingredients to increase the milk solids not fat content of the yogurt ingredients to 8.25 percent or above, it was never intended to provide and does not provide for a proportionate decrease in the minimum milkfat content of yogurt.

FDA believes that the objector has raised a genuine and material issue of fact that must be resolved at a hearing as provided for in 21 CFR 12.24. The hearing issue will be: "Whether the minimum milkfat requirement of 3.25 percent in 21 CFR 131.200(a) should apply to yogurt before or after the addition of one or more of the optional sources of milk solids not fat listed in paragraph (c)(1) of that section." Therefore, FDA is staying the effective date of the requirement in § 131.200(a) that is the subject of the hearing issue.

10. *Fresh Fluid Dairy Ingredients as the Basic Ingredients Versus Use of Condensed and Dry Dairy Ingredients Reconstituted with Water.* (a) An objector states that the standards of identity for yogurt (§ 131.200), lowfat yogurt (§ 131.203), and nonfat yogurt (§ 131.206) should be modified to provide for the manufacture of yogurts from condensed or dry dairy ingredients reconstituted with water. The objector maintains that yogurt manufacturers in Florida and the Southeastern States will be adversely affected because the fluid milk supplies in these States are often insufficient for use in yogurt manufacture. If reconstituted dairy ingredients are not permitted, the price of yogurts will be artificially and unnecessarily inflated in those areas.

FDA believes that the objector raises a genuine and substantial issue of fact that must be resolved at a public hearing as provided for in 21 CFR 12.24. Therefore, FDA is staying the effective date of those portions of §§ 131.200(a), 131.203(a), and 131.206(a) that exclude the use of reconstituted dairy ingredients as the basic ingredients in the manufacture of yogurts, pending the outcome of a public hearing. Until such time as this issue is resolved, the use of reconstituted dairy ingredients as the basic ingredients in the manufacture of yogurt, lowfat yogurt, or nonfat yogurt will not be the basis for regulatory action.

(b) The objector believes that it would allow maximum flexibility in product formulation if skim milk or skim milk reconstituted from concentrated and dry skim milk were included in the list of dairy ingredients in § 131.200(c)(1) (redesignated as § 131.200(d)(1) in the final rule set forth below) that may be used to increase the nonfat solids content of yogurt.

FDA believes it is impossible to increase the milk solids not fat content

of yogurt above 8.25 percent by using either skim milk or reconstituted skim milk. These ingredients contain approximately 9 percent milk solids not fat and 91 percent water. While the addition of skim milk or reconstituted skim milk would contribute milk solids not fat, there would be a concomitant decrease in the percent of milkfat in the dairy ingredients combined to produce yogurt due to the increased volume of water contributed by the skim milk or reconstituted skim milk. The objector did not submit any data or information demonstrating that skim milk or reconstituted skim milk can be used to increase the milk solids not fat content of yogurt above the 8.25 percent minimum without also decreasing the milkfat content below the 3.25 percent minimum. FDA concludes that these ingredients are inappropriate dairy ingredients for increasing the milk solids not fat content of yogurt and that this objection does not raise an issue of fact that warrants a hearing.

11. *Preservatives.* Objectors assert that the standards of identity for yogurt (§ 131.200(c)), lowfat yogurt (§ 131.203(c)), and nonfat yogurt (§ 131.206(c)) (redesignated as §§ 131.200(d), 131.203(d), and 131.206(d) in the final rule set forth below) should provide for the use of preservatives such as potassium sorbate and sorbic acid, to prohibit the growth of yeasts and molds and extend the shelf life of the foods 15 to 30 days. The objectors maintain that the use of preservatives is economically beneficial to consumers.

FDA believes that the objectors raised a genuine and substantial issue of fact that must be resolved at a public hearing as provided for in 21 CFR 12.24. Therefore, FDA is staying the effective date of those portions of §§ 131.200(d), 131.203(d), and 131.206(d) insofar as they exclude the addition of preservatives to yogurts, pending the outcome of a public hearing. Until such time as this issue is resolved, the appropriate use of preservatives in these foods will not be the basis for regulatory action.

12. *"Sweetened" Labeling.* One objector states that the required label declaration "sweetened" in §§ 131.200(e)(1)(i), 131.203(e)(1)(ii), and 131.206(e)(1)(i) (redesignated as §§ 131.200(f)(1)(i), 131.203(f)(1)(ii), and 131.206(f)(1)(i) in the final rule set forth below) is not justifiable for plain yogurts that only contain sufficient sweetener to soften the tart flavor of the acid, but not enough to characterize the yogurts as sweet. The objector maintains that consumers will be misled into thinking the product will taste sweet or will be high in calories due to the word "sweetened" on the label as part of the name of the food.

It is the agency's position that yogurt is sweetened when a nutritive carbohydrate sweetener is added, either to lessen the tartness of the food or to create a perceptible sweet taste, and that consumers should so be informed in a straightforward manner. The most effective method of informing the consumer that sugar or some other sweetener has been added to the food, is to require the word "sweetened" as part of the name of the food, thereby clearly differentiating sweetened from plain yogurt. Therefore, FDA concludes that these objections do not raise an issue of fact that warrants a hearing.

13. *Post-pasteurization Addition of Flavors.* An objector argues that the provisions of the standards of identity for yogurts, §§ 131.200(a), 131.203(a), and 131.206(a), that permit the addition of bulky flavors after yogurts have been pasteurized also should apply to nonbulky flavors such as lemon, vanilla, and coffee. The objector maintains that some of the chemical components of these flavors volatilize upon heating and that other components may be altered by heating in such a way that bitterness or other unpleasant tastes are created. In either case, the flavor of the final product would be adversely affected.

FDA believes that valid technological reasons have been provided by the objector for permitting the addition of nonbulky flavors to yogurt, lowfat yogurt, and nonfat yogurt, after pasteurization. Therefore, FDA is revising §§ 131.200(a), 131.203(a), and 131.206(a) by removing the words "and bulky flavoring material" from the sentence that now reads "The food may be homogenized and shall be pasteurized or ultra-pasteurized prior to the addition of the bacterial culture and bulky flavoring material", and adding the sentence "Flavoring ingredients may be added after pasteurization or ultra-pasteurization". It is the responsibility of the manufacturers of yogurts to assure that the addition of any ingredients after pasteurization will not microbiologically contaminate the final product. FDA is allowing interested persons until October 21, 1982 to submit written objections to this amendment.

14. *Minimum Titratable Acidity.* An objector contends that the minimum titratable acidity of 0.9 percent, expressed as lactic acid, as required for yogurts in §§ 131.200(a), 131.203(a), and 131.206(a), is too high for some consumers' tastes and that 0.75 percent is the common industry practice.

FDA believes that the objector raises a genuine and substantial issue of fact that must be resolved at a public hearing as provided for in 21 CFR 12.24. Therefore, FDA is staying those portions of §§ 131.200(a), 131.203(a), and 131.206(a) that set a minimum titratable acidity of 0.9 percent, expressed as lactic acid, pending the outcome of a public hearing. Until such time as this issue is resolved, yogurt, lowfat yogurt, or nonfat yogurt will not be required to meet the 0.9 percent minimum level of titratable acidity.

Objections Without Requests for a Hearing

Cultured and Acidified Milks

15. *Optional Acidifiers.* An objector asserts that the omission of acetic acid from the list of optional acidifiers that may be used in acidified milk (§ 131.111(d)), acidified lowfat milk (§ 131.136(d)), and acidified skim milk (§ 131.144(d)) is unjustifiable. The objector maintains that acetic acid is an integral component of the flavor of buttermilk, so it is reasonable to add the acid to the list of other acids that may be used to make acidified versions of buttermilk.

FDA agrees and is adding acetic acid to the lists of optional acidifying ingredients in §§ 131.111(d), 131.136(d), and 131.144(d) and is allowing interested persons until October 21, 1982 to submit written objections to this amendment.

16. *Minimum Milkfat Requirement for "Cultured Buttermilk".* An objector argues that the minimum milkfat requirement of 3.25 percent for "cultured buttermilk" (§ 131.112(a)) would cause the objector to increase the milkfat content of its "cultured buttermilk" or be required to change the name of its product to "Lowfat cultured buttermilk". The objector's view is that its product, which it calls "cultured buttermilk", was patterned after the composition of buttermilk obtained from the manufacture of butter from cream.

FDA advises that while some firms may have utilized the name "cultured buttermilk" for a product containing 0.5 to 2 percent milkfat, there are many who use a higher milkfat content. For the purpose of uniformity in composition and labeling within product groups and between products it is essential that names and composition be standardized wherever possible. It is the view of FDA that this promotes honesty and fair dealing in the interest of consumers.

Yogurts

17. *Percent Milkfat Declaration on Lowfat Yogurt Labels.* Objectors assert, in opposition to the label requirements of § 131.203(e)(1)(i) (redesignated as

§ 131.203(f)(1)(i) in the final rule set forth below), that a declaration of the actual quantity of fat, as is found in nutrition labeling, is more informative and less misleading than a declaration of the percent milkfat in the name of the food.

The purpose of requiring the declaration of the percent fat in the name of the food is to provide the consumer with information, at the time of purchase, about the fat content (to the nearest 0.5 percent) of the lowfat yogurt being purchased. The practice is reasonable because the standard of identity for lowfat yogurt provides for a milkfat content of from 0.5 to 2.0 percent. While nutrition labeling requires more definitive information, such as the grams of fat per serving, the nutrition labeling of lowfat yogurt is only required by virtue of the fact that the proposed standard of identity for lowfat yogurt would require the percentage of milkfat to be declared in the name of the food.

18. *Alternative Spelling for Yogurt.* An objector states that the mandatory name of the food "Yogurt", as required in §§ 131.200, 131.203, and 131.206, prevents the use of the name "yogourt". Therefore, the interested party requests that the alternate spelling of the name be provided for in the standards. The request for such consideration is based on the fact that the interested party has been marketing these foods under the name "yogourt" since the mid 1940's.

This issue was discussed in the preamble of the final rule published in the Federal Register of January 30, 1981 (46 FR 9924) where it was explained that the word "yogourt" may be used as a fanciful name by those who have rights to such name, but it must be accompanied by the standardized name of the food "yogurt".

19. *"Heat-treated after culturing" Labeling.* An objector interprets the standards to mean that the "heat-treated after culturing" phrase shall accompany the names of the dairy ingredients in the label statement of ingredients rather than accompanying the name of the food on the principal display panel. This objector maintains that the phrase does not convey any valuable information to consumers.

FDA advises that the objectors's interpretation is incorrect and that the "heat-treated after culturing" phrase must accompany the name of the food wherever it appears on the principal display panel or panels of the label, e.g., "nonfat yogurt (heat-treated after culturing)". The phrase need not accompany the name(s) of the dairy ingredients in the label statement of ingredients of the food. FDA also disagrees with the objector's contention that the phrase does not convey any valuable information to consumers. As discussed in the preamble of the final rule published in the Federal Register of January 30, 1981 (46 FR 9924), many consumers approve of requiring the "heat-treated after culturing" labeling as part of the name of the food so they can avoid purchasing heat-treated yogurts.

Provisions stayed. Under section 701(e) of the act, FDA hereby announces that the effective date of the following provisions of the January 30, 1981 final rule is stayed by the filed objections, pending a public hearing to be announced at a later date:

1. Those provisions of §§ 131.111(e)(1), 131.112(d)(1), 131.136(e)(1), 131.138(d)(1), 131.144(e)(1), 131.146(d)(1), 131.170(e)(1), 131.200(c)(1), 131.203(c)(1), and 131.206(c)(1) that restrict the type of milk-derived ingredients that may be used, to those so named, to increase the nonfat solids content of cultured and acidified milks, eggnog, and yogurts;

2. That portion of § 131.170(a) that sets a minimum milk solids not fat requirements of 8.25 percent in eggnog;

3. That portion of § 131.170(e)(4) that prohibits the use of color additives that simulate the color of egg yolk, butterfat, or milkfat;

4. Those portions of §§ 131.200(a), 131.203(a), and 131.206(a) that exclude the use of reconstituted dairy ingredients as the basic ingredient in the manufacture of yogurts;

5. Those portions of §§ 131.200(c), 131.203(c), and 131.206(c) insofar as they exclude the addition of preservatives to yogurts; and,

6. Those portions of §§ 131.200(a), 131.203(a), and 131.206(a) that set a minimum titratable acidity of 0.9 percent, expressed as lactic acid.

7. The requirement in § 131.200(a) that the 3.25 percent minimum milkfat level applies to yogurt after the addition of one or more of the optional sources of milk solids not fat listed in § 131.200(c)(1).

List of Subjects in 21 CFR Part 131

Cream, Food standards, Milk, Yogurt.

PART 131—MILK AND CREAM

Therefore, under the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 131 is amended as follows:

1. In § 131.111 by revising paragraphs (d) and (e)(6) to read as follows:

§ 131.111 Acidified milk.

* * * * *

(d) *Optional acidifying ingredients.* Acetic acid, adipic acid, citric acid, fumaric acid, glucono-*delta*-lactone, hydrochloric acid, lactic acid, malic acid, phosphoric acid, succinic acid, and tartaric acid.

(e) * * *

(6) Butterfat or milkfat, which may or may not contain color additives, in the form of flakes or granules.

* * * * *

2. In § 131.112 by revising paragraph (d)(6) to read as follows:

§ 131.112 Cultured milk.

* * * * *

(d) * * *

(6) Butterfat or milkfat, which may or may not contain color additives, in the form of flakes or granules.

* * * * *

3. In § 131.136 by revising paragraphs (d) and (e)(6) to read as follows:

§ 131.136 Acidified lowfat milk.

* * * * *

(d) *Optional acidifying ingredients.* Acetic acid, adipic acid, citric acid, fumaric acid, glucono-*delta*-lactone, hydrochloric acid, lactic acid, malic acid, phosphoric acid, succinic acid, and tartaric acid.

(e) * * *

(6) Butterfat or milkfat, which may or may not contain color additives, in the form of flakes or granules.

* * * * *

4. In § 131.138 by revising paragraph (d)(6) to read as follows:

§ 131.138 Cultured lowfat milk.

* * * * *

(d) * * *

(6) Butterfat or milkfat, which may or may not contain color additives, in the form of flakes or granules.

* * * * *

5. In § 131.144 by revising paragraphs (d) and (e)(6) to read as follows:

§ 131.144 Acidified skim milk.

* * * * *

(d) *Optional acidifying ingredients.* Acetic acid, adipic acid, citric acid, fumaric acid, glucono-*delta*-lactone, hydrochloric acid, lactic acid, malic acid, phosphoric acid, succinic acid, and tartaric acid.

(e) * * *

(6) Butterfat or milkfat, which may or may not contain color additives, in the form of flakes or granules.

* * * * *

6. In § 131.146 by revising paragraph (d)(6) to read as follows:

§ 131.146 Cultured skim milk.

* * * * *

(d) * * *

(6) Butterfat or milkfat, which may or may not contain color additives, in the form of flakes or granules.

* * * * *

7. In § 131.170 by revising paragraph (a) to read as follows:

§ 131.170 Eggnog.

(a) *Description.* Eggnog is the food containing one or more of the optional dairy ingredients specified in paragraph (b), one or more of the optional egg yolk-containing ingredients specified in paragraph (c) of this section, and one or more of the optional nutritive carbohydrate sweeteners specified in paragraph (d) of this section. One or more of the optional ingredients specified in paragraph (e) of this section may also be added. All ingredients used are safe and suitable. Eggnog contains not less than 6 percent milkfat and not less than 8.25 percent milk solids not fat. The egg yolk solids content is not less than 1 percent by weight of the finished food. The food shall be pasteurized of ultra-pasteurized and may be homogenized. Flavoring ingredients and color additives may be added after the food is pasteurized or ultra-pasteurized.

* * * * *

8. In § 131.200 by revising paragraph (a), by redesignating paragraphs (b) through (f) as (c) through (g), and by adding new paragraphs (b) and (f)(1)(iii) to read as follows:

§ 131.200 Yogurt.

(a) *Description.* Yogurt is the food produced by culturing one or more of the optional dairy ingredients specified in paragraph (c) of this section with a characterizing bacterial culture that contains the lactic acid-producing bacteria, *Lactobacillus bulgaricus* and *Streptococcus thermophilus.* One or more of the other optional ingredients specified in paragraphs (b) and (d) of this section may also be added. When one or more of the ingredients specified in paragraph (d)(1) of this section are used, they shall be included in the culturing process. All ingredients used are safe and suitable. Yogurt, before the addition of bulky flavors, contains not less than 3.25 percent milkfat and not less than 8.25 percent milk solids not fat, and has a titratable acidity of not less than 0.9 percent, expressed as lactic acid. The food may be homogenized and shall be pasteurized or ultra-pasteurized prior to the addition of the bacterial culture. Flavoring ingredients may be added after pasteurization or ultra-pasteurization. To extend the shelf life of the food, yogurt may be heat treated after culturing is completed, to destroy viable microorganisms.

(b) *Vitamin addition (optional).* (1) If added, vitamin A shall be present in such quantity that each 946 milliliters (quart) of the food contains not less than 2,000 International Units thereof, within limits of current good manufacturing practice.

(2) If added, vitamin D shall be present in such quantity that each 946 milliliters (quart) of the food contains 400 International Units thereof, within limits of current good manufacturing practice.

(c) *Optional dairy ingredients.* * * *

(d) *Other optional ingredients.* * * *

(e) *Methods of analysis.* * * *

(f) *Nomenclature.* * * *

(1) * * *

(iii) The phrase "vitamin A" or "vitamin A added", or "vitamin D" or "vitamin D added", or "vitamins A and D added", as appropriate. The word "vitamin" may be abbreviated "vit".

* * * * *

(g) *Label declaration.* * * *

9. In § 131.203 by revising paragraph (a), by redesignating paragraphs (b) through (f) as (c) through (g), and by adding new paragraphs (b) and (f)(1)(iv) to read as follows:

§ 131.203 Lowfat yogurt.

(a) *Description.* Lowfat yogurt is the food produced by culturing one or more of the optional dairy ingredients specified in paragraph (c) of this section with a characterizing bacterial culture that contains the lactic acid-producing bacteria, *Lactobacillus bulgaricus* and *Streptococcus thermophilus.* One or more of the other optional ingredients specified in paragraphs (b) and (d) of this section may also be added. When one or more of the ingredients specified in paragraph (d)(1) of this section are used, they shall be included in the culturing process. All ingredients used are safe and suitable. Lowfat yogurt, before the addition of bulky flavors, contains not less than 0.5 percent nor more than 2 percent milkfat and not less than 8.25 percent milk solids not fat, and has a titratable acidity of not less than 0.9 percent, expressed as lactic acid. The food may be homogenized and shall be pasteurized or ultra-pasteurized prior to the addition of the bacterial culture. Flavoring ingredients may be added after pasteurization or ultra-pasteurization. To extend the shelf life of the food, lowfat yogurt may be heat treated after culturing is completed, to destroy viable microorganisms.

(b) *Vitamin addition (optional).* (1) If added, vitamin A shall be present in such quantity that each 946 milliliters (quart) of the food contains not less than 2,000 International Units thereof, within limits of current good manufacturing practice.

(2) If added, vitamin D shall be present in such quantity that each 946 milliliters (quart) of the food contains 400 International Units thereof, within limits of current good manufacturing practice.

(c) *Optional dairy ingredients.* * * *

(d) *Other optional ingredients.* * * *

(e) *Methods of analysis.* * * *

(f) *Nomenclature.* * * *

(1) * * *

(iv) The phrase "vitamin A" or "vitamin A added", or "vitamin D" or "vitamin D added", or "vitamins A and D added", as appropriate. The word "vitamin" may be abbreviated "vit".

* * * * *

(g) *Label declaration.* * * *

10. In § 131.206 by revising paragraph (a), by redesignating paragraphs (b) through (f) as (c) through (g), and by adding new paragraphs (b) and (f)(1)(iii) to read as follows:

§ 131.206 Nonfat yogurt.

(a) *Description.* Nonfat yogurt is the food produced by culturing one or more of the optional dairy ingredients specified in paragraph (c) of this section with a characterizing bacterial culture that contains the lactic acid-producing bacteria, *Lactobacillus bulgaricus* and *Streptococcus thermophilus.* One or more of the other optional ingredients specified in paragraphs (b) and (d) of this section may also be added. When one or more of the ingredients specified in paragraph (d)(1) of this section are used, they shall be included in the culturing process. All ingredients used are safe and suitable. Nonfat yogurt, before the addition of bulky flavors, contains less than 0.5 percent milkfat and not less than 8.25 percent milk solids not fat, and has a titratable acidity of not less than 0.9 percent, expressed as lactic acid. The food may be homogenized and shall be pasteurized or ultra-pasteurized prior to the addition of the bacterial culture. Flavoring ingredients may be added after pasteurization or ultra-pasteurization. To extend the shelf life of the food, nonfat yogurt may be heat treated after culturing is completed, to destroy viable microorganisms.

(b) *Vitamin addition (optional).* (1) If added, vitamin A shall be present in such quantity that each 946 milliliters (quart) of the food contains not less than 2,000 International Units thereof, within limits of good manufacturing practice.

(2) If added, vitamin D shall be present in such quantity that each 946

milliliters (quart) of the food contains 400 International Units thereof, within limits of good manufacturing practice.

(c) *Optional dairy ingredients.* * * *

(d) *Other optional ingredients.* * * *

(e) *Methods of analysis.* * * *

(f) *Nomenclature.* * *

(1) * * *

(iii) The phrase "vitamin A" or "vitamin A added", or "vitamin D" or "vitamin D added", or "vitamins A and D added", as appropriate. The word "vitamin" may be abbreviated "vit".

* * * * *

(g) *Label declaration.* * * *

Any person who will be adversely affected by the foregoing amendments to the final regulation, published in the January 30, 1981 Federal Register (46 FR 9924), may at any time on or before October 21, 1982, submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. Except as to the amendment that may be stayed by the filing of proper objections, compliance with these amendments to the final regulations may begin November 22, 1982. The mandatory compliance date for the provisions that are revised in this document shall be July 1, 1985. Notice of the filing of objections or lack thereof will be published in the Federal Register. Accordingly, except as to those provisions being herein amended and the provisions listed above as stayed, the effective date of §§ 131.111, 131.112, 131.136, 131.138, 131.143, 131.144, 131.148, 131.170, 131.200, 131.203, and 131.206 as published in the Federal Register of January 30, 1981 (46 FR 9924) is confirmed as follows: Compliance with this regulation, including any required labeling changes, may have begun on March 31, 1981 and all affected products initially delivered for introduction into interstate commerce on or after July 1, 1983, shall fully comply.

(Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)))

Dated: September 14, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-25781 Filed 9-20-82; 8:45 am]

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21 CFR Part 135

[Docket No. 79P-0441]

Frozen Desserts; Standards of Identity for Goat's Milk Ice Cream, Goat's Milk Frozen Custard, and Goat's Milk Ice Milk

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing standards of identity for goat's milk ice cream, goat's milk frozen custard, and goat's milk ice milk by cross-reference to the standards of identity for ice cream and frozen custard and for ice milk. This action will provide for the manufacture of ice cream, frozen custard, and ice milk from goat's milk, which consumers may use as alternatives to products made from cow's milk.

DATES: Effective July 1, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may begin November 22, 1982; objections by October 21, 1982.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Eugene T. McGarrahan, Bureau of Foods (HFF-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1155.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 8, 1981 (46 FR 60007), FDA published a proposal to establish standards of identity for goat's milk ice cream and goat's milk frozen custard (21 CFR 135.115) and goat's milk ice milk (21 CFR 135.125) cross-referenced to the standards of identity for ice cream and frozen custard (21 CFR 135.110) and ice milk (21 CFR 135.120), respectively. The proposal allowed for the filing of comments by February 8, 1982.

Five comments were received in response to the proposal. The comments and the agency's response are discussed below.

1. Several comments requested that the concentrated and dry forms of goat's milk and goat's cream also be permitted in addition to the liquid form.

FDA advises that any of the dairy ingredients permitted in § 135.115(b) may be used in liquid, concentrated, or dry form. To clarify this issue, FDA is revising § 135.115(b) to read "The optional dairy ingredients referred to in paragraph (a) of this section are goat's skim milk, goat's milk, and goat's cream. These optional dairy ingredients may be used in liquid, concentrated, and/or dry form."

2. One comment suggested that goat's milk-derived ingredients, such as whey, caseinates, and coprecipitates of goat's milk protein, be added to the list of optional dairy ingredients that may be used. The comment stated that these ingredients are not now available, but providing for their use now will eliminate the need for amendments at a later date when the ingredients do become available.

FDA cannot approve the use of ingredients before they are actually developed because there are no data with which to establish whether they are safe and suitable. As new goat's milk-derived ingredients are developed and demonstrated to be suitable ingredients, interested persons may submit petitions to amend the standards of identity to provide for their use.

3. One comment suggested that the name of the food be changed from "goat's milk ice cream" to "goat ice cream" because inclusion of the word "milk" may mislead consumers about the nature of the product. The comment also stated that the proper designation should be "goat milk" rather than "goat's milk".

FDA believes the name "goat ice cream" is potentially more confusing than the name "goat's milk ice cream" and, therefore, is not making the suggested change. It is not clear to the agency how inclusion of the word "milk" in the name of the food could mislead consumers since the food is made from goat's milk and/or components of goat's milk. FDA also rejects the suggestion that "goat's milk" be referred to as "goat milk" instead, because the possessive form is the commonly recognized mode of

designating the source of various milks, e.g., cow's milk, sheep's milk.

4. One comment suggested permitting the use of 50 percent cow's milk and 50 percent goat's milk in the manufacture of ice cream. No data or information were submitted to indicate the use or need for such provisions.

In light of the fact that there are no data upon which to base this change, FDA is not providing for the use of combinations of goat's and cow's milks in the making of ice cream. Furthermore, one of the reasons given by the petitioner for establishing a standard for goat's milk ice cream was to increase the number of products available to consumers who are unable to tolerate products made with cow's milk and to do otherwise would defeat this purpose.

After considering the comments received, FDA concludes that it will promote honesty and fair dealing in the interests of consumers to establish standards of identity for goat's milk ice cream, goat's milk frozen custard, and goat's milk ice milk, as set forth below.

List of Subjects in 21 CFR Part 135

Food standards, Frozen desserts, Ice cream.

PART 135—FROZEN DESSERTS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 135 is amended by adding new §§ 135.115 and 135.125 to read as follows:

§ 135.115 Goat's milk ice cream.

(a) *Description.* Goat's milk ice cream is the food prepared in the same manner prescribed in § 135.110 for ice cream, and complies with all the provisions of § 135.110, except that the only optional dairy ingredients that may be used are those in paragraph (b) of this section; caseinates may not be used; and paragraphs (e)(1) and (f) of § 135.110 shall not apply.

(b) *Optional dairy ingredients.* The optional dairy ingredients referred to in paragraph (a) of this section are goat's skim milk, goat's milk, and goat's cream. These optional dairy ingredients may be used in liquid, concentrated, and/or dry form.

(c) *Nomenclature.* The name of the food is "goat's milk ice cream" or, alternatively, "ice cream made with goat's milk", except that when the egg yolk solids content of the food is in excess of that specified for ice cream in paragraph (a) of § 135.110, the name of the food is "goat's milk frozen custard" or, alternatively, "frozen custard made with goat's milk", or "goat's milk french ice cream", or, alternatively, "french ice cream made with goat's milk", or "goat's milk french custard ice cream", or, alternatively, "french custard ice cream made with goat's milk".

(d) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

§ 135.125 Goat's milk ice milk.

(a) *Description.* Goat's milk ice milk is the food prepared in the same manner prescribed in § 135.115 for goat's milk ice cream, except that paragraph (c) shall not apply, and which complies with all the requirements of § 135.120(a) (1), (2), (4), (5), (6), and (7) for ice milk.

(b) *Nomenclature.* The name of the food is "goat's milk ice milk" or, alternatively, "ice milk made with goat's milk".

Any person who will be adversely affected by the foregoing regulation may at any time on or before October 21, 1982 submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the hearing of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date: Except as to any provisions that may be stayed by the filing of proper objections, compliance with this final regulation, including any required labeling changes, may begin November 22, 1982, and all affected products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1985, shall fully comply. Notice of the filing of objections or lack thereof will be published in the **Federal Register.**

(Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)))

Dated: September 13, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-25716 Filed 9-20-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR PART 145

[Docket No. 78N-0138]

Canned Pears; Standard of Quality

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standard of quality for canned pears in consideration of the quality provisions of the Recommended International Standard for Canned Pears developed by the Codex Alimentarius Commission and requests by the Canners League of California and the United States Department of Agriculture. This action will promote honesty and fair dealing in the interest of consumers and facilitate international trade.

DATES: Effective July 1, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may begin November 22, 1982. Objections by October 21, 1982.

ADDRESS: Written objections are to be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 25, 1978 (43 FR 32143), FDA published a proposal to amend the standard of quality for canned pears in § 145.175(b) (21 CFR 145.175(b)) in consideration of the quality provisions of the Recommended International Standard for Canned Pears (Codex standard) developed by the Codex Alimentarius Commission. The comment period was extended until January 23, 1979, in the **Federal Register** of January 9, 1979 (44 FR 1983).

Comments were received from two trade associations representing canners

of pears. The comments and FDA's responses are as follows:

1. One comment recommended eliminating the minimum size requirements for halves and quarters styles of canned pears because they are not in the Codex standard.

The basis for retaining the current minimum size requirements for canned pear halves and quarters was fully discussed in the preamble to the July 25, 1978 proposal. In response, no comments submitted information to show that the current U.S. minimum size requirements for canned pears are incompatible with the promotion of honesty and fair dealing in the interest of consumers. In the absence of such information, FDA concludes that the minimum size requirements for halves and quarters styles of canned pears are reasonable and retains them as part of the standard of quality for canned pears in § 145.175(b)(1)(ii).

2. Two comments characterized as "arbitrary" the agency's reliance upon certain of the more restrictive provisions of the Codex standard, the U.S. standard, or the U.S. Department of Agriculture (USDA) voluntary grade standards. The comments requested that the agency reconsider its position.

The agency has reconsidered its positions on the provisions at issue. With regard to the requirements for peel, FDA proposed adopting the Codex provision which allows an average of 10 square centimeters of peel, adhering to pears or loose in the container, per kilogram (1.6 square inches per 35.3 ounces) of net weight. FDA recognizes that the Codex provision for peel is more restrictive than the U.S. and USDA requirements which permit an average of 1 square inch of peel per 16 ounces (14 square centimeters per kilogram) of net contents. However, the Codex requirements reflect a minimum level of quality considered by the international community to be acceptable for canned pears. Comments have failed to submit any information that (1) shows that the Codex provisions being adopted are unreasonable or (2) supports the adoption of a requirement other than one based on the Codex. Therefore, FDA adopts the Codex provision for § 145.175(b)(1)(iv).

With regard to crushed or broken units, FDA proposed retaining the more restrictive U.S. requirement which states in § 145.175(b)(1)(vii) that, except in the case of mixed pieces of irregular sizes and shapes, not more than 10 percent by count of the units in containers of 10 or more units and not more than 1 unit in containers of less than 10 units are crushed or broken. The U.S. standard also provides that a unit which has lost its shape because of ripeness and bears no mark of crushing shall not be considered crushed or broken.

FDA is retaining the current U.S. provision for crushed or broken units because it reflects a level of quality consumers for many years have come to expect for canned pears in the United States.

The agency has also reassessed its position on the more restrictive proposed provisions for seeds and harmless plant materials. In both instances, FDA had proposed adopting the more restrictive USDA requirements. USDA allows an average of one loose seed per 10 ounces net contents (equivalent to an average of 3.5 seeds per 35.3 ounces (1 kilogram) of net weight or approximately 10.5 seeds in a No. 10 can). The more restrictive USDA standards are voluntary grade standards that are used for grading purposes at the request of industry. Based on this fact and comments received, FDA concludes that the Codex requirement for seeds more nearly reflects a level of quality acceptable to consumers in the United States as well as the rest of the world. Therefore, FDA is adopting the Codex requirement in § 145.175(b)(1)(x) for seeds which allows an average of 8 seeds per kilogram (35.3 ounces) of total contents, except in uncored pears. This is approximately 24 seeds in a No. 10 can.

For harmless plant materials, USDA allows one external pear stem per 100 ounces (2,857 grams of net weight which is approximately one stem per No. 10 can (3.09 kilograms or 109 ounces). Codex limits harmless plant material, including leaf or similar vegetable material and stems in styles in which the stem is customarily removed, to 0.2 percent by weight of total contents. This would allow approximately 10 stems, 3 to 4 centimeters long, in a No. 10 can of pears. FDA believes that the Codex provision permits excessive amounts of harmless plant materials in canned pears. In fact, the United States has proposed an amendment to the Codex standard to lower the limit for harmless plant material to the level provided for in the USDA voluntary grade standards. Under these circumstances, FDA believes that it is prudent to delay establishing a limit for harmless plant material until the Codex Alimentarius Commission has had an opportunity to consider and act on the proposed revision of the Codex standard. Therefore, FDA is not establishing a requirement for harmless plant material.

3. One comment stated that weight and diameter relationships on uniformity of size for halves and quarters styles of pears have been studied in the Northwestern States, and data collected indicate that the uniformity of size requirement should be based on diameter rather than weight. The comment added that supporting data will be submitted in conjunction with a petition to amend the uniformity of size requirement. A second comment also stated that work is being done on weight and diameter relationships for halves and quarters units. When this work is completed, submission of a petition will be considered.

FDA has obtained data only for the 1978 packing season in California on the diameter-weight relationships for uniformity of size for pear halves. In view of the limited data available at this time, the agency is not amending the standard of quality for canned pears to change the requirement for uniformity of size in whole, halves, and quarters styles from a weight to a diameter basis. The agency will review the need for and appropriateness of this and other such requirements when the regulation is subjected to the retrospective review mandated by the Regulatory Flexibility Act of 1980.

4. One comment suggested that § 145.175(b)(1)(vi) be clarified by adding the words "of the unit" to read as follows: "In the case of whole, halves, and quarters styles, all units are untrimmed or are so trimmed as to preserve normal shape of the unit."

FDA concurs, and the final regulation has been changed accordingly.

FDA notes that the current standard of quality for canned pears states in § 145.175(b)(3) that the alternative label statement of substandard quality, that is, "Not tender," "Blemished," etc., "shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name 'pears' and any words and statements required or authorized to appear with such name by paragraph (a)(2) of this section." This statement was omitted in the July 25, 1978 proposal. That the omission was inadvertent is obvious. Accordingly, in light of the fact that any prejudice caused by the omission is remote, the agency is including the statement in the final regulation in § 145.175(b)(4).

FDA is changing paragraph (b)(1)(iii) to (b)(1)(iii)(*a*) and (b)(4)(iii) to (b)(4)(iii)(*a*) to be consistent with the format of the final rule for "chunky" style pears which is published elsewhere in this issue of the **Federal Register**. Certain other editorial changes are also made for clarification in the final regulation.

In consideration of the quality aspects of the Codex standard, together with

comments received in response to the proposal, FDA concludes that it will promote honesty and fair dealing in the interest of consumers to amend the standard of quality for canned pears as set forth below.

List of Subjects in 21 CFR Part 145

Canned fruit, Canned pears, Food standards, Fruits.

PART 145—CANNED FRUITS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 361(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 145 is amended in § 145.175 by revising paragraph (b) to read as follows:

§ 145.175 Canned pears.

* * * * *

(b) *Quality.* (1) The standard of quality for canned pears is as follows:

(i) *Maturity.* All units tested in accordance with the method prescribed in paragraph (b)(2) of this section are pierced by a weight of not more than 300 grams (10.6 ounces).

(ii) *Minimum size.* In the case of halves and quarters styles, the weight of each unit is not less than 17 grams (0.6 ounce) and 8.5 grams (0.3 ounce), respectively.

(iii) *Uniformity of size—(a) Whole, halves, and quarters.* In the case of whole, halves, and quarters styles, among those units comprising 95 percent by count of those present in the container that are most uniform in size, the weight of the largest unit is not more than twice the weight of the smallest unit. In containers with fewer than 20 units, 1 unit may be disregarded in making the determination. Where a unit has broken in the container, reassemble the broken pieces to approximate a single unit of the appropriate style.

(*b*) [Reserved]

(iv) *Peel (except unpeeled style).* Not more than 10 square centimeters (1.6 square inches) of peel adhering to pears or loose in the container per kilogram (35.3 ounces) of net weight.

(v) *Blemished units.* Not more than 20 percent by count of the units in the container are blemished with scab, hail injury, discoloration, or other abnormality aggregating the area of a circle more than 6.5 millimeters (0.25 inch) in diameter; corky or hard spots on outer surfaces aggregating the area of a circle more than 13 millimeters (0.51 inch) in diameter; or dark brown areas aggregating the area of a circle less than 6.5 millimeters (0.25 inch) in diameter which penetrate into the flesh or affect the appearance of the unit.

(vi) *Trimmed units.* In the case of whole, halves, and quarters styles, all units are untrimmed or are so trimmed as to preserve normal shape of the unit.

(vii) *Crushed or broken units.* In the case of whole, halves, quarters, slices, and dice styles, not more than 10 percent by count of the units in containers of 10 or more units and not more than 1 unit in containers of less than 10 units are crushed or broken. A unit that has lost its normal shape because of ripeness and bears no mark of crushing shall not be considered to be crushed or broken.

(viii) *Loose core material in all styles except uncored whole style.* Not more than two units of loose core material per kilogram (35.3 ounces) of net weight. A unit of such material is defined as a portion of loose core, with or without seeds, aggregating approximately one-half of a pear core.

(ix) *Partially cored units in all styles except uncored whole style.* Not more than 40 percent by count partially cored units in halves, quarters, slices, and pieces or irregular pieces styles and not more than 5 percent by weight in dice style. A partially cored unit is a unit of pear that contains an attached portion of the seed cell cavity.

(x) *Seeds in all styles except whole uncored style.* Not more than 8 seeds or the equivalent in pieces of seeds per kilogram (35.3 ounces) of net weight. Seeds included as cored material in paragraph (b)(1) (viii) and (ix) of this section shall not be counted a second time.

(2) Canned pears shall be tested by the following method to determine whether they meet the requirements of paragraph (b)(1)(i) of this section: So trim a test piece from the unit as to fit, with peel surface up, into a supporting receptacle. If the unit is of different firmness in different parts of its peel surface, trim the piece from the firmest part. If the piece is unpeeled, remove the peel. The top of the receptacle is circular in shape, of 28.6 millimeters (1.12 inches) inside diameter, with vertical sides; or rectangular in shape, 19 millimeters (0.75 inch) by 25.4 millimeters (1 inch) inside measurements, with ends vertical and sides sloping downward and joining at the center at a vertical depth of 19 millimeters (0.75 inch). Use the circular receptacle for testing units of such size that a test piece can be trimmed therefrom to fit it. Use the rectangular receptacle for testing other units. Test no unit from which a test piece with rectangular peel surface at least 13 millimeters (0.51 inch) by 25.4 millimeters (1 inch) cannot be trimmed. Test the piece by means of a round metal rod 4 millimeters (0.16 inch) in diameter. To the upper end of the rod is affixed a device to which weight can be added. The rod is held vertically by the support through which it can freely move upward or downward. The lower end of the rod is a plane surface to which the vertical axis of the rod is perpendicular. Adjust the combined weight of the rod and device to 100 grams (3.5 ounces). Set the receptacle so that the surface of the test piece is held horizontally. Lower the end of the rod to the approximate center of such surface, and add weight to the device at a uniform, continuous rate of 12 grams (0.42 ounce) per second until the rod pierces the test piece. Weigh the rod and weighted device. Test all units in containers of 50 units or less except those units too small for testing or too soft for trimming. Test at least 50 units, taken at random in containers of more than 50 units; but if less than 50 units are of sufficient size and firmness for testing, test those which are of sufficient size and firmness.

(3) Determine compliance as specified in § 145.3(o) except that a lot shall be deemed to be in compliance for peel in all styles except unpeeled styles and seeds in all styles except whole uncored style based on the average of all samples analyzed according to the sampling plans set out in § 145.3(p).

(4) If the quality of canned pears falls below the standard prescribed in paragraph (b)(1) of this section, the label shall bear the general statement of substandard quality specified in § 130.14(a) of this chapter, in the manner and form therein specified; however, if the quality of the canned pears falls below standard with respect to only one of the factors of quality specified in paragraph (b)(1) (i) through (x) of this section, there may be substituted for the second line of such general statement of substandard quality ("Good Food—Not High Grade") a new line, as specified after the corresponding designation of paragraph (b)(1) of this section which the canned pears fail to meet, as follows:

(i) "Not tender";

(ii) "Small halves" or "small quarters", as the case may be;

(iii)(*a*) "Mixed sizes";

(*b*) [Reserved];

(iv) "Excessive peel";

(v) "Blemished";

(vi) "Unevenly trimmed";

(vii) "Partly crushed or broken";

(viii) "Excessive core";

(ix) "Excessive core";

(x) "Excessive seeds".

Such alternative statement shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "pears" and any words and statements required or authorized to appear with such name by paragraph (a)(2) of this section.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before October 21, 1982 submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. Except as to any provisions that may be stayed by the filing of proper objections, compliance with this final regulation, including any required labeling changes, may begin November 22, 1982, and all affected products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1985, shall fully comply. Notice of the filing of objections or lack thereof will be published in the **Federal Register.**

(Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)))

Dated: September 14, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-25711 Filed 9-20-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 145

[Docket No. 78P-0147]

Canned Pears; Standards of Identity and Quality

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standards of identity and quality to provide for a new style of pears designated as "chunky" and to define the styles already provided for in the standard of identity. This action will promote honesty and fair dealing in the interest of consumers.

DATES: Effective July 1, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may begin November 22, 1982. Objections by October 21, 1982.

ADDRESS: Written objections are to be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 1, 1979 (44 FR 31669), FDA published a proposal to amend the standards of identity and quality for canned pears to provide for a new optional style of pears designated as "chunky". The proposal was based on a petition submitted by Libby, McNeill and Libby, Inc. The agency also proposed, on its own initiative, to define the styles already provided for in the standard of identity for canned pears, to be consistent with those currently provided for in the standard of identity for canned peaches in § 145.170 (21 CFR 145.170) and in the Recommended International Standards (Codex standards) for canned pears and for other canned fruits.

Three letters, each containing one or more comments, were received in response to the proposal. One comment supported the proposal. The remaining comments and FDA's responses are as follows:

1. Two comments recommended eliminating the dimension requirements from the definition of "chunky" style pears. One comment suggested that the style be defined as "consisting of peeled pears, with cores removed, and cut into random size pieces." The comment added that this would make clear the distinction between "chunky" style and other styles. A second comment recommended defining chunky style pears as "consisting of peeled pears, with cores removed, and cut into pieces, other than provided in paragraphs (ii), (iii), (iv), and (v) of this section, which may or may not be symmetrical or uniform in shape and size, and conforms to § 145.175(b)(1)(viii)." Paragraph (a)(2)(ii), (iii), (iv), and (v) refers to halves, quarters, slices, and dice styles, respectively. The comment asserts that this is intended for clarification and to provide a definition of the style "chunky" which conforms to the generic-type definition of the other styles of canned pears. The comment also stated the purpose of referencing the styles halves, quarters, slices, and dice is to distinguish clearly "chunky" from the more uniform styles.

FDA does not agree with these suggested changes. FDA advises that establishing dimension requirement in the definition of "chunky" style pears is consistent with a comparable style, "chunks", provided for in the standard of identity for canned pineapple (21 CFR 145.180(a)). FDA believes that the style "chunky" pears would not be clearly defined in relation to the style "pieces or irregular pieces" as provided for in § 145.175(a)(2)(vi) without size specifications. The generic-type definition referred to in the comments seems applicable only to such clearly identifiable styles as halves, quarters, slices, and dice. Therefore, FDA concludes that the proposed dimension requirements are reasonable and is so providing in § 145.175(a)(2)(vii).

2. Two comments recommended that the regulation state that not more than 25 percent of the drained weight of the contents of the container consists of units that will pass through an opening 13 millimeters (0.51 inch) wide or that are more than 44 millimeters (1.75 inches) along the longest cut edge. The purpose of this suggested change is to base compliance on the weighing of units that will pass through a one-half inch wide linear opening "when presented to the opening from all possible orientations or profiles."

FDA agrees with this suggestion and has incorporated the recommended change in § 145.175(b)(1)(iii)(*b*).

FDA is renumbering proposed paragraphs (b)(1)(viii) and (b)(3)(viii) to provide for "chunky" style pears in (b)(1)(iii)(*b*) and (b)(4)(iii)(*b*), respectively. This action will incorporate "chunky" pears into the format of a final regulation considering the quality provisions of the Recommended International Standard

for Canned Pears which is published elsewhere in this issue of the **Federal Register.** FDA notes that the provision for "chunky" style pears under crushed or broken units was inadvertently omitted from the proposal of June 1, 1979. Therefore, FDA has provided for "chunky" style pears in § 145.175(b)(1)(vii).

In consideration of the petition by Libby, McNeill and Libby, together with comments received in response to the proposal, FDA concludes that it will promote honesty and fair dealing in the interest of consumers to amend the standards of identity and quality for canned pears.

List of Subjects in 21 CFR Part 145

Canned fruit, Canned pears, Food standards, Fruits.

PART 145—CANNED FRUITS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 145 is amended in § 145.175 by revising paragraph (a)(2), revising the first three sentences and adding a new sentence in paragraph (a)(4)(ii), adding new paragraph (b)(1)(iii)(*b*), revising paragraph (b)(1)(vii), and adding new paragraph (b)(4)(iii)(*b*), to read as follows:

§ 145.175 Canned pears.

(a) * * *

(2) *Styles and forms of units.* The optional pear styles and forms of units referred to in paragraph (a)(1) of this section are:

(i) *Whole*—consisting of peeled or unpeeled pears with cores removed or left in.

(ii) *Halves*—consisting of peeled or unpeeled pears with cores removed and cut into two approximately equal parts.

(iii) *Quarters*—consisting of peeled pears with cores removed and cut into four approximately equal parts.

(iv) *Slices*—consisting of peeled pears with cores removed and cut into wedge-shaped sectors.

(v) *Dice*—consisting of peeled pears with cores removed and cut into cube-like parts.

(vi) *Pieces or irregular pieces*—consisting of peeled pears with cores removed and cut into parts of irregular shapes and sizes.

(vii) *Chunky*—consisting of peeled pears with cores removed and cut into parts 13 millimeters (0.51 inch) or greater in the smallest dimension and 44 millimeters (1.75 inches) or less in the largest dimension.

* * * * *

(4) * * *

(ii) The style and forms of units of the pear ingredient as provided in paragraph (a)(2) of this section and the name of the packing medium specified in paragraph (a)(3) (i) and (ii) of this section, preceded by "In" or "Packed in" or the words "Solid pack", where applicable, shall be included as part of the name or in close proximity to the name of the food, except that "Halves" may be alternatively designated as "Halved", "Quarters" as "Quartered", "Slices" as "Sliced", and "Dice" as "Diced". "Pieces" or "Irregular pieces" shall be designated as "Pieces", "Irregular pieces", or "Mixed pieces of irregular sizes and shapes". "Chunky" may be designated as "Chunks". The style of the pear ingredient shall be preceded or followed by "Unpeeled" when the units are whole or halves and are unpeeled. * * *

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(b) Chunky. In the case of chunky style, not more than 25 percent of the drained weight of the contents of the container consists of units that will pass through an opening 13 millimeters (0.51 inch) wide or that are more than 44 millimeters (1.75 inches) along the longest cut edge.

* * * * *

(vii) *Crushed or broken units.* In the case of whole, halves, quarter, slices, dice, and chunky styles, not more than 10 percent by count of the units in containers of 10 or more units and not more than 1 unit in containers of less than 10 units are crushed or broken. A unit that lost its normal shape because of ripeness and bears no mark of crushing shall not be considered to be crushed or broken.

* * * * *

(4) * * *

(iii) * * *

(b) "Undersized and/or oversized pieces";

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before October 21, 1982 submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. Except as to any provisions that may be stayed by the filing of proper objections, compliance with this final regulation, including any required labeling changes, may begin November 22, 1982, and all affected products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1985, shall fully comply. Notice of the filing of objections or lack thereof will be published in the **Federal Register.**

(Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)))

Dated: September 14, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-25717 Filed 9-20-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 177

[Docket No. 82F-0079]

Indirect Food Additives: Polymers; Ethylene-Vinyl Acetate-Vinyl Alcohol Copolymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethylene-vinyl acetate-vinyl alcohol copolymers as articles or components of articles in contact with food. This action is based on a petition filed by Kuraray Co., Ltd.

DATES: Effective September 21, 1982, objections by October 21, 1982.

ADDRESS: Written objections to the Dockets Management Branch (HFA-

305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 9, 1982 (47 FR 15413), FDA announced that a food additive petition (FAP 7B 3320) had been filed by Kuraray Co., Ltd., 8, Umeda, Kita-Ku, Osaka, Japan, proposing that § 177.1360 *Ethylene-vinyl acetate-vinyl alcohol copolymers* (21 CFR 177.1360) be amended to provide for the safe use of ethylene-vinyl acetate-vinyl alcohol copolymers containing a minimum of 20 percent ethylene, such that the finished copolymer will contain no more than 80 percent vinyl alcohol units by weight, as articles or components of articles in contact with food.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below in new § 177.1360(a)(3) and (d). In addition to adding the new paragraphs, FDA is revising the current regulation to include metric units, to separate the types of copolymers covered by this regulation, and to ensure consistency in language.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will remove from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the potential environmental effects of this regulation as announced in the notice of filing published in the **Federal Register**. No new information or comments have been received that would alter the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

List of Subjects in 21 CFR Part 177

Food additives, Polymeric food packaging.

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drug (21 CFR 5.10), Part 177 is amended by revising § 177.1360, to read as follows:

§ 177.1360 Ethylene-vinyl acetate-vinyl alcohol copolymers.

Ethylene-vinyl acetate-vinyl alcohol copolymers (CAS Reg. No. 26221–27–2) may be safely used as articles or components of articles intended for use in contact with food, in accordance with the following prescribed conditions:

(a) Ethylene-vinyl acetate-vinyl alcohol copolymers are produced by the partial or complete alcoholysis or hydrolysis of those ethylene-vinyl acetate copolymers complying with § 177.1350.

(1) Those copolymers containing a minimum of 55 percent ethylene and a maximum of 30 percent vinyl alcohol units by weight may be used in contact with foods as described in paragraph (b) of this section.

(2) Those copolymers containing a minimum of 55 percent ethylene and a maximum of 15 percent vinyl alcohol units by weight may be used in contact with foods as described in paragraph (c) of this section.

(3) Those copolymers containing 20 to 40 percent ethylene and 60 to 80 percent vinyl alcohol units by weight may be used in contact with foods as described in paragraph (d) of this section.

(b) The finished food-contact article shall not exceed 0.013 centimeter (0.005 inch) thickness and shall contact foods only of the types identified in Table 1 of § 176.170(c) of this chapter in categories I, II, IV–B, VI, VII–B, and VIII under conditions of use D through G described in Table 2 of § 176.170(c) of this chapter. Film samples of 0.013 centimeter (0.005 inch) thickness representing the finished article shall meet the following extractive limitation when tested by ASTM method F34–63T, "Exposing Flexible Barrier Materials to Liquids for Extraction" (issued 1963), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408.

(1) The film when extracted with distilled water at 21° C (70° F) for 48 hours yields total extractives not to exceed 0.0047 milligram per square centimeter (0.03 milligram per square inch) of food-contact surface.

(2) The film when extracted with 50 percent ethyl alcohol at 21° C (70° F) for 48 hours yields total extractives not to exceed 0.0062 milligram per square centimeter (0.04 milligram per square inch) of food-contact surface.

(c) The finished food-contact article shall not exceed 0.0076 centimeter (0.003 inch) thickness and shall contact foods only of the types identified in Table 1 of § 176.170(c) of this chapter in categories III, IV–A, VII–A, and IX under conditions of use F and G described in Table 2 of § 176.170(c) of this chapter. Film samples of 0.0076 centimeter (0.003 inch) thickness representing the finished articles shall meet the following extractive limitation when tested by ASTM method F34–63T, "Exposing Flexible Barrier Materials to Liquids for Extraction" (issued 1963), which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (b) of this section. The film when extracted with *n*-heptane at 38° C (100° F) for 30 minutes yields total extractives not to exceed 0.0078 milligram per square centimeter (0.05 milligram per square inch) of food-contact surface, after correcting the total extractives by dividing by a factor of five.

(d) The finished food-contact article shall not exceed 0.018 centimeter (0.007 inch) thickness and may contact all foods except those containing more than 8 percent alcohol under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter. Film samples of 0.018 centimeter (0.007 inch) thickness representing the finished articles shall meet the following extractive limitation when tested by ASTM method F34–63T, "Exposing Flexible Barrier Materials to Liquids for Extraction" (issued 1963), which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (b) of this section. The film when extracted with distilled water at 100° C (212° F) for 30 minutes yields total extractives not to exceed 0.023 milligram per square centimeter (0.15 milligram per square inch) of food-contact surface.

(e) The provisions of this section are not applicable to ethylene-vinyl acetate-vinyl alcohol copolymers used in the food-packaging adhesives complying with § 175.105 of this chapter.

Any person who will be adversely affected by the foregoing regulation may at any time on or before October 21, 1982 submit to the Dockets Management Branch (address above) written objections thereto and may make a

written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective September 21, 1982.

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

Dated: September 13, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

Note.—Incorporation by reference provisions were approved by the Director of the Office of the Federal Register on March 31, 1982, and are on file at the Office of the Federal Register.

[FR Doc. 82-25712 Filed 9-20-82; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 6a

[T.D. 7832]

Income Tax; Temporary Income Tax Regulations Under Subtitle C of Title XI of the Omnibus Reconciliation Act of 1980; Foreign Investment in United States Real Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document concerns the taxation of foreign investment in United States real property interests. It contains temporary regulations concerning the information returns which must be filed with respect to foreign investment in U.S. real property interests by certain corporations, partnerships, trusts, estates, and nonresident alien individuals. It also contains temporary regulations concerning procedures for establishing that corporation is not a U.S. real property holding corporation and temporary regulations concerning the election by a foreign corporation to be treated as a domestic corporation. This document also contains temporary regulations defining relevant terms.

These temporary regulations are necessary to provide the public with the immediate guidance needed to comply with the Foreign Investment in Real Property Tax Act of 1980 (subtitle C of title XI of the Omnibus Reconciliation Act of 1980) and section 831 of the Economic Recovery Tax Act of 1981. In addition, the text of the temporary regulations set forth in this document serves as the text of the proposed regulations cross referenced in the proposed rules section of today's **Federal Register.**

DATES: The temporary regulations are generally effective with respect to dispositions of U.S. real property interests after June 18, 1980. The temporary regulations are also effective with respect to dispositions of U.S. real property interests to related parties during the period after December 31, 1979, and before June 19, 1980.

FOR FURTHER INFORMATION CONTACT: Diane L. Renfroe, Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains additions to the Temporary Income Tax Regulations under Subtitle C of Title XI of the Omnibus Reconciliation Act of 1980 (26 CFR Part 6a) under sections 897 and 6039C of the Internal Revenue Code of 1954, as added by sections 1122 and 1123 of the Foreign Investment in Real Property Tax Act of 1980 (94 Stat. 2682), and as amended by section 831 of the Economic Recovery Tax Act of 1981 (Pub. L. No 97–34; 95 Stat. 172). The additions are issued under the authority contained in sections 897 (94 Stat. 2683; 26 U.S.C. 897), 6039C (94 Stat. 2687; 26 U.S.C. 6039C), and 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954.

Discussion

Statutory Provisions

The Foreign Investment in Real Property Tax Act of 1980 added sections 897 and 6039C to the Internal Revenue Code. Under section 897(a), a foreign person's gain or loss from the disposition of a U.S. real property interest is treated as if such person were engaged in a trade or business within the United States and as if such gain or loss were effectively connected with such trade or business. A United States real property interest as defined in section 897(c)(1) generally includes any interest in real property located in the United States or the Virgin Islands and any interest other than solely as a creditor in a domestic corporation which is or was a United States real property holding corporation. The term does not include an interest in a domestically controlled real estate investment trust ("REIT") under section 897(h), nor does it generally include an interest in a class of stock in a corporation which is publicly traded, unless the person disposing of such stock holds or held more than 5 percent of such class of stock as provided in section 897(c)(3). As provided in section 897(c)(1)(B), the term United States real property interest also does not include an interest in a United States real property holding corporation which has disposed of its United States real property interests in transactions in which the full amount of gain, if any, was recognized.

Section 897(c)(2) provides that a U.S. real property holding corporation is a corporation which holds U.S. real property interests with a fair market value of at least 50 percent of the sum of the fair market values of its U.S. real property interests, its interests in real property located outside the United States, and its other assets which are used or held for use in a trade or business. Although a foreign corporation may be a U.S. real property holding corporation, an interest in a foreign corporation is not a U.S. real property interest under section 897(c)(1) other than for purposes of determining whether another corporation is a U.S. real property holding corporation. (See section 897(c)(4)(A)). As a consequence, any gain from the disposition of such interest by a foreign person is not treated as effectively connected with a U.S. trade or business by reason of section 897(a).

A foreign corporation is required, however, to recognize gain on the distribution of a U.S. real property interest to its shareholders under section 897(d) to the extent the fair market value of the U.S. real property interest distributed exceeds the corporation's adjusted basis in the interest. Such recognition generally would not occur if a similar distribution were made by a domestic corporation.

The disparate treatment accorded foreign and domestic corporations under section 897 makes it possible that a foreign corporation holding a U.S. real property interest could claim entitlement to nondiscrimination under a treaty to which the United States is a party. Section 897(i) provides that such foreign corporation can elect to be treated as a domestic corporation for purposes of sections 897 and 6039C provided that certain conditions are met. Section 897(i)(4) provides that this election is the exclusive remedy for any person claiming discriminatory treatment with respect to sections 897 and 6039C.

Section 897(k) was added to the Code by the Economic Recovery Tax Act of 1981. It provides that a foreign corporation which has adopted or adopts a plan of liquidation described in section 334(b)(2)(A) and which was acquired by purchase within a 12 month period beginning after December 31, 1979, and before November 26, 1980, may elect to be treated as a domestic corporation. Section 897(k) provides that, notwithstanding the election, any selling shareholder is treated as having sold stock in a foreign corporation.

Section 6039C requires certain corporations, other entities, and nonresident alien individuals to disclose the identity and the extent of foreign ownership of U.S. real property interests. Section 6039C also grants the Internal Revenue Service broad discretion to require other relevant information with respect to such interests.

Section 6039C(a) requires information returns to be filed by domestic corporations which are for the calendar year, or were at any time during the 4 prior calendar years, U.S. real property holding corporations and which have one or more foreign shareholders during the calendar year. It also requires that nominees of foreign persons who hold interests in such corporations file information returns.

Section 6039C(b) requires information returns to be filed by foreign corporations and by domestic or foreign partnerships, trusts, and estates which hold U.S. real property interests if such entities have one or more substantial investors in U.S. real property at any time during the calendar year. A "substantial investor in U.S. real property" is a foreign person (as well as a domestic person, in the event that the entity required to report is a foreign corporation) who at any time during the calendar year held an interest in the entity if the fair market value of the person's pro rata share of the U.S. real property interests held by the entity exceeded $50,000.

Section 6039C(b)(2) provides an exception to the requirement of filing a return if an entity furnishes the Commissioner with security sufficient to ensure that any tax which may be imposed with respect to the U.S. real property interests held by the entity will be paid. Section 6039C(b)(3) requires each entity required to file a return to furnish a statement to each substantial investor showing the name and address of the entity, the substantial investor's pro rata share of the U.S. real property interests owned by the entity, and such other information as the Commissioner may require.

Section 6039C(c) requires foreign persons holding U.S. real property interests with a fair market value that equals or exceeds $50,000 at any time during a calendar year to file information returns if such persons were not engaged in a U.S. trade or business during the year and if such persons are not required to file returns under section 6039C(b). Section 6039C(c) requires that the information return include the name and address of the person, a description of the U.S. real property interests held by the person during the year, and such other information as the Commissioner may require.

Need for Temporary Regulations

The effective date of sections 897 and 6039C was June 18, 1980. Since that date, the proper application of these sections has been dependent, in many instances, on the interpretation of certain terms which are not defined by the statute, on determinations of whether a corporation is a U.S. real property holding corporation, and on determinations of whether a foreign corporation is eligible to make an election under section 897(i) to be treated as a domestic corporation.

Because of the need for immediate guidance in this regard, the Internal Revenue Service has found it to be impractical to issue these regulations with notice and public procedure under section 553(b) of title 5 of the United States Code.

The Internal Revenue Service is currently preparing temporary regulations on certain other aspects of the Foreign Investment in Real Property Tax Act of 1980 as to which immediate guidance also is needed. Those aspects include the tax treatment of distributions by foreign corporations under section 897(d), the nonrecognition and reorganization provisions of section 897(e), and the provisions concerning partnerships, trusts, and estates of sections 897 (e) and (g).

Description of Temporary Regulations

Definitions

Section 6a.897–1 provides definitions to be used in applying the regulations under section 897, section 6039C, and section 6652(g).

Under paragraph (b) of § 6a.897–1, real property includes land and improvements thereon, including buildings and structural components of buildings such as wiring. Real property also includes unharvested crops, uncut timber, and mines, wells and other natural deposits. The regulations purposely do not address the issue of whether and at what stage in the extraction or production process minerals cease to be real property. A rule resolving this issue has been omitted pending further study.

Paragraph (b)(4) of § 6a.897–1 provides that real property also includes movable walls and furnishings and other personal property associated with the use of real property. The term "personal property associated with the use of real property" is defined as personal property the use of which is an ordinary and necessary corollary of the use to which real property is put. Personal property which has dominant economic significance in relation to underlying real property is not included in the term "personal property associated with the use of real property." Paragraph (b)(4) also provides that personal property associated with the use of real property will be considered to be real property whether or not the personal property is held by the same person who holds the real property and whether or not the personal property is disposed of separately from the real property.

Paragraph (c) of § 6a.897–1 defines U.S. real property interests. This definition mirrors the statutory definition contained in section 897(c)(1).

Paragraph (d)(1) of § 6a.897–1 provides that an interest solely as a creditor in real property or in a U.S. real property holding corporation is not a U.S. real property interest. It provides, moreover, that an interest solely as a creditor in a corporation, a partnership, a trust or an estate will not be taken into account for purposes of determining whether a corporation is a U.S. real property holding corporation, for purposes of determining whether and the extent to which there has been a disposition of a U.S. real property interest under sections 897(e)(2)(B)(ii) and 897(g), and for purposes of applying the provisions of section 6039C.

Paragraph (d)(2) of § 6a.897–1 provides that in determining whether a person holds an interest in real property

or in an entity other than solely as a creditor, all interests of such person in the real property or entity must be considered. If a person has any interest in real property or in an entity other than solely as a creditor, all his interests in such real property or entity are considered interests other than solely as a creditor.

Under paragraph (d)(3) of § 6a.897–1, an interest in real property other than solely as a creditor includes a fee-ownership, co-ownership or leasehold interest in real property, a life estate, remainder or reversionary interest in real property or any other right to share in the appreciation in value of, or in the gross or net proceeds or profits from, the real property. The term "interest in real property other than solely as a creditor" also includes an interest in production payments with respect to real property, including mineral production payments. In addition, the right to installment or other deferred payments from the disposition of a real property interest will be considered to be an interest in real property other than solely as a creditor.

Under paragraph (d)(4) of § 6a.897–1, an interest in a corporation other than solely as a creditor includes a stock interest, a direct or indirect right to share in the appreciation in value of a stock interest (such as an interest in phantom stock or in stock appreciation rights), a direct or indirect right to share in the appreciation in the value of the assets of or the gross or net proceeds or profits derived by the corporation, and a right to convert or exchange an interest which would otherwise constitute an interest in the corporation solely as a creditor into or for an interest described in this sentence.

Paragraphs (d)(5) and (6) of § 6a.897–1 provide similar rules for determining whether an interest in a partnership, a trust, or an estate is an interest other than solely as a creditor.

Paragraphs (e), (f), and (g) of § 6a.897–1 define the terms "directly and indirectly," "pro rata share" and "percentage ownership interest," respectively. These terms are generally applicable for the purposes of applying the look-through rules of sections 897 (c)(4)(B) and 6039C. Paragraph (g)(3) provides that the percentage ownership interest of a contingent beneficiary of a trust or an estate is required to be determined by reference to the actuarial value of the entire portion of the trust or estate to which the beneficiary potentially may be entitled. The possibility exists in some instances, therefore, that the same gain from the direct or indirect disposition of a U.S. real property interest by a trust or estate may be required to be recognized by more than one beneficiary.

Special rules for determining the assets held by a corporation owning a controlling interest in another corporation under section 897(c)(5) are provided in § 6a.897–2.

Paragraph (h) of § 6a.897–1 defines "asset used or held for use in a trade or business." This term includes property, other than real property, which is includable in inventory or which is held for sale to customers, depreciable property which is used in a trade or business, and certain livestock. The term also includes accounts receivable from the sale of the previously mentioned property or from personal services. The term does not include cash, marketable securities and certain options to acquire stock, securities or commodities.

Sections 6a.897–1 (i) and (m) define the terms "disposition" and "established securities market," respectively.

Section 6a.897–1(n) defines the term "fair market value." The fair market value of property is measured by the gross value of such property and is not affected by liabilities to which the property may be subject.

U.S. Real Property Holding Corporations

Section 6a.897–2 provides procedures for establishing that a corporation is not a U.S. real property holding corporation. A foreign person who disposes of an interest in a domestic corporation must establish that the corporation is not a U.S. real property holding corporation in order that the gain, if any, from the disposition is not subject to the provisions of section 897(a). Failure to establish that a domestic corporation was not a U.S. real property holding corporation will result in the gain, if any, from such disposition being treated as effectively connected with a U.S. trade or business of the foreign person, and such gain will be subject to tax under sections 871 (b) or 882 of the Code. Determining whether or not a domestic or foreign corporation is a U.S. real property holding corporation is also necessary for purposes of determining whether another corporation holding an interest in such domestic or foreign corporation is itself a U.S. real property holding corporation Finally, U.S. real property holding corporation status is important for purposes of applying the reporting provisions of section 6039C.

Under paragraph (b) of § 6a.897–2 a foreign person who disposes of an interest in a U.S. corporation is required to attach certain schedules to its income tax return establishing that the corporation was not a U.S. real property holding corporation for any calendar year during a specified base period. The base period is the shorter of the period after June 18, 1980, during which the foreign person held such interest or the 5 year period ending on the date of the disposition of the interest.

Paragraph (d)(1) describes the required schedules. Information concerning the U.S. real property interests, interests in foreign real property, and trade or business assets held by the corporation at the end of the year and disposed of by the corporation during the year, must be provided. Also, the dates of acquisition and disposition of such assets and the fair market value of such assets as of the end of the calendar year or the day of disposition must be provided. Calculations demonstrating that the corporation was not a U.S. real property holding corporation on specified dates are also required. Paragraph (d)(2) provides that either the owner of an interest in a corporation or the corporation itself may prepare the requisite schedules.

Although a literal reading of section 897(c)(1)(A)(ii) would require a daily determination of U.S. real property holding corporation status, paragraph (c) of § 6a.897–2 provides that a determination of such status need only be made with respect to property held by the corporation certain applicable determination dates.

Paragraph (e) of § 6a.897–2 sets forth the applicable determination dates for applying the U.S. real property holding corporation test. In general, the applicable determination date is December 31 of the calendar year. However, additional applicable determination dates are provided with respect to certain transactions that could occur during the year to cause a U.S. real property holding corporation to lose its status as such. These dates are the dates immediately preceding the date that a corporation disposes of a U.S. real property interest, acquires foreign real property, or acquires other assets used or held for use in a trade or business, respectively. To ease the burden imposed by the additional applicable determination dates, the regulations allow any property which is retained by the corporation after such applicable determination dates to be valued as of December 31 (or, if the retained property is disposed of subsequent to the applicable determination date but prior to December 31, as of the date of disposition of the retained property. For purposes of determining whether an additional applicable determination date has been triggered by the

acquisition of assets used or held for use in a trade or business, only the acquisition of depreciable assets is taken into account, and a de minimis limitation applies.

Paragraphs (f) through (j) of § 6a.897–2 set forth rules by which to identify assets that are held by a corporation for purposes of determining whether it is a U.S. real property holding corporation. Paragraph (f)(1) provides that assets held both directly and indirectly, as provided in paragraphs (h), (i) and (j), are considered to be held by the corporation for this purpose. Paragraph (f)(2) contains an anti-abuse rule which provides that foreign real property and other assets used or held for use in a trade or business which have been acquired for the principal purpose of affecting the status of a corporation as a U.S. real property holding corporation shall not be recognized for the purpose of applying the U.S. real property holding corporation test.

Paragraph (g)(1) of § 6a.897–2 provides that, solely for purposes determining whether another corporation is a U.S. real property holding corporation, an interest in a foreign corporation is treated as a U.S. real property interest unless it is established that such foreign corporation was not a U.S. real property holding corporation during the base period. The procedures of § 6a.897–2(b) must be complied with in order to establish that a foreign corporation is not a U.S. real property holding corporation.

Section 897(c)(4)(B) provides that for purposes of determining whether a corporation is a U.S. real property holding corporation, assets held by a partnership, a trust, or an estate are to be treated as held proportionately by its partners or beneficiaries. Accordingly, paragraph (h) of § 6a.897–2 provides that a partner or beneficiary is treated as holding a pro rata share of the assets held by a partnership, a trust, or an estate. Two examples of the operation of this rule are provided.

Paragraph (i) of § 6a.897–2 sets forth rules concerning controlling interests in corporations, in accordance with the provisions of section 897(c)(5). Such section provides that for purposes of determining whether a corporation is a U.S. real property holding corporation, if a corporation (first corporation) controls a second corporation, the stock in the second corporation is disregarded, and the first corporation is instead treated as owning a portion of the assets held by the second corporation. Such portion is equal to the percentage of the fair market value of the stock of the second corporation held by the first corporation.

The rules of paragraphs (h) and (i) of § 6a.897–2 apply successively upward through a chain of ownership, and the rules of paragraphs (g), (h), and (i) apply in conjunction with one another.

Paragraph (k) of § 6a.897–2 provides procedures for establishing that an interest in a corporation is not a U.S. real property interest in accordance with the exception provided in section 897(c)(1)(B).

897(i) Election

Section 6a.897–3 provides rules for a foreign corporation to elect to be treated as a domestic corporation under section 897(i). Paragraph (a) of § 6a.897–3 describes the corporations that are eligible to make the election. Such paragraph makes it clear that the election to be treated as a domestic corporation applies only for purposes of sections 897 and 6039C of the Code and not for purposes of any other section of the Code. Paragraph (a) also provides that the election under section 897(i) is the sole remedy of a foreign corporation which claims discriminatory treatment under sections 897 and 6039C in violation of a U.S. treaty obligation.

Paragraph (b) of § 6a.897–3 sets forth additional conditions for making the election. In general, the election cannot be made if any interest in the foreign corporation has been disposed of prior to the date of making the election. However, if there has been a disposition of an interest in the corporation after June 18, 1980, and before March 21, 1983, the election may be made, provided that there has been a payment of any tax which would have been owed by the person disposing of the interest had the corporation made the election prior to the disposition, notwithstanding any treaty provision to the contrary. Paragraph (b) also provides that an election must be made in the manner and form prescribed by the regulations. These conditions conform to the statute and the statement in the House-Senate conference report. See H. Rep. No. 96–1479, 96th Cong., 2d Sess. 183 (1980) (Conference Report).

Paragraph (d) makes it clear that after the election is in effect the shareholders cannot claim treaty benefits with respect to the gain, if any, from the disposition of an interest in the electing corporation and the corporation cannot claim treaty benefits with respect to gain, if any, from the disposition of its U.S. real property interests.

Paragraph (e) of § 6a.897–3 prescribes the manner and form for making the election provided in section 897(i). It requires that the corporation agree to be bound by § 6a.897–3(d). Paragraph (e)(3) requires a signed consent to the election and an agreement to be bound by the condition of § 6a.897–3(d) from all owners of interests in the corporation on the date the election is made. This requirement was added by the Economic Recovery Tax Act of 1981.

Paragraph (f) of § 6a.897–3 sets forth rules concerning the time for making and the duration of an election. Generally, the election must be made no later than 90 days after the date a foreign corporation first holds a U.S. real property interest. However, in the case of foreign corporations which held U.S. real property interests between June 19, 1980, and March 21, 1983 may be made at any time before the later of March 21, 1983 or 90 days after the corporation first holds a U.S. real property interest.

Paragraph (g) provides an anti-abuse rule to prevent evasion of the conditions for making the election contained in paragraph (b).

Paragraph (h) provides that an election under this section may be revoked with the consent of the Commissioner. The Commissioner will not consent to a revocation if there have been any distributions of U.S. real property interests by the electing corporation.

897(k) Election

Paragraph (a) of § 6a.897–4 sets forth special rules whereby certain foreign corporations which adopt or have adopted a plan of liquidation described in section 334(b)(2)(A) and whose stock was acquired during a 12 month period beginning after December 31, 1979, and before November 26, 1980, may elect to be treated as domestic corporations under section 897(k). These rules take into account the fact that persons purchasing stock in a foreign corporation prior to enactment of section 897 may reasonably have expected that a tax would have been imposed on the foreign seller rather than on the liquidating corporation. A foreign corporation need not be a beneficiary of a treaty nondiscrimination article nor satisfy any of the other prerequisites to making the election under section 897(i) to be eligible to make the election under section 897(k).

Section 6039C Reporting Requirements

Section 6a.6039C–1 provides general rules with respect to the filing of information returns, including the time and place for filing such returns. In general, information returns must be filed no later than May 15 of the calendar year following the calendar year to which the returns relate. Information returns for calendar years

1980 and 1981 must be filed no later than June 21, 1982.

Section 6a.6039C–2 describes the information returns (Forms 6659) required to be filed by domestic corporations and by certain nominees. Paragraph (a) generally explains which corporations and nominees must file Form 6659. Paragraph (a) also provides that Form 6659 is not required to be filed if all classes of stock of a corporation which were held by foreign persons were regularly traded on an established securities market or if security is provided with respect to all U.S. real property interests held by the corporation in accordance with § 6a.6039C–5.

Paragraph (b) of § 6a.6039C–2 sets forth the information which must be supplied by the reporting corporation on Form 6659 if the information is known to such corporation. The regulations require information concerning the names and addresses of all foreign persons who held an interest in the corporation during the year, the amount and types of interests held by foreign persons, all dispositions of interests in the corporation by foreign persons during the year, distributions of U.S. real property interests to foreign persons, a description of the U.S. real property interests held by the corporation, and the identity of corporations in which the corporation holds interests which constitute U.S. real property interests.

Section 6a.6039C–2(c)(2) provides an additional reporting requirement for REITs which are controlled by foreign persons. Paragraph (c)(1) provides significantly less detailed reporting requirements for REITs which are controlled by domestic persons.

Paragraph (d) of § 6a.6039C–2 requires U.S. real property holding corporations that do not know whether they have foreign owners to notify all owners of record that such owners must file Form 6659 if they are nominees for a foreign beneficial owner. Even if a nominee who holds an interest for a foreign person is required to file Form 6659, the corporation must still file Form 6659 with respect to information which it has access to (such as the description of U.S. real property interests distributed by the corporation during the year). If the corporation itself has all the information required by paragraph (b), it must file with respect to the interest held by a nominee and must notify the nominee (including a nominee holding an interest indirectly through one or more other nominees) that the nominee is not required file Form 6659.

Paragraph (e) of section 6a.6039C–2 sets forth detailed rules concerning the filing of Form 6659 by nominees of foreign beneficial owners. Paragraph (e)(1)(i) of § 6a.6039C–2 makes it clear that there is no knowledge limitation imposed by the statute with respect to nominee filing. Thus, if a nominee does not know the required information, it must either obtain the information or provide security in accordance with § 6a.6039C–5.

A domestic corporation is only required to supply the information requested on Form 6659 if it is "known" to the corporation. Paragraph (f) of § 6a.6039C–2 defines the term "known" for this purpose.

Paragraph (g) of § 6a.6069C–2 provides that persons owning bearer shares and persons with addresses outside the United States shall be treated as foreign persons, unless the corporation or a nominee knows otherwise.

Under section 897(c)(3), stock of a corporation which is of a class that is regularly traded on an established securities market is not treated as a U.S. real property interest unless the stock is held by a person who holds more than 5 percent of that class of stock. Accordingly, paragraph (h) of § 6a.6039C–2 provides that no information is required to be supplied concerning stock in a U.S. real property holding corporation during times when the stock is of a class which is regularly traded on an established securities market.

Section 6a.6039C–3 concerns the information returns (Forms 6660) required under section 6039C(b) to be filed by foreign corporations and by domestic or foreign partnerships, trusts, and estates. Paragraph (a) describes the entities which must file the return on Form 6660 if on any applicable determination date during the calendar year such entities have a substantial investor in U.S. real property and if the entities do not have in effect for the calendar year a security agreement with the District Director, Foreign Operations District. Paragraph (b)(1) defines "substantial investor in United States real property," and provides that the determination of the number of substantial investors is to be made on each applicable determination date during the year. Paragraph (b)(2) explains how the fair market value of a person's pro rata share of U.S. real property interests held by an entity and how a person's percentage ownership interest in the entity are determined for this purpose.

Paragraph (c)(1) of § 6a.6039C–3 provides that interests held both directly and indirectly through corporations, partnerships, trusts and estates (as provided in § 6a.897–1(e)) are considered held by an entity, except that an entity's pro rata share of U.S. real property interests held by a corporation are disregarded for this purpose unless they exceed $50,000. Paragraph (c)(1) also provides that the indirect holding rules apply successively upward through a chain of ownership.

Paragraph (d) of § 6a.6039C–3 sets forth the applicable determination dates for determining whether an entity has substantial investors during the year. Generally, the applicable determination dates are December 31 of the calendar year, the date immediately preceding the date on which the entity disposes of a U.S. real property interest, and the date on which a person with an interest in the entity disposes of such interest.

Paragraph (e) of § 6a.6039C–3 sets forth the information which must be provided on Form 6660. The regulations require disclosure of the identities of substantial investors and require information relating to the U.S. real property interests held by the entity, including a description of each substantial investor's pro rata share of the U.S. real property interests held by the entity.

Paragraph (f) provides that persons holding bearer shares in a foreign corporation and persons with foreign addresses will be presumed to be foreign unless the entity knows otherwise.

Paragraph (g) of § 6a.6039C–3 provides, as indicated by the statute, that an entity which does not know the required information must obtain such information. It also provides that the fact that stock of a foreign corporation is in bearer form does not constitute reasonable cause for failure to provide the required information within the meaning of section 6652(g) of the Code. Section 6652(g) provides for penalties for failure to comply with the reporting requirements of section 6039C.

If the information to be filed on a Form 6660 cannot be obtained, the entity must provide security and enter into a security agreement with the District Director, Foreign Operations District, under § 6a.6039C–5. See H. Rep. No. 96–1479, 96th Cong., 2d Sess. 192 (1980) (Conference Report).

Paragraph (h) of § 6a.6039C–3 sets forth the requirements for furnishing statements to substantial investors for each calendar year as required by section 6039C(b)(3). It provides that in the event the entity provides security in lieu of filing a return required by section 6039C(b)(1), the entity will not be required to furnish statements to substantial investors.

Section 6a.6039C–4 describes the returns (Form 6661) required by section 6039C(c) to be filed by foreign persons holding U.S. real property interests. Paragraph (a) describes the persons who are required to file the Form 6661, and it provides that Form 6661 is not required to be filed if the entity through which the person is treated as owning U.S. real property interests enters into a security agreement for the calendar year with the District Director, Foreign Operations District, as provided in § 6a.6039C–5. Paragraph (a) also includes special rules relating to the U.S. trade or business exemption from reporting under section 6039C(c).

Paragraph (b) sets forth rules concerning the direct and indirect holding of U.S. real property interests by foreign persons through partnerships, trusts, and estates and provides that family attribution rules apply for determining what U.S. real property interests an individual is considered to hold.

Paragraph (c) provides applicable determination dates for determining whether, for purposes of applying section 6039C(c), a person holds U.S. real property interests the fair market value of which equals or exceeds $50,000.

Paragraph (d) of § 6a.6039C–4 sets forth the information which must be included on Form 6661 for each calendar year. The regulations require information concerning the U.S. real property interests held by the foreign person at the end of the calendar year (including their fair market values) and the U.S. real property interests disposed of by the foreign person during the year.

Section 6a.6039C–5 contains rules for providing security and entering into a security agreement with the District Director, Foreign Operations District, in lieu of filing Form 6659, 6660, or 6661 for a calendar year. The security agreement option is explicitly authorized by section 6039C(b)(2) and has been expanded as an option to the return requirements of section 6039C (a) and (c). The regulations give the District Director absolute discretion to determine the type and amount of security required.

Under § 6a.6039C–5(a), the person required to file a return under §§ 6a.6039C–2 through 6a.6039C–4 must provide the Internal Revenue Service with sufficient security to ensure that any income tax which may be owed with respect to the U.S. real property interests held by such person will be paid. The security must secure payment of income taxes which could be imposed not only on the person required to file the return but also on an owner of an interest in the person with respect to property held directly and indirectly by the person.

Paragraph (b) of § 6a.6039C–5 provides that the type of security which the District Director may accept depends upon the facts and circumstances of each case. Types of security which the District Director may accept include (but are not limited to) liens, escrowed property, letters of credit, surety bonds, and evidence of binding voluntary withholding agreements which assure payment of tax on the disposition of a U.S. real property interest. If certain requirements relating to the existence of substantial assets in the United States are met, the written personal guarantee of a person may be accepted as appropriate security by the District Director.

Paragraph (c) of § 6a.6039C–5 provides that the amount of security generally must cover the tax that would be due on the appreciation in value of U.S. real property at the maximum long term capital gains rate. However, in appropriate circumstances a lesser or greater amount of security may be required. In no event shall the required amount exceed the maximum ordinary income rate of tax on the appreciation. In the event that the potential maximum tax liability of the person who would be required to file the return and that of another person having an interest in the U.S. real property interest differ, the security must cover the greater liability.

Paragraph (d) of § 6a.6039C–5 provides that the person desiring to file security in lieu of filing a return for a calendar year must show that any income tax on the disposition of a U.S. real property interest by such person, or on the disposition of an interest in such person, during the calendar year for which the return is required either has been paid or will be paid by the date that such tax is due.

Paragraph (e) of § 6a.6039C–5 provides that for purposes of determining the amount of security, the appraised fair market value of the U.S. real property interests to be secured as of December 31 of the calendar year must be used.

Paragraph (f) of § 6a.6039C–5 provides rules concerning the effect of security on persons holding an interest in an entity that has provided security who also may be required to file a return under section 6039C. If an entity has provided security and has entered into a security agreement with respect to all U.S. real property interests which it holds, a person who holds an interest in such entity is not required to take into account its pro rata share of such U.S. real property interests held by the entity in determining whether such person is required to file a return under section 6039C.

Paragraph (g) of § 6a.6039–5 provides rules concerning the duration and renewal of security agreements. In the event that a security agreement is not renewed for a subsequent calendar year, the section 6039C information returns for such year are due on the dates specified in § 6a.6039C–1(a). The security provided with respect to the expired agreement shall not be released until the information returns and tax returns, if required, are filed and any income tax with respect to dispositions of U.S. real property interests covered by the security agreement is paid.

Drafting Information

The principal author of these temporary regulations is Diane L. Renfroe of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations both on matters of substance and style.

Regulatory Flexibility Act and Executive Order 12291

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that these temporary regulations are not subject to Executive Order 12291.

List of Subjects in 26 CFR Part 6a

Bonds, Income taxes, Mortgages, Veterans, Foreign investments in United States real property interests.

Adoption of Temporary Regulations

PART 6a—TEMPORARY REGULATIONS UNDER TITLE II OF THE OMNIBUS RECONCILIATION ACT OF 1980.

The following new §§ 6a.897–1 through 6a.897–4, and §§ 6a.6039C–1 through 6a.6039C–5 are hereby added to 26 CFR Part 6a:

§ 6a.897–1 Taxation of foreign investment in United States real property interests, definition of terms.

(a) *Summary.* This section provides definitions of certain terms. The definitions apply when used in §§ 6a.897–1 through 6a.897–4 and 6a.6039C–1 through 6a.6039C–5, unless stated otherwise in those sections.

(b) *"Real property"*—(1) *In general.* Local law definitions will not be controlling for purposes of determining the meaning of the term "real property" as it is used in sections 897 and 6039C and the regulations thereunder.

(2) *Land and improvements.* The term "real property" includes land, unharvested crops (including uncut timber), and improvements, such as buildings and other inherently permanent structures. Also included are the structural components of buildings, such as wiring, plumbing, central heating and central air conditioning systems, pipes and ducts, and elevators or escalators.

(3) *Natural deposits.* The term real property includes mines, wells and other natural deposits.

(4) *"Personal property associated with the use of real property."* (i) The term "real property" includes movable walls, furnishings, and other personal property associated with the use of real property. For purposes of section 897 and 6039C, furnishings are not considered to include such items as antique furniture, paintings and similar ornamental objects if their fair market value depends principally on factors other than their functional use. The term "personal property associated with the use of real property" means personal property the use of which is an ordinary and necessary corrollary of the use to which the real property is put. It is to be distinguished from personal property with which the use of real property is associated (*i.e.*, personal property which has dominant economic significance in relation to the underlying real property). For instance, mining equipment and farming machinery used in connection with mining and farming operations, respectively, constitute personal property associated with the use of real property; whereas factory machinery, office equipment, harvested crops, and livestock and other animals generally do not constitute such property.

(ii) Personal property associated with the use of real property will be considered to be real property for purposes of sections 897 and 6039C irrespective of (A) whether it is held by a person other than the person which holds the real property with which such personal property is associated or (B) whether the personal property is disposed of without the concurrent disposition of the real property with which it is associated.

(iii) The determination of whether personal property is personal property associcated with the use of real property as defined in paragraph (b)(4)(i) of this section is to be made on the date the personal property is disposed of and on each applicable determination date. See § 6a.897–2.

(c) *"United States real property interest".* The term "United States real property interest" means an interest, other than an interest solely as a creditor, in real property located in the United States or the Virgin Islands or an interest, other than an interest solely as a creditor, in a domestic corporation unless the taxpayer establishes that the domestic corporation is not a United States real property holding corporation within the time period prescribed in section 897(c)(1)(A)(ii). The term does not include an interest in a domestically controlled REIT as defined by section 897(h)(4)(B); nor does it include shares of a class of stock of a corporation if that class is traded on an established securities market, unless the person disposing of such shares has held or holds more than 5 percent of the class of stock as provided in section 897(c)(3). The term also does not include an interest in a corporation which has disposed of all its U.S. real property interests in transactions in which the full amount of gain, if any, was recognized as provided in section 897(c)(1)(B). See § 6a.897–2(k) for establishing that an interest is described under section 897(c)(1)(B).

(d) *"Interest other than an interest solely as a creditor"*—(1) *In general.* An interest solely as a creditor either in real property or in a domestic corporation will not constitute a United States real property interest. Similarly, an interest solely as a creditor in any corporation, partnership, trust or estate will not be considered to be an interest in such corporation, partnership, trust or estate for purposes of determining whether a corporation is a United States real property holding corporation, for purposes of determining whether and the extent to which there has been a disposition of a United States real property interest under sections 897(e)(2)(B)(ii) and 897(g), and for purposes of applying section 6039C.

(2) *Aggregation rule*—(i) *In general.* For the purpose of determining whether a person has an interest in real property or in an entity other than an interest solely as a creditor, the aggregate interests of such person in the real property or in the entity must be considered. Therefore, if a person has any interest in the real property or in the entity other than solely as a creditor, all interests of such person in the real property or in the entity will be considered to be interests other than solely as a creditor. In determining the aggregate interests of a person in real property or in an entity, the constructive ownership rules of section 318(a) apply as provided in section 897(c)(6)(C). In addition, if a person's interests in real property or in an entity are dispersed among related entities for the principal purpose of causing one or more of such interests to be an interest solely as a creditor, such interest, or each of such interests, will be considered to be an interest in the real property or entity other than solely as a creditor for purposes of sections 897 and 6039C. Entities are considered to be related within the meaning of this paragraph if they are partners or partnerships described in section 707(b)(1) of the Code, if they are related within the meaning of section 267 (b) and (c) of the Code (without reference to the personal holding company or foreign personal holding company limitations of section 267(b)(3)), or if they are members of a controlled group of corporations. For this purpose the term "controlled group of corporations" has the same meaning given to it in section 1563(a), except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a), and subsections (a)(4), (b)(2), and (e)(3)(C) of section 1563 shall be disregarded.

(ii) *Example.* The rules of paragraph (d)(2)(i) are illustrated as follows:

Example. X, a foreign corporation, owns 40 percent of the fair market value of all the outstanding stock of Y, a domestic corporation, and other persons who are not related to X within the meaning of paragraph (d)(2)(i) own interests, solely as a creditor or otherwise, in Y. The only asset of Y is a fee interest in a parcel of real property located in the United States. Y is a U.S. real property holding corporation under section 897(c)(2). X makes a loan to Y which is evidenced by a note providing that the principal is payable in full in 20 years and that interest is payable at a fixed arm's-length rate at regular intervals over the term of the loan. In accordance with the aggregate interests rule of paragraph (d)(2)(i), X's stock interest in Y and its indebtedness from Y are aggregated and are interests in Y other than solely as a creditor.

(3) *Interests in real property other than solely as a creditor*—(i) *In general.* For purposes of section 897 and section 6039C, an interest in real property other than an interest solely as a creditor includes a fee ownership, co-ownership or leasehold interest in real property, a time sharing interest in real property and a life estate, remainder or reversionary interest in such property. The term also includes any direct or indirect right to share in the appreciation in the value of, or in the gross or net proceeds or profits generated by, the real property. A loan to an individual or entity under the terms of which a holder of the

indebtedness has any direct or indirect right to share in the value of, or the gross or net proceeds or profits generated by, an interest in real property of the debtor or of a related party (within the meaning of paragraph (d)(2)(i) of this section) is, in its entirety, an interest in real property other than solely as a creditor.

The term also includes an interest in production payments with respect to real property, including those payments described in section 636 of the Code. An option, a contract, or a right of first refusal to acquire any of the foregoing interests or any other interest in real property (other than an interest solely as a creditor), as well as the right to installment or other deferred payments from the disposition of any such interests, will itself constitute an interest in real property other than an interest solely as a creditor for purposes of sections 897 and 6039C.

(ii) *Example.* The rules of paragraph (d)(3)(i) are illustrated by the following example.

Example. A, a U.S. citizen, purchases a condominium unit located in the United States for $500,000. A makes a $100,000 down payment and borrows $400,000 from B, a foreign person, to pay the balance of the purchase price. Under the terms of the loan, A is to pay B 13 percent annual interest each year for 10 years and 35 percent of the appreciation in the fair market value of the condominium after 10 years. Because B has a right to share in the appreciation in value of the condominium, B has an interest other than solely as a creditor in the condominium. B's entire interest in the obligation from A, therefore, is a United States real property interest.

(4) *Interest in a corporation other than solely as a creditor.* For purposes of sections 897 and 6039C, an interest in a corporation other than an interest solely as a creditor means—

(i) An interest which is or would be treated as stock of such corporation under any principle of federal income taxation;

(ii) An interest which is, in whole or in part, a direct or indirect right to share in the appreciation in value of an interest (whether as a result of actual ownership or hypothetical ownership) in the corporation described in paragraph (d)(iv)(i) of this section or a direct or indirect right to share in the appreciation in value of assets of, or gross or net proceeds or profits derived by, the corporation; or

(iii) A right (whether or not presently exercisable) directly or indirectly to convert or to exchange an interest which otherwise would constitute an interest in the corporation solely as a creditor into or for an interest described in paragraph (d)(iv)(i), paragraph (d)(iv)(ii) or paragraph (d)(iv)(iii) of this section. The interests described in paragraph (d)(4)(ii) of this section include any right to a payment from a corporation the amount of which is contingent on the appreciation in value of an interest (whether as a result of actual ownership or hypothetical ownership) described in paragraph (d)(4)(i) of this section or which is contingent on the appreciation in value of assets of, or the gross or net proceeds or profits derived by, such corporation

(5) *Interest in a partnership other than solely as a creditor.* For purposes of determining whether any corporation is a United States real property holding corporation and of determining whether under section 897(e)(2)(B)(ii) or 897(g) there has been a disposition of a United States real property interest, as well as for purposes of applying section 6039C, an interest in a partnership other than an interest solely as a creditor means—

(i) An interest in such partnership as a partner within the meaning of section 761(b) and the regulations thereunder;

(ii) A direct or indirect right to share in the appreciation in value of an interest (whether as a result of actual ownership or hypothetical ownership) in the partnership described in paragraph (d)(5)(i) or a direct or indirect right to share in the appreciation in value of assets of, or in gross or net proceeds or profits derived by, the partnership; or

(iii) A right (whether or not presently exercisable) directly or indirectly to convert or exchange an interest which otherwise would constitute an interest in the partnership solely as a creditor into or for an interest described in paragraph (d)(5)(i), paragraph (d)(5)(ii) or paragraph (d)(5)(iii) of this section. The interests described in paragraph (d)(5)(ii) of this section include any right to a payment from a partnership the amount of which is contingent on the appreciation in value of an interest (whether as a result of actual ownership or hypothetical ownership) described in (d)(5)(i) of this section or which is contingent on the appreciation in value of assets of, or gross or net proceeds and profits derived by, such partnership.

(6) *Interests in trusts and estates other than solely as a creditor.* For purposes of determining whether any corporation is a United States real property holding corporation and of determining whether there has been a disposition of a United States real property interest under sections 897(e)(2)(B)(ii) and 897(g), as well as for purposes of applying section 6039C, an interest in a trust or an estate other than solely as a creditor means—

(i) An interest in a trust or estate as a beneficiary within the meaning of section 643(c) and the regulations thereunder or an ownership interest in any portion of a trust as provided in sections 671 through 679 of the Code;

(ii) A direct or indirect right to share in the appreciation in value of an interest (whether as a result of actual ownership or hypothetical ownership) described in (i) or a direct or indirect right to share in the appreciation in value of, or gross or net proceeds or profits derived by, the trust or estate; or

(iii) A right (whether or not presently excercisable) directly or indirectly to convert or exchange an interest which otherwise would constitute an interest solely as a creditor in the trust or estate into or for an interest described in paragraph (d)(6)(i), paragraph (d)(6)(ii) or paragraph (d)(6)(iii). The interests described in paragraph (d)(6)(ii) of this section include any right to a payment from a trust or estate the amount of which is contingent on the appreciation in value of an interest (whether as a result of actual ownership or hypothetical ownership) described in paragraph (d)(6)(i) of this section or which is contingent on the appreciation in value of assets of, or proceeds or profits derived by, such trust or estate.

(7) *"Interest" means "interest other than solely as a creditor."* Unless otherwise stated, the term "interest" as used with regard to real property or with regard to an entity hereafter in this section and in §§ 6a.897–2 through 6a.897–4 and 6a.6039C–1 through 6a.6039G–5 means an interest in such real property or entity other than an interest solely as a creditor.

(e) *"Directly or indirectly."* Unless otherwise provided, property which is held "directly or indirectly" includes property which is actually held and property which is held by application of this paragraph. A shareholder, partner or beneficiary is considered as holding its pro rata share of the property which is held by a corporation, a partnership, a trust, or an estate, respectively. Property that is considered as being held by reason of the preceding sentence shall be treated as actually held by the person for purposes of reapplying the rule of such sentence. See § 6a.897–2(f) for limitations on the indirect holding rule of this paragraph for purposes of determining whether a corporation is a U.S. real property holding corporation.

(f) *"Pro rata share."* A shareholder's, partner's, or beneficiary's pro rata share of property held by a corporation, partnership, trust, or estate is a percentage of the fair market value of the property equal to the shareholder's,

partner's, or beneficiary's percentage ownership interest in the corporation, partnership, trust, or estate.

(g) *"Percentage ownership interest."*—(1) *Corporations*—(i) *General rule.* A person's "percentage ownership interest" in a corporation is the percentage equal to the ratio of (A) the sum of the liquidation values of all interests in the corporation held by the person to (B) the sum of the liquidation values of all outstanding interests in the corporation. The liquidation value of an interest in a corporation is the amount of cash and the fair market value of any property that would be distributed with respect to such interest upon the liquidation of the corporation after satisfaction of liabilities to persons having interests in the corporation solely as creditors. The fair market value of the assets of the corporation, the amount of cash held by the corporation and the amount of liabilities to persons having interests solely as creditors is determined for this purpose on the date with respect to which the percentage ownership interest is determined.

(ii) *Example.* The rule of paragraph (g)(1)(i) of this section is illustrated by the following example.

Example. Corporation K's only asset is a parcel of U.S. real estate with a fair market value of $20,000,000. The real estate is subject to liabilities of $10,000,000. Included in the liabilities is a $1,000,000 loan from M at 10 percent interest. On the date in question there is no accrued but unpaid interest with respect to the $10,000,000 of liabilities. M is also entitled, on payment of the loan principal to a shared appreciation payment equal to 10 percent of the excess of the fair market value of the U.S. real estate over $18,000,000 but only if all other corporate liabilities have been paid. K has two classes of stock, common and preferred. X and Y each own 100 of the 200 outstanding shares of preferred stock. D and E each own 500 of the 1,000 outstanding shares of common stock. Each preferred shareholder is entitled to $10,000 per share of preferred stock upon liquidation, subject to payment of all corporate liabilities and to any amount owed to M, but before any common shareholder is paid. The liquidation value of M's interest in K, which constitutes an interest other than an interest solely as a creditor, is $1,200,000 ($1,000,000 principal of the loan to K plus $200,000 [10 percent of the excess of $20,000,000 over $18,000,000]).

The liquidation value of each of X's and Y's block of preferred stock is $1,000,000 ($10,000 times 100 shares each). The liquidation value of each of D's and E's block of common stock is $3,900,000 ($20,000,000 (the total fair market value of K's assets) − $9,000,000 (liabilities to creditors other than M) − $1,200,000 (M's liquidation value) − $2,000,000 (X and Y's liquidation value)) times 50 percent (the percentage of common stock owned by each). The sum of the liquidation values of all the outstanding interests in K (*i.e.*, interests other than solely as a creditor) is $11,000,000 ($1,200,000 (M's liquidation value) + $2,000,000 (X's and Y's liquidation values) + $7,800,000 (D's and E's liquidation values)). Each of D's and E's percentage ownership interests in K is 35.5 percent ($3,900,000 divided by $11,000,000). Each of X's and Y's percentage ownership interests in K is 9 percent ($1,000,000 divided by $11,000,000). M's percentage ownership interest in K is 11 percent ($1,200,000 divided by $11,000,000).

(2) *Partnerships*—(i) *General rule.* A person's "percentage ownership interest" in a partnership is the percentage equal to the ratio of (A) the sum of the liquidation values of all interests held by the person in the partnership to (B) the sum of the liquidation values of all outstanding interests in the partnership. The liquidation value of an interest in a partnership is the amount of cash and the fair market value of any property that would be distributed with respect to such interest upon liquidation of the partnership after satisfaction of liabilities to persons having interests in the partnership solely as creditors. The fair market value of the partnership assets, the amount of cash held by the partnership, and the amount of its liabilities to persons having interests solely as creditors is determined for this purpose on the date with respect to which the percentage ownership interest is determined. See the regulations under section 897(g) for an exception to the provisions of this subparagraph where the interest of a person in the United States real property interests held by a partnership is disproportionate to such person's interest in the total assets of the partnership.

(ii) *Example.* The rule of paragraph (g)(2)(i) of this section is illustrated by the following example.

Example. A, a U.S. person, and B, a foreign person, are partners in a partnership the only asset of which is a parcel of undeveloped land located in the United States which was purchased by the partnership in 1980 for $300,000. The partnership has no liabilities, and its capital is $300,000. A's and B's interests in the capital of the partnership are 25 percent and 75 percent, respectively, and A and B each has a 50 percent profits interest in the partnership. In 1984 the partnership has no items of income or deduction, and the fair market value of its parcel of undeveloped land is $500,000. In 1984 the percentage ownership interest of A in the partnership is 35 percent (the ratio of $100,000 (the liquidation value of A's profit interest in 1984) plus $75,000 (the liquidation value of A's 25 percent interest in the partnership's $300,000 capital) to $500,000 (the sum of the liquidation values of all outstanding interests in the partnership)). The percentage ownership interest of B in the partnership in 1984 is 65 percent (the ratio of $325,000 (B's $100,000 profit interest plus his $225,000 capital interest) to $500,000).

(3) *Trusts and estates*—(i) *General rule.* A person's percentage ownership interest in a trust or an estate is the percentage equal to the ratio of (A) the sum of the actuarial values of such person's interests in the cash and other assets held by the trust or estate after satisfaction of the liabilities of the trust or estate to persons holding interests in the trust or estate solely as creditors; to (B) the entire amount of such cash and other assets after satisfaction of liabilities to persons holding interests in the trust or estate solely as creditors. For purposes of calculating this ratio, the fair market value of the trust or estate's assets, the amount of cash held by the trust or estate and the amount of the liabilities to persons having interests solely as creditors is determined on the date with respect to which the percentage ownership interest is determined. In determining its percentage ownership interest in a trust or an estate, a person must be able to demonstrate that the sum of the actuarial values of interests in the cash and the other assets of the trust or estate held by persons in existence on the date with respect to which such determination is made equals the amount in paragraph (g)(3)(i)(B) of this section. The interest of any such person must have a definitely ascertainable actuarial value on such date to be taken into account for this purpose. If the sum of the definitely ascertainable actuarial values of the interests held by persons in existence on the determination date does not equal the amount in paragraph (g)(3)(i)(B) of this section, the excess will be considered to be owned in total by each beneficiary who is in existence on such date, whose interest in the excess is not definitely ascertainable and who is potentially entitled to such excess. For purposes of determining his own percentage ownership interest in a trust, a grantor or other person will be treated as owning any portion of the trust's cash and other assets which such person is treated as owning under sections 671 through 679. See the regulations under section 897(g) for an exception to the provisions of this subparagraph where the interest of a person in the United States real property interests held by a trust or estate is disproportionate to such person's interest in the total assets of the trust or estate. See § 6a.6039C–4(a) regarding limitations on the reporting requirements of persons whose interests in a trust or an estate do not have definitely ascertainable actuarial values.

(ii) *Examples.* The rules of paragraph (g)(3)(i) of this section are illustrated by the following example.

Example. A, a U.S. person, established a trust on December 31, 1984, and contributed $10,000 to the trust. The terms of the trust provide that the trustee, a bank that is unrelated to A, at its discretion may retain trust income or may distribute it to X, a foreign person, or to the head of state of any country other than the United States. The remainder upon the death of X is to go in equal shares to such of Y and Z, both foreign persons, as survive X. On December 31, 1984, the total value of the trust's assets is $10,000. On the same date, the actuarial values of the remainder interest of Y and Z in the corpus of the trust are definitely ascertainable. They are $1,000 and $500, respectively. Neither the income interest of X nor of the head of state of any country other than the United States has a definitely ascertainable actuarial value on December 31, 1984. The interests of Y and Z in the income portion of the trust similarly have no definitely ascertainable actuarial values on such date since the income may be distributed rather than retained by the trust.

Since the sum of the actuarial values of definitely ascertainable interests of persons in existence ($1,500) does not equal $10,000, the excess ($8,500) is treated as owned by each beneficiary who is in existence on December 31, 1984, and who is potentially entitled to such excess. Therefore, X, Y, Z, and the head of state of any country other than the United States are each considered as owning the entire $8,500 income interest in the trust. On December 31, 1984, the total actuarial value of X's interest is $8,500, and his percentage ownership interest is 85 percent. The total actuarial value of Y's interest in the trust is $9,500 ($1,000 plus $8,500), and his percentage ownership interest is 95 percent. The total actuarial value of Z's interest is $9,000 ($500 plus $8,500), and his percentage ownership interest is 90 percent. The actuarial value of the interest of the head of state of each country other than the United States is $8,500, and his percentage ownership interest is 85 percent.

(4) *Dates with respect to which percentage ownership interests are determined.* The dates with respect to which percentage ownership interests are determined are the applicable determination dates outlined in §§ 6a.897–2, 6a.6039C–3 and 6a.639C–4.

(h) *"Asset used or held for use in a trade or business."* The term "asset used or held for use in a trade or business" means—

(1) Property, other than real property, which is described in sections 1221(1), 1231(b)(1) and 1231(b)(3) without regard to the holding period limitations of section 1231(b), and

(2) Accounts receivable from the sale of property described in paragraph (h)(1) of this section or from the performance of personal services.

The term does not include cash or marketable stock or securities. Nor does it include an option or a contract to acquire stock, securities or commodities which option or contract constitutes a capital asset with respect to its holder. If an option or a contract to acquire stock, securities or commodities is not a capital asset with respect to its holder, the determination of whether such option or contract is to be taken into account as an asset used or held for use in a trade or business is made only after application of the rule set forth in § 6a.897–2(f)(2) (relating to the acquisition or disposition of assets principally for the purpose of avoiding United States real property holding company status).

(i) *"Disposition"*—(1) *In general.* A disposition is not taken into account for purposes of applying sections 897 and 6039C if it is not of a type that constitutes a realization event under any principal of federal income taxation.

(2) *Example.* The rule of paragraph (i)(1) of this section is illustrated by the following example.

Example. A, a foreign individual, has an undivided fee interest in a parcel of real property located in the United States. The fair market value of A's interest is $70,000, and A's basis in such interest is $50,000. The only liability to which the real property is subject is a liability of $65,000 secured by a mortgage in the same amount. A transfers his fee interest in the property subject to the mortgage by gift to B. A realizes $15,000 of gain upon such transfer. As the transfer is a realization event for federal income tax purposes, it is of a type that is subject to sections 897 and 6039C. However, such sections would not be applicable to the transfer if the mortgage on the U.S. real property were equal to or less than A's $50,000 basis since the transfer then would not be a transaction of a type which would constitute a realization event for federal income tax purposes.

(j) *"Domestic corporation."* The term "domestic corporation" has the same meaning as set forth in section 7701(a)(4). For purposes of sections 897 and 6039C, it also includes a foreign corporation with respect to which an election under section 897 (i) and (k) and §§ 6a.897–3 and 6a.897–4 to be treated as a domestic corporation is in effect.

(k) *"Foreign person."* The term "foreign person" means a non-resident alien individual (including an individual subject to the provisions of section 877), a foreign corporation, a foreign partnership, a foreign trust or a foreign estate, as such persons are defined respectively by § 1.871–2 and by section 7701 and the regulations thereunder. A resident alien individual, including a nonresident alien individual with respect to whom there is in effect an election under section 6013 (g) or (h) to be treated as a United States resident, is not a foreign person.

(l) *"Foreign corporation."* The term "foreign corporation" has the meaning ascribed to such term in section 7701 (a)(3) and § 301.7701–5. For purposes of sections 897 and 6039C however, the term does not include a foreign corporation with respect to which there is in effect an election under sections 897(i) and 6a.897–3 to be treated as a domestic corporation.

(m) *"Established securities market."* An interest in a corporation is considered to be traded on an "established securities market" if—

(1) It is traded on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) or on a domestic over-the-counter market, and

(2) Information concerning the identity of persons holding more than 5 percent of any class of interests in the corporation is required by law to be reported to the Securities and Exchange Commission.

For purposes of this paragraph (m), an over-the-counter market is a market reflected by the existence of an interdealer quotation system. An interdealer quotation system is any system of general circulation to brokers and dealers which regularly disseminates quotations of obligations by identified brokers or dealers, other than by quotation sheets which are prepared and distributed by a broker or dealer in the regular course of business and which contain only quotations of such broker or dealer. In no event will an interest be considered to be traded on an established securities market by reason of being traded on a foreign securities exchange which is not registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

(n) *"Fair market value."* For purposes of sections 897 and 6039C, the "fair market value" of property is its gross value. Gross value is to be determined by reference to the price at which the property would change hands between an unrelated willing buyer and willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all relevant facts.

(o) *"Identifying number."* The "identifying number" of an individual is the individual's United States social security number. The "identifying number" of any other person is its United States employer identification number.

§ 6a.897-2 Establishing that a corporation is not a United States real property holding corporation.

(a) *Purpose.* Section 897 (a) provides that gain or loss of a foreign person from the disposition of a U.S. real property interest is taken into account under sections 871 (b)(1) or 882 (a)(1) as is the foreign person were engaged in the conduct of a U.S. trade or business during the taxable year and the gain or loss were effectively connected with the trade or business. Under section 897 (c), a U.S. real property interest generally includes any interest in any domestic corporation unless it is established that the corporation was not a U.S. real property holding corporation at any time during the base period described in paragraph (b) of this section. Therefore, U.S. real property holding corporation status is important for determining whether the disposition by a foreign person of an interest in a domestic corporation is taxable. U.S. real property holding corporation status is also important for reporting purposes. For instance, under section 6039C, a domestic corporation that is a U.S. real property holding corporation is required to report annually if it has foreign shareholders. Solely for purposes of determining whether another corporation is a U.S. real property holding corporation, an interest in a foreign corporation is a U.S. real property interest unless it is established that the foreign corporation is not a U.S. real property holding corporation. This section provides rules for establishing that a corporation is not a U.S. real property holding corporation.

(b) *Establishing that a corporation is not a U.S. real property holding corporation.* Except when section 897 (e) would allow nonrecognition, a foreign person who makes a disposition of an interest in a domestic corporation (other than an interest described in section 897 (c)(3) or (h)(2)) is subject to the provisions of section 897 (a) unless (1) the person supplies the schedules required by paragraph (d) of this section for each calendar year during the base period, or (2) the person establishes as provided in paragraph (k) of this section that the interest meets the requirements of section 897(c)(1)(B). The base period is the shorter of—

(i) The period after June 18, 1980, during which the foreign person held the interest in the corporation, or

(ii) The 5 year period ending on the date of the dispositon of the interest.

The schedules must be attached to an income tax return for the taxable year (even if the foreign person has no income under section 897 or otherwise to report). In order to establish that gain or loss from the disposition is not treated as effectively connected with a U.S. trade or business under section 897(a). An interest in any corporation, whether domestic or foreign, held directly or indirectly by the domestic corporation is taken into account as a U.S. real property interest for purposes of determining whether such domestic corporation is a U.S. real property holding corporation unless the foreign person supplies the schedules required by paragraph (d) of this section for each calendar year during the base period applicable to such other domestic or foreign corporation. However, if a portion of the assets of such other corporation is taken into account by the domestic corporation under paragraph (i) of this section, the schedules do not have to be supplied with respect to the interest in the other corporation.

(c) *U.S. real property holding corporation test.* A corporation is a U.S. real property holding corporation in a calendar year in which the fair market value of the U.S. real property interests held by the corporation on any of the applicable determination dates equals or exceeds 50 percent of the sum of the fair market values of the—

(1) U.S. real property interests;

(2) Interests in real property located outside the United States; and

(3) Other assets used or held for use in a trade or business which are held by the corporation on such dates.

(d) *Schedules*—(1) *Requirement of schedules.* The following schedules must be supplied in accordance with paragraph (b) of this section. A schedule of—

(i) All U.S. real property interests held by the corporation on the last day of the calendar year;

(ii) All U.S. real property interests disposed of by the corporation during the calendar year;

(iii) All property described in paragraphs (c) (2) and (3) of this section which is held by the corporation on the last day of the calendar year;

(iv) All property described in paragraphs (c) (2) and (3) of this section which was disposed of by the corporation during the calendar year; and

(v) Calculations illustrating that the corporation was not a U.S. real property holding corporation on any of the applicable determination dates during the calendar year.

Each schedule required by paragraph (d)(1) (i) through (iv) of this paragraph must include a description of each item, its location, its date of acquisition and disposition, and its fair market value as of the earlier of the date of its disposition or December 31 of the calendar year. If the corporation has substantially identical assets which are used or held for use in a trade or business, it may provide the required information for such assets on an aggregate basis rather than on an item by item basis. Each schedule must be verified as true and signed under penalty of perjury by the person or the responsible corporate officer who prepares the schedule. For purposes of this paragraph (d), calendar year 1980 shall include only the period from June 19, 1980, to December 31, 1980.

(2) *Schedule prepared by the corporation.* The schedules required by paragraph (d)(1) of this section of a foreign person who disposes of an interest in a domestic corporation may be prepared by the corporation. However, the owner of the interest must supply the schedule of calculations required by paragraph (d)(1)(v) of this section for the calendar years of acquisition and disposition of the interest since and including 1980. Each schedule prepared by a corporation must be verified as true and signed under penalty of perjury by the responsible officer of the corporation.

(e) *Applicable determination dates for applying U.S. real property holding corporation test*—(1) *In general.* For purposes of paragraphs (c) and (d)(1)(v) of this section the applicable determination dates for any corporation for a calendar year are:

(i) December 31 of the calendar year;

(ii) The date immediately preceding each date on which the corporation disposes of a U.S. real property interest; and

(iii) The date immediately preceding each date on which the corporation acquires an interest in foreign real property or other assests used or held for use in a trade of business during the year.

For purposes of applying this paragraph (e)(1), if a corporation is treated under paragraph (h) or (i) of this section as owning a portion of the assets owned by an entity, the corporation will be treated as disposing of or acquiring such assets on the dates that the entity disposes of or acquires such assets. For purposes of paragraph (e)(1)(iii) only, other assets used or held for use in a trade or business do not include property described in sections 1221(1) and 1231(b)(3) of the Code. In addition, paragraph (e)(1)(iii) of this section shall not apply to an acquisition of other assets used or held for use in a trade or business described in the preceding sentence unless the fair market value of the assets acquired exceeds 1 percent of the total fair market value of all such

assets. However, if the corporation makes or is treated as making more than one acquisition of less than 1 percent of the value of such assets during the year, a determination must be made with respect to property held before any acquisition which will make the total value of all such assets acquired exceed the above percentage.

(2) *Special determination dates for a calendar year in which foreign person disposes of an interest in a domestic corporation.* In a calendar year in which a foreign person disposes of an interest in a domestic corporation, the applicable determination dates for determining whether the corporation is a U.S. real property holding corporation are:

(i) The date on which the foreign person disposes of an interest in the corporation; and

(ii) Any dates described in paragraph (e)(1) (ii) or (iii) of this section which precede the date described in paragraph (e)(2)(i) of this section.

The determination as to whether the corporation was a U.S. real property holding corporation in any calendar year during the portion of the base period that precedes the year of disposition shall be made on the dates set forth in paragraph (e)(1) of this section.

(3) *Valuation methods*—(i) *In general.* For purposes of determining whether a corporation is a U.S. real property holding corporation on any applicable determination date, the fair market value of the property considered to be held by the corporation (in accordance with § 6a.897–2 (f)) as of the applicable determination date must be used.

(ii) *Alternative valuation method for determination dates other than December 31.* For purposes of paragraph (e)(3)(i) of this section, if an applicable determination date under paragraph (e)(1) and (2) of this section is other than December 31 and if property otherwise required to be valued as of such date is retained after such date, the fair market value of the retained property as of the earlier of the date of its own disposition or December 31 may be used.

(iii) *Consistent methods.* The valuation date method selected under this paragraph (e)(3) (i) or (ii) for the first determination date in a calendar year must be used for all subsequent determination dates for such year. In addition, the valuation date method selected must be used for all property with respect to which the determination is made. The use of one method for one calendar year does not preclude the use of the other method for any other calendar year.

(4) *Illustrations.* The rules of this paragraph (e) are illustrated by the following examples.

Example (1). Nonresident alien individual X purchased 100 shares of stock of domestic corporation K on July 26, 1979. K has additional shares of common stock outstanding, however, its stock has never been traded on an established securities market. At all times during calendar year 1980, K's only assets were a parcel of U.S. real estate (parcel A) and a parcel of country Z real estate (parcel B). On December 31, 1980, the fair market value of parcel A was $1,000,000 and the fair market value of parcel B was $2,000,000. At all times during calendar year 1981, K's only assets were the same parcels of real estate, with fair market values on December 31, 1981, of $1,150,000, and $2,300,000, respectively.

On November 23, 1981, X disposed of 50 shares of the K stock. K prepared the schedules described in paragraph (d) of this section for calendar years 1980 and 1981. With her income tax return for 1981, X attached copies of the schedules prepared by K for 1980 and 1981 and the calculations described in paragraph (d)(1)(v) of this section for 1980 and 1981, required by paragraph (b) of this section, claiming that K was not a U.S. real property holding corporation at any time from June 19, 1980, to November 23, 1981. In determining whether K was a U.S. real property holding corporation during 1980, the only applicable determination date is December 31, 1980, because K did not dispose of or acquire any property described in paragraph (e)(1) of this section during the year. The test of paragraph (c) is applied using the fair market value of the property held on that date. K was not a U.S. real property holding corporation during 1980 because as of December 31, 1980, the fair market value ($1,000,000) of the U.S. real property interests held by K did not equal or exceed 50 percent ($1,500,000) of the sum ($3,000,000) of the fair market values of K's U.S. real property interest ($1,000,000), the interests in real property located outside the United States ($2,000,000), plus other assets used or held for use by K in a trade or business (zero). In determining whether K was a U.S. real property holding corporation during the period in 1981 in which X held the 50 shares which were disposed of, the only applicable determination date is November 23, 1981, since K did not dispose of or acquire any property during the year prior to such date.

Pursuant to paragraph (e)(3) of this section, X chooses to use the fair market value of K's property as of December 31, 1981, in lieu of using the fair market value on November 23, 1981. K was not a U.S. real property holding corporation from January 1, 1981, until November 23, 1981, because the fair market value as of December 31, 1981, ($1,150,000) of the U.S. real property interests held by K on November 23, 1981, did not equal or exceed 50 percent ($1,725,000) of the sum ($3,450,000) of the fair market values, as of December 31, 1981, of K's U.S. real property interests held on November 23, 1981 ($1,150,000), K's interests in real property located outside the United States on November 23, 1981 ($2,300,000), plus other assets used or held for use by K in a trade or business on November 23, 1981 (zero). As K was not a U.S. real property holding corporation from June 19, 1980, to November 23, 1981, the stock of K was not a U.S. real property interest, and X's gain on the disposition of such stock is not subject to the provisions of section 897(a). The following chart summarizes this example.

K CORPORATION

Calendar year	1980	1981
1. Applicable determination dates.	Dec. 31,1980	Nov. 23,1981.
2. Fair market value of U.S. real property interests held on applicable determination date parcel A.	1.0 [1]	1.15 (Dec. 31, 1981)
Total	1.0	1.15.
3. Fair market value of foreign real property held on applicable determination date parcel B.	2.0	2.3 (Dec. 13, 1981)
Total	2.0	2.3.
4. Fair market value of other assets used or held for use in a trade or business on applicable determination date.	0	0.
Total	0	0.
5. Total of (2), (3), and (4).	3	3.45.
6. 50 percent of (5)	1.5	1.725.
7. K's U.S. real property holding corporation status on applicable determination date.	Not a USRPHC (1.0<1.5).	Not a USRPHC (1.15<1.725).

[1] Figures represent millions of dollars.

Example (2). The facts are the same as in *Example (1)*, except that on April 7, 1982, K purchases another parcel of U.S. real estate (parcel C) for $2,000,000; on May 25, 1982, X disposes of her remaining 50 shares of K stock; on October 17, 1982, K disposes of parcel A for its fair market value ($1,500,000); on December 31, 1982, the fair market values of parcels B and C are $2,600,000 and $2,400,000, respectively. K prepares the schedules described in paragraph (d) of this section for calendar year 1982. In determining whether K was a U.S. real property holding corporation from January 1, 1982, to May 25, 1982, the period in 1982 during which X owned her K stock, the only applicable determination date is May 25, 1982, since K did not dispose of or acquire property described in paragraph (e)(1) (ii) or (iii) of this section prior to this date. In accordance with paragraph (e)(3)(ii), X chooses to use the fair market values of parcels B and C as of December 31, 1982, and the fair market value of parcel A on October 17, 1982, in lieu of values of such property on May 25, 1982. K was a U.S. real property holding corporation during the period from January 1, 1982, until May 25, 1982, because the fair market values ($3,900,000) of the U.S. real property interests held by K on May 25, 1982 (determined as of October 17, 1982, in the case of parcel A, and as of December 31, 1982, in the case of parcels B and C), exceeded 50 percent ($3,250,000) of the sum ($6,500,000) of the fair

market values of K's U.S. real property interests held on May 25, 1982 ($3,900,000), K's interests in real property located outside the United States on May 25, 1982 ($2,600,000), plus K's other assets used or held for use in a trade or business on May 25, 1982 (zero). As K was a U.S. real property holding corporation on May 25, 1982, the stock of K is a U.S. real property interest, and X's gain on the disposition of K stock is treated as effectively connected with a U.S. trade or business under section 897(a). The following chart summarizes this example.

K CORPORATION

Calendar year	1982
1. Applicable determination date	May 25, 1982.
2. Fair market value of U.S. real property interests held on applicable determination date:	
Parcel A	1.5 (Oct. 16, 1982).[1]
Parcel C	*2.4* (Dec. 31, 1982).
Total	3.9.
3. Fair market value of foreign real property held on applicable determination date; parcel B.	*2.6* (Dec. 31, 1982).
Total	2.6.
4. Fair market value of other assets used or held for use in a trade or business on applicable determination date.	*0.*
Total	0.
5. Total of (2), (3), and (4)	6.5.
6. 50 percent of (5)	3.25.
7. K's status as a U.S. real property holding corporation on applicable determination date.	Is a USRPHC (3.9>3.25).

[1] Figures represent millions of dollars.

Example (3). The facts are the same as in *Example (2)*, except that X disposes of her K stock in 1983, and on December 17, 1982, K purchases a parcel of country Z real estate (parcel D) with a fair marker value of $1,400,000. In determining whether K was a U.S. real property holding corporation in 1982, in accordance with paragraph (e) the applicable determination dates are December 31, 1982, December 16, 1982, and October 16, 1982. On December 31, 1982, K was not a U.S. real property holding corporation since the value of its U.S. real property interests held on that date ($2,400,000) does not equal or exceed 50 percent ($3,200,000) of the total value of all its U.S. real property interests, foreign real property interests and other assets used in a trade or business held on that date ($6,400,000). On December 16, 1982, considering the assets held by K on that date, K was not a U.S. real property holding corporation since the value as of December 31, 1982, of its U.S. real property interests held did not equal or exceed 50 percent ($2,500,000) of the total fair market value of K's U.S. real property interests, its foreign real property, and its other assets used or held for use in its trade or business ($5,000,000). On October 16, 1982, K was a U.S. real property holding corporation since the fair market value of its U.S. real property interests held on that date ($3,900,000) (including the value of parcel A on October 16, 1982 ($1,500,000) and the value of parcel C on December 31, 1982 ($2,400,000)) is greater than 50 percent of the value ($3,250,000) of its total assets ($6,500,000) held on such date. As K was a U.S. real property holding corporation on October 16, 1982, the stock of K is a U.S. real property interest, and X will be subject to the provisions of section 897(a) upon the disposition of K stock in 1983. The following chart summarizes this example.

K CORPORATION

Calendar year		1982	
1. Applicable determination dates	Oct. 16, 1982	Dec. 16,1982	Dec. 31,1982.
2. Fair market value of U.S. real property interests:			
Parcel A	1.5 (Oct. 16, 1982) [1]		
Parcel C	2.4 (Dec. 31, 1982)	2.4 (Dec. 31,1982)	2.4 (Dec. 31, 1982).
Total	3.9	2.4	2.4.
3. Fair market value of foreign real property:			
Parcel B	2.6 (Dec. 31, 1982)	2.6 (Dec. 31, 1982)	2.6 (Dec. 31, 1982.)
Parcel D			1.4 (Dec. 31, 1982).
Total			4.0
4. Fair market value of other assets used or held for use in trade or business on applicable determination date.	0	0	0
Total	0	0	0
5. Total of (2), (3), and (4)	6.5	5.0	6.4.
6. 50 percent of (5)	3.25	2.5	3.2.
7. K's status as a U.S. real property holding corporation on applicable determination date.	Is a USRPHC (3.9>3.25).	Not a USRPHC (2.4<2.5).	Not a USRPHC (2.4<23.2).

[1] Figures represent millions of dollars.

(f) *Assets held by a corporation*—(1) *Included assets.* For purposes of determining whether a corporation is a U.S. real property holding corporation, the assets held by a corporation include only those held directly by the corporation and those held indirectly by application of the rules of paragraphs (h), (i), and (j) of this section.

(2) *Excluded assets.* For the purposes of paragraph (c) of this section, foreign real property and other assets used or held for use in a trade or business acquired principally for the purpose of affecting the status of a corporation as a U.S. real property holding corporation shall not be recognized. Whether property is acquired principally for such purpose will depend on the facts and circumstances in each case. One of the factors that will be considered is whether a corporation has increased its amount of such property just prior to an applicable determination date and whether it appears that such increase will be accompanied by a decrease in the amount of such property after such date. In such case, the acquired property will be disregarded unless the corporation establishes that a valid business purpose existed for increasing and decreasing the amount of such property.

(g) *Interests in foreign corporations*—(1) *In general.* For purposes only of determining whether any corporation is a U.S. real property holding corporation, an interest in a foreign corporation shall be treated as a U.S. real property interest unless it is established that the foreign corporation was not a U.S. real property holding corporation as defined in paragraph (c) of this section at any time during the base period (as defined in paragraph (b) of this section). The rules of this section must be complied with to establish that the foreign corporation is not a U.S. real property holding corporation. Regardless of whether a foreign corporation is a U.S. real property holding corporation, gain or loss from the disposition of an interest in such corporation will not be treated as effectively connected with a U.S. trade or business by reason of section 897(a), unless the foreign corporation elects to be treated as a domestic corporation under section 897 (i) or (k).

(2) *Examples.* The rules of paragraph (g)(1) of this section are illustrated by the following examples. In each example, fair market value is determined as of the applicable determination dates under paragraph (e)(3)(i) of this section.

Example (1). Nonresident alien individual X holds all of the stock of domestic corporation K. K's only assets are 40 percent of the stock of foreign corporation L, with a fair market value of $500,000, and a parcel of country W real estate, with a fair market value of $400,000. Foreign corporation M, unrelated to K, holds the other 60 percent of the stock of L. L's only asset is a parcel of U.S. real estate with a fair market value of $1,250,000. L is a U.S. real property holding corporation because the fair market value of its U.S. real property interests ($1,250,000) exceeds 50 percent ($625,000) of the sum of the fair market values of its U.S. real property interests ($1,250,000), its interests in real property located outside the United States (zero), plus its other assets used or held for use in a trade or business (zero). Consequently, K's interest in L is treated as a U.S. real property interest under the rule of this paragraph (g). K is a U.S. real property holding corporation because the fair market value ($500,000) of its U.S. real property interests (the stock of L) exceeds 50 percent ($450,000) of the sum ($900,000) of the fair

market value of its U.S. real property interests ($500,000), its interests in real property located outside the United States ($400,000), plus its other assets used or held for use in a trade or business (zero). X's gain on the disposition of her stock in K will be treated as effectively connected with a U.S. trade or business under section 897(a). M's gain on the disposition of its L stock will not be subject to the provisions of section 897(a), because the stock of L is a U.S. real property interest only for purposes of determining whether K is a U.S. real property holding corporation.

Example (2). Nonresident alien individual X holds all of the stock of domestic corporation K. K's only assets are 40 percent of the stock of foreign corporation L. Nonresident alien individual Y, unrelated to X, holds the other 60 percent of L's stock. L's only assets are 40 percent of the stock of foreign corporation M. M's only asset is a parcel of U.S. real estate with a fair market value of $1,000,000. M, therefore, is a U.S. real property holding corporation, and the stock of M held by L is a U.S. real property interest for purposes of determining whether L is a U.S. real property holding corporation (not for purposes of treating L's gain from the disposition of M stock as effectively connected with a U.S. trade or business under section 897(a)). As all of L's assets are U.S. real property interests, the stock of L held by K is a U.S. real property interest for purposes of determining whether K is a U.S. real property holding corporation (not for purposes of subjecting Y's gain on the disposition of L stock to the provisions of section 897(a)). As all of K's assets are U.S. real property interests, K is a U.S. real property holding corporation, and the stock of K held by X is a U.S. real property interest. As K is a domestic corporation, X's gain upon the disposition of the stock of K is subject to the provisions of section 897(a).

(h) *Proportionate ownership of assets held by partnership, trusts, and estates*—(1) *In general.* For purposes of determining whether a corporation is a U.S. real property holding corporation, a partner or beneficiary of a partnership, a trust, or an estate (whether domestic or foreign) shall be treated pursuant to section 897(c)(4)(B) as holding assets directly and indirectly in accordance with § 6a.897–1(e). In addition, for purposes of applying paragraph (c) of this section, a determination of a partner's or beneficiary's percentage ownership interest in a partnership, a trust, or an estate, as well as a determination of its pro rata share of U.S. real property interests, foreign real property, and other assets used or held for use in a trade or business which are held by the partnership, trust, or estate, shall be made as of each applicable determination date described in paragraph (e) (1) or (2) of this section. Any asset treated as held by a partner or beneficiary by reason of this paragraph (h)(1) which is used or held for use in a trade or business by the partnership, trust, or estate shall be treated as so used or held for use by the partner or beneficiary. The proportionate ownership rule of this paragraph (h)(1) applies successively upward through a chain of ownership.

(2) *Examples.* The proportionate ownership rule of paragraph (h)(1) of this section is illustrated by the following examples. In each example fair market value is determined as of the applicable determination date under paragraph (e)(3)(i) of this section.

Example (1). Nonresident alien individual X holds all of the stock of domestic corporation K. K is a partner in foreign partnership L, and K's percentage ownership interest in L is 50 percent. K's other assets are a parcel of country F real estate with a fair market value of $500,000 and other assets which it uses in its business with a fair market value of $100,000. L's assets are a parcel of country Z real estate with a fair market value of $300,000 and a parcel of U.S. real estate with a fair market value of $2,000,000. For purposes of determining whether K is a U.S. real property holding corporation, K is treated as holding its pro rata share of the assets held by L. K's pro rata share of the U.S. real estate held by L is $1,000,000, determined by multiplying the fair market value ($2,000,000) of the U.S. real property interests held by L by K's percentage ownership interest in L (50 percent). K's pro rata share of the country Z real estate held by L is $150,000, determined in the same manner. K is a U.S. real property holding corporation because the fair market value ($1,000,000) of its U.S. real property interests (the U.S. real estate it is treated as holding proportionately) exceeds 50 percent ($875,000) of the sum ($1,750,000) of the fair market values of its U.S. real property interests ($1,000,000), its interests in real property located outside the United States ($650,000) (its country F real estate and is pro rata share of the country Z real estate), plus its other assets which are used or held for use in a trade or business ($100,000). Because K is a U.S. real property holding corporation, the stock of K is a U.S. real property interest and X's gain or loss on the disposition of its K stock will be treated as effectively connected with a U.S. trade or business under section 897(a).

Example (2) Nonresident alien individual X holds all of the stock of domestic corporation K. K is a beneficiary of foreign trust L. K's percentage ownership interest in L is 90 percent. K has no other assets. L is a partner in domestic partnership M. L's percentage ownership interest in M is 30 percent. L has no other assets. M's only asset is a parcel of U.S. real estate with a fair market value of $1,000,000. L is treated as holding U.S. real estate with a fair market value of $300,000 (30 percent of the U.S. real estate held by M with a fair market value of $1,000,000). For purposes of determining whether K is a U.S. real property holding corporation, the proportionate ownership rule is applied successively upward through the chain of ownership. Thus, K is treated as holding 90 percent of L's $300,000 pro rata share of the U.S. real estate held by M. K is a U.S. real property holding corporation because the fair market value ($270,000) of its U.S. real property interests (its pro rata share of the U.S. real estate held by M) exceeds 50 percent ($135,000) of the sum of the fair market values of its U.S. real property interests ($270,000), its interests in real property located outside the United States (zero), plus its other assets used or held for use in a trade or business (zero). Because K is a U.S. real property holding corporation, the stock of K is a U.S. real property interest, and X's gain or loss from the disposition of K stock will be treated as effectively connected with a U.S. trade or business under section 897(a).

(i) *Controlling interests in corporations*—(1) *Rules.* For purposes only of determining whether a corporation is a U.S. real property holding corporation, if the corporation (the "first corporation") holds a controlling interest in a second corporation—

(i) Stock which the first corporation holds in the second corporation is not taken into account.

(ii) The first corporation is treated as holding a portion of each asset (i.e. U.S. real property interests, foreign real property, and assets used or held for use in a trade or business) held by the second corporation equal to the percentage of the fair market value of all classes of stock of the second corporation represented by the stock held by the first corporation, and

(iii) Any asset so treated as held proportionately by the first corporation which is used or held for use by the second corporation in a trade or business shall be treated as used or held for use in a trade or business by the first corporation.

A determination of what portion of the assets of the second corporation are considered to be held by the first corporation shall be made as of the applicable determination dates for determining whether the first corporation is a U.S. real property holding corporation. A determination of the first corporation's percentage of the fair market value of all classes of stock of the second corporation shall also be made on such dates. A "controlling interest" means 50 percent or more of the fair market value of all classes of stock of a corporation. In determining whether a corporation holds a controlling interest in another corporation, section 318 (a) shall apply (except that sections 318(a)(2)(C) and (3)(C) are applied by substituting the phrase "5 percent" for "50 percent"). The controlling interest rules of this paragraph (i)(1) apply regardless of whether a corporation is domestic or

foreign. The rules apply successively upward through a chain of ownership. For example, if the second corporation owns a controlling interest in a third corporation, the rules of this paragraph shall be applied first to determine the portion of the assets of the third corporation that is considered to be held by the second corporation and then to determine the portion of the assets held and considered to be held by the second corporation that is considered to be held by the first corporation.

(2) *Examples.* The rules of paragraph (i)(1) of this section are illustrated by the following examples. In each example fair market value is determined as of the applicable determination date under paragraph (e)(3) of this section.

Example (1). Nonresident alien individual X owns all of the stock of domestic corporation J. J's only assets are 60 percent of the stock of foreign corporation K and 60 percent of the stock of domestic corporation L. The stock held by J in K and L represents 60 percent of the fair market value of all classes of stock of each corporation. The balance of the stock in K and L is held by nonresident alien individual Y, who is unrelated to X. K's only asset is a parcel of country F real estate with a fair market value of $1,000,000. L's only asset if a parcel of U.S. real estate with a fair market value of $2,000,000. The value of J's stock in K and L is not taken into account for purposes of determining whether J is a U.S. real property holding corporation. Rather, because J holds a controlling interest (60 percent) in each of K and L, J is treated as holding a portion of each asset held by K and L. J's portion of the country F real estate held by K is $600,000, determined by multiplying the fair market value (1,000,000) of the country F real estate by the percentage of the fair market value of K stock held by J (60 percent). Similarly, J's portion of the U.S. real estate held by L is $1,200,000 (60 percent of $2,000,000). J is a U.S. real property holding corporation, because the fair market value ($1,200,000) of its U.S. real property in interests (its portion of the U.S. real estate) exceeds 50 percent ($900,000) of the sum ($1,800,000) of the fair market values of its U.S. real property interests ($1,200,000), its interests in real property located outside the United States (the $600,000 portion of country F real estate), plus its other assets used or held for use in a trade or business (zero). If K or L has other assets used or held for use in a trade or business, J would be treated as holding a similar portion of such assets for use in its trade or business.

Because J is a U.S. real property holding corporation, the stock of J is a U.S. real property interest, and X's gain or loss on the disposition of J stock would be treated as effectively connected with a U.S. trade or business under section 897(a).

Example (2). Nonresident alien individual X owns all of the stock of domestic corporation J. J's only asset is 75 percent of the stock of domestic corporation K. The stock of K held by J represents 75 percent of the fair market value of all classes of stock of K. K's only assets are 60 percent of the stock of domestic corporation L with a fair market value of $600,000 and a parcel of country D real estate with a fair market value of $800,000. The stock of L held by K represents 60 percent of the fair market value of all classes of stock of L. L's only asset is a parcel of U.S. real of estate with a fair market value of $2,000,000, but subject to a liability of $1,000,000. K holds a controlling interest in L (60 percent). Consequently, the value of K's stock in L is not taken into account in determining whether K is a U.S. real property holding corporation. Instead K is treated as holding a portion of the U.S. real estate held by L. K's portion of the U.S. real estate is $1,200,000, determined by multiplying K's percentage of the fair market value of L stock (60 percent) by the fair market value ($2,000,000) of the U.S. real estate. The liabilities to which the real estate is subject are not taken into account. J holds a controlling interest in K (75 percent). By reapplying the rules of paragraph (i)(1) of this section successively upward through the chain or ownership, J's stock in K is not taken into account, and J is treated as holding a portion of the country D real estate held by K and the U.S. real estate which K is treated as holding proportionately. J's portion of the country D real estate is $600,000, determined by multiplying J's percentage of the fair market value of K stock (75 percent) by the fair market value ($800,000) of the country D real estate. J's portion of the U.S. real estate which K is treated as owning is $900,000, determined by multiplying J's percentage of the fair market value of K stock (75 percent) by the fair market value ($1,200,000) of K's portion of U.S. real estate held by L. J is a U.S. real estate holding corporation, because the fair market value ($900,000) of its U.S. real property interests (its portion of K's portion of U.S. real estate) is more than 50 percent ($750,000) of the sum ($1,500,000) of fair market values of its U.S. real property interests ($900,000), its interests in real property located outside the United States ($600,000), plus its other assets used or held for use in a trade or business (zero). Because J is a U.S. real property holding corporation and is a domestic corporation, the stock of J is a U.S. real property interest, and X's gain or loss on the disposition of J stock will be treated as effectively connected with a U.S. trade or business under section 897(a).

Example (3). Nonresident alien individual X holds all of the stock of domestic corporation D. D's only assets are 40 percent of the stock of foreign corporation E and a parcel of country R real estate with a fair market value of $100,000. D does not constructively hold any other stock of E. The stock of E held by D represents 40 percent of the fair market value of all classes of stock of E. E's only asset is one parcel of U.S. real estate with a fair market value of $1,000,000, but subject to a liability of $500,000. The fair market value of the E stock held by D is $200,000. E is a U.S. real property holding corporation. Since D does not hold a controlling interest in E, the controlling interest rules of paragraph (i)(1) of this section do not apply to treat D as holding a portion of the U.S. real estate held by E. However, because E is a U.S. real property holding corporation, the stock of E is a U.S. real property interest for purposes of determining whether D is a U.S. real property holding corporation. D is a U.S. real property holding corporation because the fair market value ($200,000) of its U.S. real property interests (the stock of E) exceeds 50 percent ($150,000) of the sum ($300,000) of the fair market values of its U.S. real property interests ($200,000), its interests in real property located outside the United States ($100,000), plus its other assets used or held for use in a trade or business (zero). Because D is a U.S. real property holding corporation and is a domestic corporation, its stock is a U.S. real property interest, and X's gain or loss on the disposition of D stock would be subject to the provisions of section 897(a).

(j) *Co-application of rules of paragraphs (g), (h), and (i).* The rules of paragraphs (g), (h), and (i) of this section apply in conjunction with one another for purposes of determining whether a corporation is a U.S. real property holding corporation. The rule of this paragraph (j) is illustrated by the following example. In the example fair market value is determined as of the applicable determination dates in accordance with paragraph (e)(3)(i) of this section.

Example. Nonresident alien individual X holds 100 percent of the stock of domestic corporation I. I's only asset is 10 percent of the stock of foreign corporation J. J's only asset is 100 percent of the stock of foreign corporation K. K's only asset is a 50 percent interest in domestic partnership L. K's percentage ownership interest in L is 50 percent. L's only asset is a parcel of U.S. real estate with a fair market value of $10,000,000. In determining whether I is a U.S. real property holding corporation, the rules of paragraphs (g), (h), and (i) of this section apply in conjunction with one another. Consequently, under paragraph (h) of this section, K is treated as holding U.S. real estate with a fair market value of $5,000,000 (50 percent of the $10,000,000, its pro rata share of real estate held by L). Under paragraph (i) of this section, J is treated as holding 100 percent of the assets of K (U.S. real estate with a fair market value of $5,000,000). J, therefore, is a U.S. real property holding corporation. Under paragraph (g) of this section, the stock of J is treated as a U.S. real property interest. I is a U.S. real property holding corporation because 100 percent of its assets (the stock of J) are U.S. real property interests. As I is a U.S. real property holding corporation and is a domestic corporation, the stock of I is a U.S. real property interest, and X's gain or loss from the disposition of the stock of I will be subject to the provisions of section 897(a).

(k) *Statements that section 897(c)(1)(B) applies.* To establish that an interest in a domestic corporation is not a U.S. real property interest under section 897(c)(1)(B), the person disposing of the interest must attach a written statement to its income tax return for the year (even if the person has no

income to report for the year). The statement must state that the corporation meets the requirements of section 897(c)(1)(B) on the date of disposition of such interest. Such statement must contain the name, address, and identifying number of the domestic corporation in which the interest is held, a description of the U.S. real property interests held by such corporation during the base period, the dates of acquisition and disposition of such interests by the corporation, the corporation's basis in each of the U.S. real property interests, the fair market value of such interests on the dates of disposition, and the amount of gain, if any, recognized by the corporation on each disposition. To establish that an interest has ceased to be a U.S. real property interest under section 897(c)(1)(B)(ii)(II), the statement must contain the foregoing information with respect to each one or more other corporations within the meaning of section 897(c)(1)(B)(ii)(II). The statement must be verified as true and signed under penalty of perjury by the person disposing of the interest or if the corporation prepares the statement, by the responsible officer of the corporation.

§ 6a.897-3 Election by foreign corporation to be treated as domestic corporation under section 897(i).

(a) *Election to be treated as a domestic corporation.* This section provides rules pursuant to which a foreign corporation may elect under section 897(i) to be treated as a domestic corporation for purposes of sections 897 and 6039C and the regulations thereunder. The election may be made if—

(1) The foreign corporation holds a U.S. real property interest;

(2) Under any treaty to which the United States is a party, the foreign corporation is entitled to nondiscriminatory treatment with respect to its U.S. real property interest; and

(3) The conditions of paragraph (b) of this section are met.

A foreign corporation that makes an election under section 897(i) shall not be treated as a domestic corporation for purposes of any other provision of the Code or regulations. A foreign corporation with respect to which an election under section 897(i) is in effect is subject to all rules under section 897 and 6039C that apply to domestic corporations. Thus, for example, if a foreign corporation makes an election under section 897(i) and if the corporation is a U.S. real property holding corporation, its stock is a U.S. real property interest, and gain or loss, if any, from the disposition of such stock by a foreign person will be treated as effectively connected with a U.S. trade or business under section 897(a) (unless the stock is described in section 897(c)(1)(B), 897(c)(3), or 897(h)(2) or unless under section 897(e) and the regulations thereunder the disposition qualifies as a nonrecognition transaction). In addition, section 897(d) will not apply to any distribution of a U.S. real property interest by such corporation. An election under section 897(i) is the exclusive remedy of any foreign corporation claiming discriminatory treatment under any treaty with respect to sections 897 and 6039C.

(b) *Conditions.* An election under section 897(i) is subject to the following conditions:

(1) Except as provided in paragraph (b)(2), an election may not be made if any interest in the foreign corporation was disposed of at any time after the later of June 19, 1980, or the date on which the corporation first holds a U.S. real property interest;

(2) Notwithstanding the rule of paragraph (b)(1) of this section, if a disposition described in such paragraph occurs before March 21, 1983 an election may be made under paragraph (f)(1) of this section, provided that there has been a payment of any tax which would have been owed under chapter 1 of the Code by the person disposing of the interest in the corporation had the corporation made the election prior to the disposition, notwithstanding the provision of any income tax treaty to the contrary;

(3) The rules of paragraph (e) of this section are complied with;

(4) The corporation agrees to be bound by paragraph (d) of this section; and

(5) Any other condition which the Commissioner may by form prescribe.

If the conditions of paragraphs (b) (1), (2), (3), and (4) (and any condition which may be imposed under paragraph (b)(5) of this paragraph) are not met, the election cannot be made. If an election cannot be made, the nondiscrimination article of a treaty is not otherwise applicable with respect to sections 897 and 6039C.

(c) *Tax paid on prior disposition.* Paragraph (b)(2) of this section provides that, as a condition to making an election under section 897(i), there must have been a payment, no later than the date the election is to be made, of any tax which would have been owed under chapter 1 of the Code by the person disposing of an interest in such foreign corporation had the corporation made the election prior to the disposition, notwithstanding the provision of any income tax treaty to the contrary. For this purpose, it is not necessary that the tax payment be made by the person who would have owed the tax if the election under this section had been made prior to the disposition; moreover, that person is under no obligation to supply any information to the present holders of interests in the electing corporation. The corporation or any other person may make the tax payment to the District Director, Foreign Operations District. This paragraph (c) provides procedural rules only and does not affect any substantive income tax consequences which may arise as a result of the tax payment.

(d) *Subsequent effect of election.* While the election is in effect, neither a foreign person disposing of an interest in the election corporation, nor the electing corporation disposing of a U.S. real property interest, may avail itself of the benefits of any U.S. tax treaty with respect to gain or loss, if any, on the disposition which is taken into account under section 897(a) as effectively connected with a U.S. trade or business.

(e) *Manner and form of election.* An election under section 897(i) is made by filing a statement, and the required attachments, with the Commissioner. The statement and the attachments must be forwarded to the District Director, Foreign Operations District, 1325 K St. N.W., Washington, D.C. 20225. No particular form is required for the statement. The statement must include the name, address, identifying number, and place and date of incorporation of the foreign corporation. The statement must also indicate the treaty and article under which the foreign corporation is seeking nondiscriminatory treatment and must describe the U.S. real property interests held by the corporation, including the dates such interests were acquired, the corporation's adjusted bases in such interests and their fair market values. The statement must provide that an election under section 897(i) is being made and must state that there have been no prior dispositions of an interest in the corporation in accordance with paragraph (b)(1) of this section. If paragraph (b)(2) of this section is applicable, the corporation must describe any dispositions and show that the condition of such paragraph has been met. The statement must also provide that the corporation agrees to be bound by paragraph (d) of this section. In addition the statement must indicate that paragraph (g) of this section is not applicable. The statement and the attachments must be verified as

true and signed by the responsible officer of the foreign corporation under penalty of perjury. The following attachments are required to accompany the statement:

(1) A list of names, addresses, and indentifying numbers (if any) of all owners of interests in the foreign corporation on or between the first date to which the election applies and the date the election is made;

(2) A description of the interest in the foreign corporation held by each person listed in paragraph (e)(1) of this section, including the type and amount of such interest and its fair market value;

(3) A signed consent to the election, and an agreement to be bound by paragraph (d) of this section, from all the owners of interests listed in paragraph (e)(1) of this section who own an interest in the corporation on the date the election is made, except that in the case of an interest which is regularly traded on an established securities market on the day the election is made, the signed consent and agreement need only be provided by a person who holds or has held more than 5 percent (determined after application of the constructive ownership rules of section 897(c)(6)(C)) of a class of interests at some time during the shorter of the periods described in section 897(c)(1)(A)(ii); and

(4) A list of all dispositions of any interests in the foreign corporation after December 31,1979, and before June 19, 1980, between related persons (as defined in section 453(f) (1)), giving the type and the amount of any interest transferred, the name and address of the related person to whom the interest was transferred, and the transferor's basis in the interest transferred.

(f) *Time and duration of election* —(1) *Election for corporations in existence on or between June 19, 1980, and March 23, 1983.* A foreign corporation in existence on or between June 19, 1980, and March 21, 1983, may make an election under section 897(i) only if the election is made by the later of March 21, 1983 or 90 days after the date the corporation first holds (i.e. holds or is treated as holding for federal income tax purposes) a U.S. real property interest. The period to which the election applies begins on the later of June 19, 1980, or the first day on which the foreign corporation holds a U.S. real property interest and, unless revoked, applies for the duration of the time for which the corporation remains in existence.

(2) *Election for corporations created after March 21, 1983.* A foreign corporation which is created after March 21, 1983 may make an election under section 897(i) only if the election is made no later than 90 days after the date the corporation first holds a U.S. real property interest. The period to which the election applies begins on the date the corporation first holds the U.S. real property interest and, unless revoked, applies for the duration of the time for which the corporation is in existence.

(3) *Date of election.* An election is made on the earlier of the date that the statement (and accompanying attachments) is delivered to the District Director, Foreign Operations District, or on the date that is postmarked for delivery to the District Director in accordance with section 7502 of the Code and the regulations thereunder.

(g) *Anti-abuse rule* —(1) *In general* Notwithstanding a corporation's eligibility to make an election under paragraph (b) of this section, an election cannot be made if:

(i) Prior to receipt of a U.S. real property interest by the corporation seeking to make the election, stock in such corporation (or in any corporation above or below such corporation in the same chain of ownership) was acquired in a transaction in which the person acquiring such stock obtained an increase in basis in the stock over the adjusted basis of the stock in the hands of the person from whom it was acquired;

(ii) The full amount of gain realized by the person from whom the stock was acquired was not subject to U.S. tax; and

(iii) The corporation seeking to make the election received the U.S. real property interest in a transaction or series of transactions to which section 897(d)(1)(B) applies to allow for nonrecognition of gain.

(2) *Examples.* The rule of paragraph (g)(1) of this section is illustrated by the following examples.

Example 1. Nonresident alien individual X owns 100 percent of the stock of foreign corporation L which was organized in 1981. L's only asset is a parcel of U.S. real property which it has held since 1981. The fair market value of the U.S. real property held by L on January 1, 1984, is $1,000,000. L's basis in the property is $200,000. X's basis in the L stock is $500,000. On June 1, 1984, M corporation, a foreign corporation owned by foreign persons who are unrelated to X, purchases the stock of L from X for $1,000,000 with title passing outside of the United States. Since the stock of L is not a U.S. real property interest, X's gain from the disposition of the L stock ($500,000) is not treated as effectively connected with a U.S. trade or business under section 897(a). In addition, since X was neither engaged in a U.S. trade or business nor present in the U.S. at any time during 1984, such gain is not subject to U.S. tax under section 871. On January 1, 1987, M liquidates L under a plan of liquidation adopted on that same date. Under section 332 of the Code M recognizes no gain on receipt of the parcel of U.S. real property distributed by L in liquidation. Under section 334 (b)(1) M takes $200,000 as its basis in the U.S. real property received from L. Under section 897(d)(1)(B) no gain would be recognized to L under section 897(d)(1)(A) on the liquidating distribution. As a consequence, no gain is recognized to L under section 336 of the Code. Within 90 days of receipt of the U.S. real property from L, M seeks to make an election to be treated as a domestic corporation. M cannot make the election since M acquired the L stock in a transaction in which it obtained a basis in such stock in excess of the adjusted basis of X in the stock. U.S. tax was not paid on the full amount of the gain realized by X and M has received the property in a distribution to which section 897(d)(1)(B) applied to provide for nonrecognition of gain to L.

Example 2. Nonresident alien individual X owns 100 percent of the stock of foreign corporation A which owns 100 percent of the stock of foreign corporation B. X's basis in the A stock is $500,000. A's basis in B stock is $500,000. B owns U.S. real property with a fair market value of $1,000,000. B's basis in the U.S. real property is $500,000. On January 1, 1985, X sells the stock of A to Y, an unrelated individual, for $1,000,000 with title passing outside of the United States. In addition, X was neither engaged in a U.S. trade or business nor present in the U.S. at any time during 1985. Since the A stock is not a U.S. real property interest, X's gain on such disposition is not treated as effectively connected with a U.S. trade or business under section 897(a) and is therefore not subject to U.S. tax under section 871. On July 1, 1987, a plan of liquidation is adopted, and B is liquidated into A. Under sections 332, 334(b)(1), 336, and 897(d)(1)(B), there is no tax to A on receipt of U.S. real property from B and no tax to B on the distribution of the U.S. real property interest to A. Within the 90 day period after receipt of the property A seeks to make an election under section 897(i). Under the rule of paragraph (g)(1) of this section A cannot make the election.

(h) *Revocation of election*—(1) *In general.* An election under section 897(i) may be revoked only with the consent of the Commissioner. Application for revocation shall be in writing and shall be addressed to the Commissioner of Internal Revenue, Attention: CC:C:R, Washington, D.C. 20224. The request shall include the name, address, and identifying number of the corporation seeking to revoke the election, a description of all U.S. real property interests held by the corporation on the date of the request for revocation and any other information the Commissioner may prescribe. The request shall be signed by the responsible officer of the corporation under penalty of perjury, and shall contain a statement that there have been no distributions of U.S. real property interests by the corporation as

provided in paragraph (h)(2) of this section. The revocation is effective as of the date provided by the Commissioner in the consent to the revocation.

(2) *Condition.* The Commissioner shall not consent to a revocation of an election made under section 897(i) if there have been any distributions of U.S. real property interests by the corporation during the period to which the election applies in which the full amount of gain realized by the corporation, if any, was not subject to U.S. tax.

§ 6a.897–4 Special election under section 897(k) for certain foreign corporations acquired before November 26, 1980.

(a) *In general.* This section provides special rules under which certain foreign corporations may make the election under section 897(k) to be treated as domestic corporations for purposes of sections 897 and 6039C. The election may be made if—

(1) A foreign corporation holds a U.S. real property interest;

(2) The foreign corporation adopts, or has adopted, a plan of liquidation described in section 334(b)(2)(A); and

(3) The 12 month period described in section 334(b)(2)(B) for the acquisition by purchase of the stock of the foreign corporation began after December 31, 1979, and before November 26, 1980.

A foreign corporation with respect to which an election under this paragraph (a) is in effect is subject to all rules under sections 897 and 6039C that apply to domestic corporations, except that in any acquisition described in section 334(b)(2), the selling shareholder shall be considered to have disposed of an interest in a foreign corporation, and any gain or loss from the disposition shall not be taken into account by such shareholder for purposes of section 897(a). If an interest in a corporation that has made an election under this paragraph (a) is a U.S. real property interest, a foreign person exchanging the interest for a liquidating distribution from the corporation shall be subject to the provisions of section 897(a) with respect to any gain or loss on such exchange.

(b) *No conditions to election.* An election under paragraph (a) of this section is not subject to the conditions described in § 6a.897–3.

(c) *Election procedures.* An election under paragraph (a) of this section is made by filing a statement with the commissioner. No particular form is required for the statement. The statement must provide that an election under section 897(k) is being made. The statement must include the name, address, identifying number, and place and date of incorporation of the foreign corporation. The statement must describe the U.S. real property interests held by the corporation, including their dates of acquisition and disposition, adjusted bases and fair market values. The statement must also establish that the requirements of paragraph (a) of this section have been met. The statement must be verified as true and signed by the responsible officer of the foreign corporation under penalty of perjury. The statement shall be forwarded to the District Director, Foreign Operations District, 1325 K Street N.W., Washington, D.C. 20225. The rules of § 6a.897–3(f) concerning the time and duration of the election, and of § 6a.897–3(h), concerning revocation of this section, apply to elections made under this section.

§ 6a.6039C–1 Returns with respect to United States real property interests.

(a) *In general.* Section 6039C requires certain persons who own United States real property interests to file annual information returns concerning the ownership of U.S. real property interests by foreign persons. Section 6a.6039C–2 sets forth rules concerning the information returns required by section 6039C(a) to be filed by certain domestic corporations and direct or indirect nominees of owners of interests in such corporations. Section 6a.6039C–3 sets forth rules concerning the information returns (and statements) required by section 6039C(b) to be filed by certain foreign corporations and certain partnerships, trusts, and estates (whether domestic or foreign). Section 6a.6039C–4 sets forth rules concerning the information returns required by section 6039C(c) to be filed by certain foreign persons, or their nominees, holding direct investments in U.S. real property.

(b) *Period covered by returns.* The information returns required by section 6039C must be filed with respect to each calendar year, beginning with 1980. Except with respect to the information required by §§ 6a.6039C–2(b)(6) and 6a.6039C–4(d)(5), calendar year 1980 shall include only the period from June 19, 1980, to December 31, 1980.

(c) *Time and place for filing returns.* The information returns required by section 6039C must be filed no later than May 15 of the calendar year following the calendar year covered by the return, except that information returns for calendar years 1980 and 1981 must be filed no later than June 21, 1983. The returns must be filed with the Internal Revenue Service Center, 11601 Roosevelt Boulevard, Philadelphia, Pennsylvania 19155. Information returns concerning Virgin Islands real property interests under section 6039C(f)(2) shall be filed with the Bureau of Internal Revenue, Tax Division, Charlotte Amalie, St. Thomas, V.I. 00801. For rules on extensions of time for filing, see section 6081 and the regulations thereunder. For rules on the forwarding of notices concerning foreign ownership of domestic corporations, see §§ 6a.6039C–2 (d) and (e). For rules concerning the forwarding of statement to substantial investors in foreign corporations and in domestic or foreign partnerships, trusts, and estates, see § 6a.6039C–3(h).

(d) *Definitions of terms.* Section 6a.897–1 provides definitions of terms used in this section and §§ 6a.6039C–2 through 6a.6039C–5.

§ 6a.6039C–2 Returns of certain domestic corporations with foreign shareholders.

(a) *Requirement of return.* Any domestic corporation that was a U.S. real property holding corporation as defined in § 6a.897–2(c) at any time during the calendar year or the four preceding calendar years must file an information return under section 6039C(a) on Form 6659 if during the calendar year one or more owners of an interest in the corporation are foreign persons. In addition, any person who holds an interest in a domestic corporation which was a U.S. real property holding corporation at any time during the calendar year or during any of the four preceding calendar years must file Form 6659 for the calendar year if such person holds the interest as a nominee, either directly or indirectly through one or more other nominees, for a beneficial owner of the interest who is a foreign person. For purposes of this section, calendar year prior to 1980 are not to be taken into account. Domestic corporations which are not U.S. real property holding corporations for the period described in this paragraph (a) are not required to file Form 6659 or any other document to establish their status. However, a domestic corporation may upon request by the Service be required to show that it was not required to report under this section because it was not a U.S. real property holding corporation during the above mentioned period. See § 6a.897–2 for rules regarding how to establish that a corporation is not a U.S. real property holding corporation. Form 6659 must be filed at the time and place set forth in § 6a.6039C–1(c). Form 6659 is not required to be filed for the calendar year—

(1) If all classes of stock in the corporation which were held by foreign

persons during the calendar year were regularly traded on an established securities market during the entire time held by the foreign persons;

(2) If the domestic corporation has provided security and has in effect for the calendar year a security agreement with the District Director, Foreign Operations District, under § 6a.6039C–5(a); or

(3) If with respect to all U.S. real property interests held by the domestic corporation, such corporation would be exempt from filing a return under § 6a.6039C–5(f).

(b) *Information required.* The corporation shall provide the following information on the Form 6659 which is required to be filed by section 6039C(a), if such information is known (as defined in paragraph (f) of this section) to the corporation:

(1) The name, address, and identifying number of the person filing the return;

(2) The name, address, and identifying number of any foreign person who held an interest in the corporation on the last day of the calendar year;

(3) The name, address and identifying number, if any, of nominees who held interests in the corporation, either directly or indirectly through one or more other nominees, for a foreign beneficial owner on the last day of the calendar year;

(4) A description of the capitalization of the corporation, including a description of the amount of and the class or type of interests held by each foreign person described in paragraph (b) (2) or (3) of this section;

(5) Information concerning all dispositions during the year of interests in the corporation by foreign persons or their direct or indirect nominees (including dispositions in redemption or complete or partial liquidation of the corporation and exchanges pursuant to corporate reorganizations), including the names, addresses, and identifying numbers of all such foreign persons and nominees, the dates of such dispositions, the amount of and a description of the class or type of interests in the corporation disposed of, the date the interests were acquired, the sales prices (if any) for the interests, the adjusted bases in the interests, the fair market values of the interests (in the case of dispositions other than sales), and the amount of gain or loss to the foreign persons upon disposition of their interests in the corporation;

(6) The same information required by paragraph (b)(5) of this section, but concerning all dispositions after December 31, 1979, and before June 19, 1980, of interests in the corporation by foreign persons, if the dispositions were to related persons (as defined in section 453(f)(1) of the Code);

(7) Information concerning all distributions during the year to which section 301 applies of U.S. real property interests to foreign persons, including the names, addresses, and identifying numbers of distributees, a description of the U.S. real property interests distributed, the adjusted bases and fair market values of the U.S. real property interests at the time of the distributions, and the amount of gain recognized, if any, by the corporation on the distributions;

(8) A description (including the location) of all U.S. real property interests held directly and indirectly under §§ 6a.897–2 (f) through (j) by the corporation at the end of the year;

(9) The name, address, and identifying number of any corporation in which the reporting corporation held an interest at any time during the year, if the interest is a U.S. real property interest (including an interest in a foreign corporation as provided in § 6a.897–2(g)); and

(10) Such other information as the Commissioner may by form prescribe.

(c) *Special rules for REITs*—(1) *Domestically-controlled REITs.* A real estate investment trust ("REIT") which is a "domestically-controlled REIT" (as defined in section 897(h)(4)(B)) shall set forth on Form 6659 only the following information:

(i) The information required by paragraph (b)(1) of this section, and

(ii) The "foreign ownership percentage" (as defined in section 897(h)(4)(C)) or the REIT during the calendar year.

(2) *Foreign-controlled REITs.* A REIT which is not a domestically-controlled REIT, in addition to the information required by paragraph (b) of this section, shall set forth on Form 6659 that portion of any gain received from the disposition during the calendar year of a U.S. real property interest which is not treated as a "capital gain dividend" (as defined in section 857(b)(3)(C)) when distributed to shareholders.

(d) *Corporate notification obligations with respect to interests held by nominees.* A corporation which is or has been a U.S. real property holding corporation at any time during the period prescribed in section 6039C(a)(1)(B)(ii) must so notify an owner of record who holds an interest in the corporation at any time during the calendar year if the corporation does not know whether such owner of record is a foreign person or is a nominee for a foreign person. The notice must inform the owner of record that the notice requirements of paragraph (e) of this section must be complied with if the owner of record is a nominee. The notification by the corporation required by this paragraph (d) must be made by January 31 of the year following the year for which the return must be filed, except that the notification must be made by February 21, 1983 for calendar years 1980 and 1981. If the corporation itself knows all information required to be supplied by paragraph (b) of this section with respect to an interest held by a nominee, the corporation must file Form 6659 with respect to such interest. In such case, the corporation must notify the nominee (including each nominee which has been identified in a notice to the corporation from a nominee below it in a chain within the consecutive 30 day period prescribed in paragraph (e)(1)(ii) of this section) by the above dates that the nominee is not required to file Form 6659 with respect to such interest. The corporation also must file Form 6659 setting forth information as to which it has partial knowledge even though a nominee must file Form 6659 with respect to an interest in the corporation under paragraph (e)(1) of this section. For example, the description of property held or distributed by the corporation which is required to be supplied by paragraphs (b) (7) and (8) of this section must be included on a Form 6659 filed by the corporation, even though a Form 6659 also is filed by a nominee. For persons required to give notice under this paragraph (d), notice is considered to be given on the date the notice is actually delivered to the nominee or, if mailed, on the date that such notice is postmarked for delivery to the nominee in accordance with section 7502 of the Code. For persons receiving notice under this paragraph (d) who may be required to give additional notification within a specified time period, notice is considered to be received on the date it is actually delivered.

(e) *Nominee filing*—(1) *Requirement to file*—(i) *In general.* Unless otherwise provided in paragraph (e)(2) of this section, a domestic or foreign person who at any time during the calendar year is a nominee, either directly or indirectly through one or more other nominees, for the beneficial owner of an interest in a domestic corporation which is described in section 6039C(a)(1)(B) must file Form 6659 with respect to such interest if the beneficial owner is a foreign person. The nominee must include on such form all information required to be provided by the corporation under paragraph (b) of this section. Unless it is excepted from filing Form 6659 by paragraph (e)(2) of this section, the nominee is required to obtain and supply any of the

information described in paragraph (b) which it does not otherwise have.

(ii) *Notice requirements.* Each nominee in a chain of nominees (for example, a chain comprised of nominee A who holds an interest in a domestic corporation for nominee B who holds the interest for foreign person X) must notify the nominee above it in the chain that such other nominee must file a Form 6659 if the other nominee holds an interest in a domestic corporation described in section 6039(C)(a)(1)(B), directly or indirectly through one or more other nominees, for a foreign beneficial owner. The notification must be made by both domestic and foreign nominees. The notice by a nominee to another nominee in the chain must be given within 20 consecutive days of its receipt of the notice from the corporation which is described in paragraph (d) of this section or its receipt of the notice from the nominee below it in the chain which is described in this paragraph (e)(1)(ii). Within 30 consecutive days of the receipt of a notice described in paragraph (d) or this paragraph (e)(1)(ii) of this section, a nominee must give notice to the corporation as to whether it is holding the interest in the corporation for a foreign beneficial owner or as to whether it has notified the nominee for whom it holds the interest of the requirement to file. The notice to the corporation that a nominee has delivered a notice to another nominee must include a copy of the notice to the other nominee, a statement of the name and address of the nominee to whom notice was given, and a statement of the name, address, and identifying number (if any) of the nominee giving notice to the corporation. For persons required to give notice under this paragraph (e)(1)(ii), notice is considered to be given on the date that notice is actually delivered to the corporation or to the nominee or, if mailed, on the date that such notice is postmarked for delivery in accordance with section 7502 of the Code. For persons receiving notice under this paragraph who may be required to give additional notification within a specified time period, notice is considered to be received on the date it is actually delivered. The 20 and 30 consecutive day periods described in this paragraph (e)(1)(ii) are to be counted from, and not including, the date of the receipt of a notice which triggers the beginning of such periods. In no event shall the notice requirements of this paragraph (e)(1)(ii) be utilized so as to relieve a corporation, or any nominee in a chain of nominees, from filing Form 6659 by the due date provided in § 6a.6039C–1(c). A corporation or nominee which knows of its obligation to file must do so even though the notification procedures of this paragraph (e)(1)(ii) have not been followed.

(2) *Exceptions to nominee reporting.* A nominee is not required to prepare and file a Form 6659 setting forth the information required by paragraph (b) of this section with respect to an interest that it holds for a foreign beneficial owner if:

(i) The corporation has notified the nominee under paragraph (d) of this section that the nominee is not required to file Form 6659 with respect to such beneficial owner;

(ii) The nominee, or another nonimee in a chain of nominees, has provided adequate security to and has in effect for the calendar year a security agreement with the District Director, Foreign Operations District, in accordance with § 6a.6039C–5;

(iii) With respect to the interest in the corporation held by the nominee, the corporation has provided security to, and has in effect for the calendar year a security agreement with, the District Director, Foreign Operations District, in accordance with § 6a.6039C–5;

(iv) The beneficial owner has provided to the nominee on Form 6659 all of the information required with respect to its interest in the corporation, the nominee is satisfied that the form is complete, and the nominee files the form with the Internal Revenue Service; or

(v) Any of the exceptions set forth in paragraph (a) of this section apply.

Notwithstanding the exceptions of paragraph (e)(2) (i) and (iv) of this section, a nominee must file Form 6659 upon written notification from the Internal Revenue Service that the return of the corporation or of the foreign beneficial owner is incomplete.

(f) *Definition of "known".* Information is "known" by a corporation if the information is included on the books and records of the corporation or its agent (including a transfer agent), is known by its directors or officers, or is known by other employees who in the course of their employment have reason to know such information.

(g) *Foreign addresses and bearer shares.* An owner of bearer shares or an owner of record of an interest in a corporation with an address outside the United States shall be treated as a foreign person, unless known to be otherwise by the corporation.

(h) *Publicly traded stocks.* Any information required by paragraph (b) of this section with respect to stock in a corporation need not be included on Form 6659 if the stock was of a class of stock that was regularly traded on an established securities market at all times during the calendar year. Notice under paragraphs (d) and (e) of this section is not required to be made with respect to such stock. If the stock was of a class of stock regularly traded on an established securities market for only part of a calendar year, information with respect to the stock must be included for the part of the year that it was not so traded.

§ 6a.6039C–3 Returns of foreign corporations, and partnerships, trusts, and estates.

(a) *Requirements of return.* An entity to which this section applies must file an annual return under section 6039C(b) on Form 6660. An entity to which this section applies is any foreign corporation and any partnership, trust, or estate (whether domestic or foreign) that has a substantial investor in United States real property on any of the applicable determination dates during the calendar year. Form 6660 must be filed at the time and place set forth in § 6a.6039C–1(c). This section does not apply if the entity has provided security to and has in effect for the calendar year a valid security agreement with the District Director, Foreign Operations District, under § 6a.6039C–5(a) or if with respect to all U.S. real property interests held by the entity, the entity would be exempt from filing under § 6a.6039C–5(f).

(b) *Substantial investors in United States real property*—(1) *In general.* A substantial investor in United States real property (hereinafter referred to as a "substantial investor") is—

(i) Any foreign person who holds an interest in a partnership, trust, or estate (whether domestic or foreign), or

(ii) Any person (whether domestic or foreign) who holds an interest in a foreign corporation, if, on any application determination date during the calendar year, the fair market value of the person's pro rata share (determined in accordance with § 6a.897–1(f)) of the U.S. real property interests held by the entity exceeds $50,000. For purposes of the preceding sentence, a person's percentage ownership interest (determined in accordance with § 6a.897–1(g)) in an entity must be determined as of each applicable determination date. In determining an individual's percentage ownership interest, interests in the entity which are held by a spouse or minor child (as defined in § 1.151–3(a)) of an individual are treated as held by the individual.

(2) *Example.* The rules of this paragraph (b) are illustrated by the following example:

Example. Domestic partnership K's only asset is a parcel of U.S. real estate with a fair market value of $101,000. The partnership has two partners, D (a U.S. citizen) and F (a nonresident alien individual). Each partner's percentage ownership interest in K is 50 percent. The fair market value of F's pro rata share of the U.S. real property interests held by K is $50,500 (50 percent of $101,000). As $50,500 exceeds $50,000, F is a substantial investor, and this section applies to K, unless a security agreement under §6a.6039C–5 is in effect for the calendar year between K and the District Director, Foreign Operations District.

(c) *United States real property interests held by entity*—(1) *Direct and indirect holding rules.* The U.S. real property interests held by any entity include those held directly and indirectly by the entity as provided in § 6a.897–1(e). The rules of § 6a.897–1(e) shall be applied to any corporation, partnership, trust, or estate, whether foreign or domestic, in which the entity holds an interest. However, the U.S. real property interests held by an entity do not include its pro rata share of the U.S. real property interests held by a corporation if such pro rata share does not exceed $50,000. If a pro rata share of a domestic corporation's U.S. real property interests are treated as held by an entity under this paragraph (c)(1) of this section, the entity's stock (or other interest) in the domestic corporation shall not also be treated as a U.S. real property interest held by the entity. The rules of this paragraph (c)(1) shall not be applied with respect to stock in a corporation if the stock both is of a class which is regularly traded on an established securities market and is held by an entity which at no time during the period described in section 897(c)(1)(A)(ii) held more than 5 percent of that class of stock. The indirect holding rules of this paragraph (c)(1) apply successively upward through a chain of ownership.

(2) *Indirect holding rules examples.* The indirect holding rules of paragraph (c)(1) of this section are illustrated by the following examples.

Example (1). Foreign corporation K's only asset is a parcel of U.S. real estate with a fair market value of $1,000,000. Foreign corporation L's only asset is all of the outstanding stock of K, and L's percentage ownership interest in K is 100 percent. Foreign corporation M's only asset is all of the outstanding stock of L, and M's percentage ownership interest in L is 100 percent. Nonresident alien individual X holds 40 percent of all the outstanding stock of M. X's percentage ownership interest in M is 40 percent. L is a substantial investor with respect to K because the fair market value ($1,000,000) of L's pro rata share of the U.S. real property interests held by K (100 percent of $1,000,000) exceeds $50,000. By virtue of the rules of paragraph (c)(1) of this section, L is treated as holding its pro rata share of the U.S. real property interests held by K (the real estate). Thus, L is treated as holding U.S. real property interests with a fair market value of $1,000,000 (100 percent of the fair market value of the parcel of U.S. real estate). M is a substantial investor with respect to L because the fair market value ($1,000,000) of M's pro rata share of the U.S. real property interests held by L (the U.S. real property interests L is treated as holding under the rules of paragraph (c)(1) of this section) exceeds $50,000 (100 percent of $1,000,000). The indirect holding rules of paragraph (c)(1) of this section are applied successively upward through the chain of ownership. Thus, M is treated as holding its pro rata share (100 percent) of the U.S. real property interests held by L (including the parcel of U.S. real estate with a fair market value of $1,000,000 which L is treated as holding). X is a substantial investor with respect to M because the fair market value ($400,000) of X's pro rata share (40 percent of $1,000,000) of the U.S. real property interests held by M (the U.S. real estate) exceeds $50,000. Consequently, K, L, and M must file the return required by this section because each has a substantial investor.

Example (2). The facts are the same as in *Example (1),* except that K also holds a parcel of real estate located in country Z with a fair market value of $2,000,000 and the parcel of U.S. real estate is subject to liabilities of $975,000. However, the result of *Example (1)* is not changed, as neither the ownership of an asset other than a U.S. real property interest nor the liabilities to which a U.S. real property interest is subject enter into the computations of this section.

Example (3). Domestic partnership K's only asset is a parcel of U.S. real estate with a fair market value of $1,000,000. Foreign trust L's only asset is a 50 percent interest as a partner in K, and its percentage ownership interest in K is 50 percent. Foreign estate M is the sole beneficiary of L. M's percentage ownership interest in L is 100 percent. Nonresident alien individual X is the sole beneficiary of M. X's percentage ownership interest in M is 100 percent. L is a substantial investor with respect to K, because the fair market value ($500,000) of L's pro rata share of the U.S. real property interests held by K (50 percent of $1,000,000) exceeds $50,000. Under the rules of paragraph (c)(1) of this section, L is treated as holding U.S. real property interests with a fair market value of $500,000, L's pro rata share (50 percent) of the U.S. real property interests (the parcel of U.S. real estate) owned by K. M is a substantial investor with respect to L because the fair market value ($500,000) of M's pro rata share of the U.S. real property interests held by L (the pro rata share of U.S. real estate L is treated as holding) is more than $50,000 (100 percent of $500,000). The indirect holding rules of paragraph (c)(1) of this section are applied successively upward through a chain of ownership. Thus, M is treated as holding U.S. real property interests with a fair market value of $500,000 (100 percent of $500,000). X is a substantial investor with respect to M because the fair market value ($500,000) of X's pro rata share of the U.S. real property interests held by M (the pro rata share of U.S. real estate it is treated as holding) is more than $50,000 (100 percent of $500,000). As a result, K, L, and M must each file the return required by this section, as each has a substantial investor.

Example (4). Nonresident alien individual X holds all of the outstanding stock of foreign corporation K. X's percentage ownership interest in K is 100 percent. K's only asset is an interest in domestic partnership L. K's percentage ownership interest in L is 50 percent. L's only asset is 50 percent of the outstanding stock of foreign corporation M. M's only asset is a 100 percent beneficial interest in foreign trust N. M's percentage ownership in N is 100 percent. N's only asset is a parcel of U.S. real estate with a fair market value of $2,000,000. The indirect holding rules of paragraph (c)(1) of this section apply in conjunction with one another such that K is treated as holding U.S. real property interests with a fair market value of $500,000 (50 percent of 50 percent of 100 percent of $2,000,000). X, K, L, and M are each substantial investors. K, L, M, and N each are required to file the return required by this section with respect to the person above them in the chain of ownership.

(d) *Applicable determination dates*—(1) *In general.* For purposes of determining whether an entity is an entity to which § 6a.6039C–3(a) applies and whether a person is a substantial investor under § 6a.6039C–3(b), the applicable determination dates are:

(i) December 31 of the calendar year;

(ii) If the entity disposes of a U.S. real property interest during the year, the date immediately preceding each disposition;

(iii) If the entity is treated as holding a pro rata share of U.S. real property interests held by another entity in accordance with paragraph (c) of this section and the other entity disposes of a U.S. real property interest, the date immediately preceding the disposition by the other entity; and

(iv) The date on which a person described in paragraph (b) of this section disposes of an interest in the entity during the year.

(2) *Valuation methods*—(i) *In general.* For purposes of determining a person's pro rata share of U.S. real property interests held by an entity or for purposes of determining a person's percentage ownership interest in the entity, the fair market value of the property held by the entity on the applicable determination date must be used.

(ii) *Alternative valuation method.* For purposes of paragraph (d)(2)(i) of this section, if the applicable determination date under paragraph (d)(1) of this

section is other than December 31 and if U.S. real property interests otherwise required to be valued as of such date are retained after such date, the entity may use the fair market value of the retained property as of the earlier of the date of its own disposition or December 31.

(iii) *Consistent methods.* The valuation method selected for the first determination date in the calendar year must be used for all subsequent determination dates during the year. In addition, the valuation date method selected must be used for all property with respect to which the determination is made. The use of one valuation method in one calendar year does not preclude the use of the other method for any other calendar year.

(e) *Information required.* The return required by section 6039C(b) on Form 6660 shall set forth the following information:

(1) The name, address, and identifying number of the person filing the return;

(2) The name, address, and identifying number of each substantial investor in the entity during the calendar year;

(3) The fair market value of each substantial investor's pro rata share of the U.S. real property interests held by the entity on the last day of the calendar year (or, in the case of a disposition of an interest in a foreign corporation by a substantial investor, on the date of disposition);

(4) The amount and a description of each class or type of interest in the entity (regardless of whether the interest at any time is of a class regularly traded on an established securities market) which is held by a substantial investor on the last day of the calendar year;

(5) A schedule of all U.S. real property interests held by the entity on the last day of the calendar year, including a description of each interest and its location, adjusted basis, and fair market value;

(6) In the case of a partnership, trust, or estate, the information required by paragraph (e)(5) of this section on the date of disposition of an interest in the entity by a substantial investor;

(7) In the case of a distribution of a U.S. real property interest by any entity to a foreign person (and by a foreign corporation to a domestic person) during the calendar year, the date of distribution, a description of the U.S. real property interest, its adjusted basis and fair market value, and the name, address, and identifying number of the distributee (regardless of whether the distributee is a substantial investor);

(8) A schedule of all dispositions of interests in a partnership, trust, or estate during the calendar year by a foreign person, including the name, address, and identifying number of the transferor (regardless of whether the transferor is a substantial investor), the date of the disposition, the amount and a description of the type of interest disposed of, the sales price (if any), the fair market value of the interest (in the case of a disposition other than a sale), and, in the case of a disposition by a substantial investor, the fair market value of the substantial investor's pro rata share of the U.S. real property interests held by the entity on the date of disposition;

(9) The name, address, and identifying number of any other entity with respect to which the partnership, trust, estate, or foreign corporation is a substantial investor;

(10) The name, address, and identifying number of any domestic corporation in which the entity holds an interest at any time during the year if the interest is a U.S. real property interest; and

(11) Such other information as the Commissioner may by form prescribe.

(f) *Foreign address, bearer shares and nominees.* For purposes of this section, an owner of bearer shares in an entity or an owner of record of an interest in an entity with an address in a foreign country will be treated as a foreign person unless known to be otherwise by the entity. In addition, interests in an entity held by a nominee will be treated as owned by a foreign person, unless known by the entity to be otherwise.

(g) *No Knowledge requirement.* If an entity does not have the information required by paragraph (e) of this section, the entity must obtain and supply the information. However, the entity is not required by paragraph (e) of this section if the entity has provided adequate security to, and has in effect for the calendar year a valid security agreement with the District Director, Foreign Operations District, under § 6a.6039C–5. The fact that stock of a foreign corporation or any other interest in any entity to which this section applies is in bearer form or is held by a nominee or that disclosure of ownership would contravene a secrecy law of any country does not constitute reasonable cause under section 6652(g) for failure to comply with the requirements of this section.

(h) *Statements to substantial investors.* Every entity to which this section applies must furnish a statement for each calendar year to all substantial investors, as required by section 6039C(b)(3). No particular form is required for the statement. The statement must be furnished no later than January 31 of the calendar year following the calendar year for which a statement is required, except that it must be furnished by February 21, 1983 for calendar years 1980 and 1981. A copy of each statement must be retained by the entity. The statement must include the information described in paragraph (e)(1) of this section and the information described in paragraph (e)(2), (3), (7), and (8) of this section which relates to the substantial investor to whom the statement is furnished. The statement also must inform the substantial investor that the information included on the statement is being supplied to the Internal Revenue Service. If the entity has provided adequate security to, and has in effect for the calendar year a valid security agreement with, the District Director, Foreign Operations District, under section 6a.6039C–5, the entity is not required to furnish the statement to substantial investors as otherwise required by this paragraph.

§ 6a.6039C–4 Returns of foreign persons holding United States real property interests.

(a) *Requirement of return.* Any foreign person who holds a U.S. real property interest (or any nominee who holds a U.S. real property interest for a foreign person) on any of the applicable determination dates during a calendar year must file an annual return under section 6039C(c) of Form 6661 if—

(1) Any U.S. real property interest held during the calendar year was not used by the foreign person in the conduct of a trade or business within the United States at any time during the calendar year;

(2) The fair market value of the U.S. real property interests described in paragraph (a)(1) of this section held on any of the applicable determination dates during the calendar year was at least $50,000;

(3) The person is not required to file a return under § 6a.6039C–3 for the calendar year with respect to the U.S. real property interests; and

(4) The person is not exempt from the requirements of this section, with respect to all U.S. real property interests held during the year, by the provisions of § 6a.6039C–5(a) or § 6a.6039C–5(f).

Form 6661 must be filed at the time and place set forth in § 6a.6039C–1(c). A foreign beneficiary of a trust or estate who is treated as owning a portion of the U.S. real property interests owned by the trust or estate will not have to report with respect to such interests if the actuarial value of no portion of the beneficiary's interests in the trust or estate is definitely ascertainable. Instead, the trustee or executor must file

a Form 6661 for each such beneficiary regardless of whether the trust or estate is required to file under section 6039C(b). A person who, with respect to gain or loss, if any, from the disposition of a U.S. real property interest, is treated as engaged in the conduct of a trade or business within the United States solely by reason of section 897(a)(1) shall not be treated as using the U.S. real property interest disposed of in the conduct of a trade or business within the United States for purposes of paragraph (1) of this section. Similarly, a person who is treated as having income effectively connected with the conduct of a trade or business within the United States under the net election provisions of section 871(d) or section 882(d), and a person who is treated similarly under any U.S. income tax treaty, shall not be treated as using the U.S. real property interests covered by those sections or by the treaty, as the case may be, in the conduct of a trade or business within the United States for purposes of paragraph (a)(1) of this section.

(b) *United States real property interests held.* For purposes of this section, the U.S. real property interests held by a foreign person (or a nominee of a foreign person) include those held directly and indirectly in accordance with § 6a.897–1(e), except that such person will not be treated as owning its pro rata share of the assets held by a corporation in which it holds an interest. A person's pro rata share of U.S. real property interests held by an entity (determined in accordance with § 6a.897–1(f)) and the person's percentage ownership interest in the entity (determined in accordance with § 6a.897–1(g)) shall be determined as of each applicable determination date. The U.S. real property interests held by a spouse or minor child (as defined in § 1.151–3(a)) of a non-resident alien individual are treated as held by the individual.

(c) *Applicable determination dates*—(1) *In general.* For purposes of determining whether a foreign person meets the requirements of paragraph (a)(2) of this section, the applicable determination dates are:

(i) December 31 of the calendar year;

(ii) If such person disposes of a U.S. real property interest or of an interest in any entity through which the person is treated as holding a pro rata share of U.S. real property interests, the date of each disposition; and

(iii) If an entity described in paragraph (c)(1)(ii) of this section disposes of a U.S. real property interest, the date immediately preceding such disposition.

(2) *Valuation methods*—(i) *In general.* For purposes of determining whether the fair market value of U.S. real property interests held by a person is equal to or in excess of $50,000, the fair market value of the property as of the applicable determination date must be used.

(ii) *Alternative valuation method.* For purposes of paragraph (c)(2)(i) of this section, if the applicable determination date under paragraph (c)(1) of this section is other than December 31 and if U.S. real property interests otherwise required to be valued as of such date are retained after such date, the entity may use the fair market value of the retained property as of the earlier of the date of its own disposition or December 31.

(iii) *Consistent methods.* The valuation method selected for the first determination date in the calendar year must be used for all other applicable determination dates during the calendar year. In addition, the valuation date method selected must be used for all property with respect to which the determination is made. The use of one valuation method in one calendar year does not preclude the use of the other valuation method for any other calendar year.

(d) *Information required.* The return required by this section shall set forth the following information:

(1) The name, address, and identifying number of the person filing the return (and the name, address and identifying number of the foreign person owning the beneficial interest in U.S. real property if a nominee is filing the return);

(2) A description of all U.S. real property interests held by or on behalf of the foreign person on the last day of the calendar year (other than those used in the conduct of a U.S. trade or business), including the location of and the date the interests were acquired, the name, address, and identifying number of any foreign person from whom the interests were acquired, and the fair market values of the interests;

(3) A schedule of all dispositions of U.S. real property interests held by or on behalf of the foreign person during the calendar year, including a description of the interests, their fair market values, the adjusted bases in the interests of the foreign person filing the return, and their locations (in the case of real or tangible (but not intangible) U.S. real property interests);

(4) In the case of a disposition of a U.S. real property interest to a foreign person, the transferee's name, address, and identifying number (if any), the date of disposition, the sales price (if any), the adjusted basis, and the fair market value (in the case of a disposition other than a sale) of the property;

(5) The same information required by paragraphs (d) (3) and (4) of this section, but with respect to all transfers after December 31, 1979, and before June 19, 1980, of U.S. real property interests to a foreign person, if the person to whom the interests are transferred is a related person (as defined in section 453(f)(1) of the Code); and

(6) Such other information as the Commissioner may by form prescribe.

§ 6a.6039C–5 Furnishing of security instead of filing information return.

(a) *Security option.* A person otherwise required to file a return or to furnish statements to substantial investors under §§ 6a.6039C–2 through 6a.6039C–4 for a calendar year is not required to file the return or furnish such statements if the person furnishes the District Director, Foreign Operations District (hereinafter referred to as "the Director"), with such security as the Director determines necessary to ensure that any tax that may be imposed by chapter 1 of the Code with respect to U.S. real property interests otherwise covered by the return will be paid. The Director will accept such security only pursuant to a binding security agreement with the person. The security must be sufficient to secure payment of chapter 1 taxes which may be imposed upon the person required to file the return or upon a foreign person who holds an interest in the person required to file the return with respect to U.S. real property interests held directly and indirectly by such person in accordance with §§ 6a.6039C–2 through 6a.6039C–4. The security shall secure only chapter 1 taxes which would be attributable to the excess of the fair market value of the U.S. real property interests which would otherwise be required to be covered by the return over their adjusted bases. This section provides procedural rules only and does not affect any substantive income tax consequences which may arise as a result of the entity providing security and entering into a security agreement.

(b) *Types of security.* The Director has absolute discretion to determine the type and amount of security required. The Director will examine the facts and circumstances of each case to determine the appropriate type of security. The types of security that the Director may accept include, but are not limited to, recorded security interests in real property located in the United States with sufficient priority to protect the Government's interest, funds or other property placed in escrow, letters of

credit, bonds executed with satisfactory surety (as described in § 301.7101–1), and evidence of binding voluntary withholding agreements which assure payment of tax on the disposition of a U.S. real property interest. Alternatively, the Director may enter into a binding agreement with an entity for the guarantee by the entity of the payment of the chapter 1 taxes that may be owed by the entity or any direct or indirect owner of the entity if:

(1) The entity is engaged in the conduct of a trade or business within the United States;

(2) The Director determines that the entity has substantial assets within the United States;

(3) The Director is satisfied that the entity will not be liquidated and that its assets will not be disposed of without payment of the taxes covered by paragraph (a) of this section; and

(4) The Director is satisfied that the entity has sufficient assets to pay any such taxes.

The rules of the preceding sentence are illustrated by the following example.

Example. Foreign corporation K is a publicly traded corporation. K is engaged in the conduct of a commercial real estate development business in foreign country Z. In addition, K holds all of the outstanding stock of domestic corporation L. L is engaged in the conduct of a commercial real estate development business in the United States and owns numerous commercial real estate developments in the United States. L is a U.S. real property holding corporation, and the stock of L is a U.S. real property interest. K has numerous substantial investors (as defined in § 6a.6039C–3(b)(1)). K is required to file the return required by § 6a.6039C–3(a). The Director is satisfied that K will not attempt to liquidate L and dispose of L's assets without payment of taxes which would be owed by K with respect to the U.S. real property interests held by L. The Director also is satisfied that L has sufficient assets to pay any tax which would be owed by K upon the disposition of its L stock. The Director may enter into a security agreement with L for the personal guarantee of payment by L of any tax which would be owed by K if K disposed of the stock of L. No other form of security is required.

(c) *Amount of security.* Generally, the amount of the security to be required by the Director will cover the excess of the sum of the appraised fair market values of all U.S. real property interests held by the entity during the calendar year over the sum of their adjusted bases, multiplied by a percentage which equals the greater of the maximum income tax rate applicable to long term capital gain of the person required to file the return or the maximum income tax rate applicable to long term capital gain of foreign persons who hold an interest in the person required to file the return. However, the Director may determine that a greater or lesser amount is appropriate to cover the tax which may be imposed. In no case shall the amount of the security exceed an amount which equals the excess of the sum of the appraised fair market values of all U.S. real property interests held by the entity over the sum of their adjusted bases, multiplied by the maximum income tax rate applicable to ordinary income of the person required to file the return or of foreign persons whose tax liabilities are to be secured under the security agreement. The maximum income tax rate for purposes of this paragraph (c) shall be determined without regard to the actual items of income or of loss, deduction, credit, or other allowance of the foreign person whose tax liability is to be secured.

(d) *Condition for entering into security agreement.* The Director will not enter into a security agreement with a person unless such person establishes to the satisfaction of the Director that any income tax owed by—

(1) the person, as to a disposition of the U.S. real property interests with respect to which a return is required, and

(2) any owner of an interest in the person, with respect to a disposition of an interest in the person,

during the calendar year for which the return is required either has been paid or will be paid by the date that such income tax is due.

(e) *Appraised fair market value of U.S. real property interests*—(1) *In general.* For purposes of paragraph (c), the appraised fair market value of U.S. real property interests held by an entity must be determined as of December 31 of the calendar year to which the security agreement relates. Such appraised fair market value must be based on an appraisal made within 60 days of the close of the calendar year. Appraisals made after 60 days of the close of the taxable year will be accepted only if the Director is satisfied that the person had good cause for not making a timely appraisal and that the appraisal accurately represents the fair maket value of the property at the close of the calendar year. With respect to security in lieu of filing 1980 and 1981 returns, the appraised fair market value of U.S. real property interests shall be determined no later than March 21, 1983.

(2) *"Appraised fair market value".* Fair market value is appraised if it is set by an appraiser of competency to appraise the particular property.

(f) *Effect of security on persons holding an interest in an entity*—(1) *In general.* Where an entity that is required to file a return for the calendar year under 6039C has entered into a valid security agreement for such year with the Director in accordance with paragraph (c) of this section, the entity is not required to make the required return or furnish statements to substantial investors, who hold an interest in such entity. In addition, in determining whether any person who holds an interest in such entity is required to file a return under section 6039C, such person is not required to take into account the fair market value of its pro rata share of the U.S. real property interests held by such entity, provided that the person has received notification in writing from the entity that the entity has entered into a valid security agreement with respect to its U.S. real property interests. No particular form is required for such notification.

Example (1). Foreign corporation K's only asset is a parcel of U.S. real estate with a fair market value of $1,000,000 and an adjusted basis of $200,000. Foreign corporation L's only asset is 100 percent of the stock of K. Nonresident alien individual X owns all the stock of L. If K provides security and enters into a valid security agreement, K is not required to file a return or furnish statements to substantial investors as otherwise required under section 6039C(b). In addition, if K has notified L of its security agreement, L may disregard the fair market value of its pro rata share of U.S. real property interests held by K in determining whether X is a substantial investor in L. Since L holds no other U.S. real property interests other than through K, X is not a substantial investor in L, and L is not required to file a return under section 6039C(b).

Example (2). The facts are the same as in example (1), except that L holds other U.S. real property interests with a fair market value of $60,000. L is required to file under section 6039C(b) because the fair market value of X's pro rata share of the U.S. real property interests held by L (disregarding its pro rata share of U.S. real property interests held by K) is greater than $50,000.

(g) *Duration and renewal of security and security agreement.* Generally, providing security and entering into a security agreement will relieve a person from the filing requirements of § 6a.6039C–2 through § 6a.6039C–4 for one calendar year. However, the Director may extend the security agreement and security provided for 1981 to cover the calendar year 1980, provided that the person entering into the 1981 agreement establishes that the requirements for entering into a security agreement as provided in paragraph (d) of this section were met for calendar year 1980. A security agreement may be renewed annually. In the case of any renewal of a security agreement, the

Director, at his discretion, may enter into a 2 year security agreement provided that the Director is satisfied that the requirements of this paragraph will be satisfied for the second year. A security agreement may be renewed for a subsequent calendar year only if the amount of security is adjusted to reflect any appreciation or depreciation, as of the last day of the subsequent calendar year, of the U.S. real property interests to be covered by the agreement. For this purpose a person seeking renewal of a security agreement must provide the Director with the appraised fair market value of its U.S. real property interests determined as of December 31 of the calendar year (in accordance with paragraph (e) of this section) for which the renewal of the security agreement is sought. A security agreement will be renewed only if no U.S. real property interests to be covered by the agreement and no interests in any entity renewing the agreement were disposed of during the calendar year to which the renewed agreement will relate, or, if any such interests were disposed of, unless it is established to the satisfaction of the Director that any income tax incurred with respect to the dispositions either has been paid or will be paid by the date such income tax is due. The Director may accept a representation, under penalty of perjury, by a responsible officer, general partner, or fiduciary of an entity that no U.S. real property interests and no direct or indirect interests in the entity have been disposed of in a transaction in which gain or loss would be subject to section 897(a). If the terms of a security agreement are violated, or if a security agreement is not renewed, the Director may take such actions with respect to the security as is provided in the security agreement. If there is a violation of the security agreement the returns required by §§ 6a.6039C–2 through 6a.6039C–4 for the calendar year covered by the security agreement are due on the later of the due date of such returns specified in § 6a.6039C–1(c) or the date 30 days from, and exclusive of, the date on which the violation first occurs or is initiated. If the security agreement is not renewed for the subsequent calendar year, the person who entered into the security agreement and any person who was exempt from filing under paragraph (f) of this section must file the information returns required by §§ 6a.6039C–2 through 6a.6039C–4 for such subsequent year. The Director shall not release or return the security held with respect to the security agreement except upon proof that all persons required to file with respect to the real property interests secured have filed the information returns required by §§ 6a.6039C–2 through 6a.6039C–4 or have entered into new security agreements and have provided new security for the appropriate year. Moreover, the security will not be released or returned unless any tax return required is filed and any tax due is paid with respect to a U.S. real property interest covered by the security agreement which was disposed of while the agreement was in effect. Any interest or other proceeds derived from property which serves as collateral under the security agreement shall be paid over to the beneficial owner of such property when the security is released or as otherwise provided in the security agreement.

(h) *Application for security agreement.* Applications to the Director for a security agreement or for a renewal thereof must be made within 30 days of the close of the calendar year for which a security agreement is desired or by March 21, 1983 for calendar years 1980 and 1981. Inquiries concerning security agreements should be addressed to the District Director, Foreign Operations District, Attention: Collection Division, 1325 K St., N.W., Washington, D.C. 20225.

(i) *Security option for Virgin Islands real property interests.* A person otherwise required under § 6a.6039C–1(c) to file a return described in § 6a.6039C–2 through –4 with the Bureau of Internal Revenue of the Virgin Islands to cover its Virgin Islands real property interests may furnish security to, and enter into a security agreement with, the Bureau of Internal Revenue as provided in this section in lieu of filing the return. Inquiries concerning security agreements with the Bureau of Internal Revenue should be addressed to the Bureau of Internal Revenue, Tax Division, Charlotte Amalie, St. Thomas, V.I. 00801.

This Treasury decision is issued under the authority contained in sections 897, 6039C, and 7805 of the Internal Revenue Code of 1954 (94 Stat. 2683; 26 U.S.C. § 897, 94 Stat. 2687; 26 U.S.C. § 6039C, 68A Stat. 917; 26 U.S.C. § 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: September 14, 1982.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 82-25829 Filed 9-20-82; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Approval of Permanent Program Amendment From the Commonwealth of Virginia Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 946 by adding the permanent program amendment concerning reclamation bonding submitted by Virginia under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director, OSM, has determined that the modifications of the Virginia program meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director has approved the Virginia program amendment.

Part 946 of 30 CFR Chapter VII is being amended to implement this decision.

EFFECTIVE DATE: This approval is effective September 21, 1982.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone: (202) 343–5351.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1982, Virginia submitted to OSM a proposed program amendment consisting of a General Assembly bill passed on an emergency basis creating the Coal Surface Mining Reclamation Fund (Fund) and promulgated regulations to implement the legislation (Administrative Record No. VA 401). The proposed program amendment would create and implement an alternative reclamation bonding system in the Virginia program.

OSM published a notice in the **Federal Register** on July 27, 1982, announcing receipt of the amendment, procedures for the public comment period and a public hearing on the substantive adequacy of the amendment (47 FR 32457–32458). The public comment

period ended August 26, 1982. A public hearing scheduled for August 19, 1982, was not held because no one expressed a desire to present testimony. On August 19, 1982, OSM published a notice in the **Federal Register** to cancel the public hearing (47 FR 36227). Public disclosure of comments by Federal agencies was made on September 9, 1982, in the **Federal Register** (47 FR 39696).

Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendment submitted by Virginia on July 8, 1982, consisting of enacted legislation adding in Chapter 19 Title 45.1 of the Virginia Code, an article numbered 5, sections 45.1–270.1—45.1–270.7 and the enacted regulations (sections V808.15, part V809 and references to remainder of Subchapter VJ) which establish an alternative bonding system in the Virginia program, meet the requirements of Sections 509 and 519 of SMCRA and 30 CFR Part 800–809.

The Virginia regulations at V809.17(a) provide that bond release is allowed after two full growing seasons and compliance with V809.18 for areas that have been adequately reclaimed and revegetated. Also, V809.17(a) provides that bond liability shall continue for the appropriate liability period, not less than five years, or as provided by sections V801.13 or V805.13. Section V809.18(b) states that the minimum period of bond liability for the entire permit area shall continue for not less than five years following completion of all reclamation work and that this period of liability shall be in accordance with the provisions of sections V801.13 and V805.13. Since V809.17(a) and V809.18(b) reference V801.13 and V805.13, the Director interprets that the bond amount to be held for the period of liability and the release procedures necessary to obtain release of remaining bond amounts following the liability period are subject to the requirements of V807.11 and V807.12.

Section 45.1–270.5.B of the Virginia Coal Surface Mining Control and Reclamation Act (SMCRA) states that all funds paid into the Fund, and interest accrued to the Fund, shall be available for the completion of defaulted reclamation plans. The Virginia regulations at V809.18(d) state that the regulatory authority may use the Fund as necessary to complete reclamation liabilities in the event of forfeiture after partial bond release. The Director interprets these provisions to mean that the Fund's assets will be used to complete the reclamation plan whenever bond money, forfeited or not, is insufficient.

As part of the approval of the program amendment and as part of OSM's oversight of the Virginia program, the Director requires that the State provide a periodic report (not less than annually) evaluating the adequacy of the Fund dollar amount and other parameters. This report must include, at a minimum, the following items. The report must show how the $500,000 lower limit and the one million dollar upper limit of the Fund is continually sufficient to cover any reclamation costs on forfeited acres which are not covered by bond forfeiture amounts. The rate of Fund replenishment following use of the funds for reclamation purposes must be calculated and the report must show that the Fund is replenished in a timely manner so as not to delay necessary reclamation. In proving adequacy of the Fund, the report should address: average reclamation costs; frequency of default; the dollar amounts of the Fund available at a given time; and the amount of permittee bond versus Fund money used in reclamation. Also, the report on Fund adequacy should include projections of default rates for self-bonded operators and of expected fund expenditures in the event of default on an unsecured self-bond.

In conjunction with the above, the Director encourages and expects Virginia, pursuant to section 45.1–270.7.E of the Virginia Coal SMCRA, to review the program frequently and make any adjustments as necessary to assure adequacy of the Fund.

Disposition of Comments

The Virginia Mining and Reclamation Association, Inc. stated that the proposal complies with the requirements of SMCRA, assures adequate protection of the public and the environment, and it greatly simplifies and reduces the workload and expense on OSM, the Virginia regulatory authority and the coal industry. The Director agrees with the commenter and has approved the program amendment.

The Environmental Protection Agency made comments concerning the Virginia regulations at V800.11 and V807.12. The Director finds that these comments are outside the scope of this rulemaking as they are directed to provisions of the Virginia regulations approved by the Secretary of the Interior on December 15, 1981.

Additional Determinations

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this action.

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 6, and 8 of Executive Order 12291 for all actions taken to approve or conditionally approve State regulatory programs, actions or amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96–354, I have certified that this rule will not have a significant economic impact on a substantial number of small entities.

On December 8, 1981, the Administrator of the Environmental Protection Agency transmitted her written concurrence on the Virginia permanent program. The amended regulatory provisions approved in this document are not aspects of the Virginia permanent program which relate to air or water quality standards promulgated under the authority of the Federal Clean Water Act, as amended (33 U.S.C. 1151–1175), and the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*)

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Therefore, Part 946 of 30 CFR Chapter VII is amended as set forth herein.

Dated: September 14, 1982.

J. R. Harris,

Director, Office of Surface Mining Reclamation and Enforcement.

PART 946—VIRGINIA

Part 946 of Title 30 is amended by revising § 946.10 to read as follows:

§ 946.10 State regulatory program approval.

The Virginia State Program, as submitted on March 3, 1980, as amended and clarified on June 16, 1980, as resubmitted on August 13, 1981, and clarified in a meeting with OSM on September 21 and 22, 1981, and in a letter to the Director of the Office of Surface Mining on October 15, 1981, was conditionally approved, effective December 15, 1981. Beginning on that date, the Department of Conservation and Economic Development, Division of Mined Land Reclamation, was deemed the regulatory authority in Virginia for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Beginning on July 21, 1982

and August 19, 1982, the program also included program amendments submitted on January 28 and July 9, 1982, respectively. Further, beginning on September 21, 1982 the program includes a program amendment submitted on July 8, 1982.

Copies of the conditionally approved program, as amended, are available for review at:

Virginia Division of Mined Land Reclamation, Drawer U, 630 Powell Avenue, Big Stone Gap, Virginia 24219

Virginia Department of Conservation and Economic Development, 1100 State Office Building, Richmond, Virginia 23219

Office of Surface Mining Reclamation and Enforcement, Flannagan and Carroll Streets, Lebanon, Virginia 24266

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 "L" Street, NW., Washington, D.C.

[FR Doc. 82-25925 Filed 9-20-82; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 723

Board for Correction of Naval Records; Standards and Procedures for Less Than Honorable Discharges

AGENCY: Department of the Navy.

ACTION: Final rule.

SUMMARY: Pursuant to the July 16, 1982, order of the United States District Court for the District of Columbia in *Walters v. Secretary of Defense* (Civil Action No. 81-0962), the procedures for the Board for Correction of Naval Records are amended. The amendment sets forth the standards and procedures to be used in the review of less than honorable discharges that were issued as the result of an administrative proceeding in which the Navy or the Marine Corps introduced evidence developed by or as a result of compelled urinalysis testing administered for the purpose of identifying drug abusers.

EFFECTIVE DATE: The amendment is effective as of August 23, 1982, and will apply to all applications pending before the Board for Correction of Naval Records on that date, as well as to new applications.

FOR FURTHER INFORMATION CONTACT: Mr. W. Dean Pfeiffer, Executive Director, Board for Correction of Naval Records, Washington, D.C. 20370, Telephone number: (202) 694-1403

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR Part 723. Inasmuch as the United States District Court for the District of Columbia has ordered the Department of the Navy to publish this final rule without latitude as to its contents, it has been determined that invitation of public comment prior to adoption under the public rulemaking provisions of 32 CFR Parts 296 and 701 is unnecessary. The Department of the Navy is presently seeking to appeal the district court order that requires promulgation of this amendment. If, as a result of the appeal, the district court order is stayed, modified, or vacated, this rule may be revised or revoked, and actions taken on applications submitted pursuant thereto may be modified or reversed.

List of Subjects in 32 CFR Part 723

Military personnel, Claims, Administrative practice and procedure.

PART 723—BOARD FOR CORRECTION OF NAVAL RECORDS

Accordingly, 32 CFR Part 723 is amended as follows:

1. The authority citation for Part 723 reads as follows:

Authority: Secs. 1552, 5031, 70A Stat. 116, 278, as amended, sec. 301, 80 Stat. 379; 5 U.S.C. 301; 10 U.S.C. 1552, 5031.

§ 723.3 [Amended]

2. Section 723.3 is amended by adding a new paragraph (f) which reads as follows:

* * * * *

(f) *Special standards.* (1) Pursuant to the order of the United States District Court for the District of Columbia in *Walters v. Secretary of Defense* (Civil Action No. 81-0962), a former Navy or Marine Corps servicemember who presently possesses a less than honorable administrative discharge, which was characterized as less than honorable in an administrative proceeding in which evidence was introduced that was developed by, or as a result of, compelled urinalysis testing administered for the purpose of identifying drug abusers, as entitled to special processing.

(2) Applicants who believe that their cases qualify for such special processing should place the word "CATEGORY W" in block 2, DD Form 149, Application for Correction of Military or Naval Record. Such applications shall be reviewed expeditiously by a designated official who will either cause the applicant to be sent an honorable discharge certificate or cause him/her to be forwarded a notice of the initiation of a new administrative proceeding designed to determine whether the less than honorable discharge awarded him/her can be justified. Each notice of initiation of proceedings shall inform the applicant of (i) the bases of separation, other than drug abuse or use or possession of drugs based upon compelled urinalysis, that was specified in the commanding officer's report and upon which the Navy or Marine Corps now seeks to base the less than honorable discharge, (ii) the full complement of procedural protections that are in effect at the time the notice is sent and which are to be accorded the applicant, including the name, address, and telephone number of a judge advocate or law specialist with whom the applicant has a right to consult, and (iii) the right to participate in the new proceedings or to elect to maintain his or her present character of discharge.

(3) Any new administrative proceedings initiated pursuant to this paragraph shall be instituted *ab initio* with the full complement of procedural protections required by current military regulations to be accorded a servicemember prior to administrative separation, and shall be based upon only those bases for separation, other than drug abuse or use or possession of drugs based upon compelled urinalysis, that were specified in the commanding officer's letter of notification in the former member's case. Such new proceedings shall be completed within a reasonable period of time and, if an administrative hearing is held, it shall be conducted at the Navy or Marine Corps installation of the applicant's former service closest to the applicant's current residence.

(4) Applicants determined not to qualify for the relief described in paragraphs (f)(2) or (3) of this paragraph by the designated official, will have their applications referred to the Naval Discharge Review Board for appropriate review and action. This action of the designated official, as well as the action authorized by paragraph (f)(2) of this paragraph, shall not constitute an action or decision by the Board for Correction of Naval Records.

Dated: September 14, 1982.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy, Alternate Federal Register, Liaison Officer.

[FR Doc. 82-25994 Filed 9-20-82; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 726

Payment of Amounts Due Mentally Incompetent Members of the Naval Service

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its regulations concerning the payment of moneys due to mentally incompetent members of the naval service to reflect recent changes to Chapter XV of the Manual of the Judge Advocate General.

EFFECTIVE DATE: June 11, 1982.

FOR FURTHER INFORMATION CONTACT: Mrs. Val Childress, Civil Affairs Division, Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, Virginia 22332, Telephone number: (202) 325–9752.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR Part 726, which is derived from Chapter XV of the Manual of the Judge Advocate General, to reflect changes in that regulation. The amendment relates to internal naval management and personnel practices, and is being published by the Department of the Navy solely for the guidance and interest of the public in accordance with 5 U.S.C. 552a(a)(1). It has been determined that invitation of public comment on this amendment prior to adoption would be impracticable and is not required under the public rulemaking provisions of 32 CFR Parts 296 and 701. It has also been determined that this final rule is not a "major rule" within the criteria specified in section 1(b) of Executive Order 12291, and does not have substantial impact on the public.

List of Subjects in 32 CFR Part 726

Mental health programs, military personnel, Administrative practice and procedure, Reporting requirements.

Accordingly, 32 CFR Part 726 is revised as follows:

PART 726—PAYMENT OF AMOUNTS DUE MENTALLY INCOMPETENT MEMBERS OF THE NAVAL SERVICE

Sec.

726.1 Purpose.
726.2 Scope.
726.3 Authority to appoint trustees to receive Federal moneys.
726.4 Procedure.
726.5 Records.
726.6 Travel orders.
726.7 Status of pay account.
726.8 Procedure for designation of a trustee.
726.9 Emergency funds.
726.10 Reports and supervision of trustees.
726.11 Authority of the Judge Advocate General to issue instructions.

Authority: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 37 U.S.C. 601–604, and 1001; 32 CFR 700.206 and 700.1202.

§ 726.1 Purpose.

This part prescribes regulations for implementation of 37 U.S.C. Chapter 11, "Payments to Mentally Incompetent Persons."

§ 726.2 Scope.

(a) 37 U.S.C. Chapter 11 grants authority, in the absence of notice that a legal committee, guardian, or other legal representative has been appointed by a court of competent jurisdiction, for the designation by the Department of the Navy of a trustee to receive the active duty pay and allowances, amounts due for accrued or accumulated leave, or retired pay or retainer pay, that are otherwise payable to a member who is found by competent medical authority to be mentally incapable of managing his/her affairs.

(b) The term "member" as used in this part refers to:

(1) Members of a uniformed service who are on active duty (other than for training) or who are on the retired list of that service; and

(2) Members of the Fleet Reserve or Fleet Marine Corps Reserve.

§ 726.3 Authority to appoint trustees to receive Federal moneys.

(a) Pursuant to 37 U.S.C. 602 (1976), the Judge Advocate General and the Deputy Assistant Judge Advocate General [Civil Affairs] [hereafter referred to in this part as the DAJAG (CA)] are delegated authority to appoint trustees to receive and administer federal moneys for members of the naval service.

(b) The commanding officer of any naval medical facility may designate an officer of the command to receive and receipt for up to $30 per month from the accrued pay of a member of the naval service who has been found incapable of handling his/her own affairs and is a patient at a naval medical facility under the following conditions:

(1) A trustee has not been designated by cognizant authority and a committee, guardian, or other legal representative has not been appointed by a court of competent jurisdiction;

(2) The member has no other funds available for use in his/her own behalf; and

(3) The funds are necessary for the purchase of items necessary for the comfort of the member.

This section shall be cited on the pay voucher as authority for payment and receipt of such monthly comfort money.

§ 726.4 Procedures.

(a) The commanding officer of the cognizant naval medical facility shall convene a board of not less than three medical officers or physicians, one of whom is specially qualified in the treatment of mental disorders, when there is evidence that a member of the naval service or a member of another uniformed service who is a patient in the naval medical facility may be incapable of handling his/her affairs. Membership of the board may include members of the Reserve components on active or inactive duty.

(b) At least one officer on the board, preferably a psychiatrist, shall personally observe the member and ensure that the member's medical record, particularly that portion concerning his/her mental health, is accurate and complete. Each board member shall sign the report of the board and shall certify whether the servicemember is or is not mentally capable of managing his/her affairs.

(c) The Judge Advocate General or DAJAG (CA) may direct competent authority to convene a board in accordance with this section to determine the mental capability of a member of the naval service to manage his/her affairs. In appropriate circumstances, a commanding officer or administrator of any Federal medical facility may be requested by the Judge Advocate General or other cognizant authority to convene such a board.

§ 726.5 Records.

(a) The convening authority shall forward one copy of the record of proceedings of each board convened pursuant to §726.4, above, as follows:

(1) *Naval service.* Judge Advocate General (Code 12), Department of the Navy, 200 Stovall Street, Alexandria, Virginia 22332;

(2) *Army.* Commanding General, Finance Center, U.S. Army, Indianapolis, Indiana 46249, Attention: (Central Pay Operations in the case of active-duty personnel, or Retired Pay Division in the case of retired personnel);

(3) *Air Force.* Director of Military Personnel, Headquarters USAF, AFMPC, Washington, D.C. 20030;

(4) *Coast Guard.* Commandant, U.S. Coast Guard (Code C–PS/43), Washington, D.C. 20593;

(5) *National Oceanic and Atmospheric Administration (NOAA).*

Director, NOAA Corps, NOAA, Rockville, Maryland 20852; and

(6) *Public Health Service.* Director, Commissioned Personnel Operations Division (OPM–OM), Room 435, 5600 Fishers Lane, Rockville, Maryland 20857.

(b) In the case of a finding that a servicemember is not mentally capable of managing his/her affairs, the convening authority, in the forwarding endorsement, shall set forth the name, relationship, and address of the member's next of kin and such other pertinent data as may be available to assist in identification of a trustee. This additional information need not be furnished where a trustee or other legal representative has been previously designated and the designation is still in effect.

§ 726.6 Travel orders.

In appropriate cases, the Chief of Naval Personnel or Commandant of the Marine Corps shall issue travel orders to a member of the naval service to appear before an examining board convened for the purpose of determining whether the member is or is not mentally capable of managing his/her affairs. In the case of permanently retired members of the naval service, however, travel expenses in connection with an appearance before a board convened pursuant to § 726.4 shall be at no cost to the Government unless the Judge Advocate General or DAJAG (CA) determines that unusual hardship exists and directs that appropriate authority fund the travel expenses.

§ 726.7 Status of pay account.

The Judge Advocate General or DAJAG (CA) will direct appropriate disbursing officials to suspend the pay of servicemembers found to be mentally incapable of managing their affairs. Thereafter, the Judge Advocate General or DAJAG (CA) will direct payment of moneys to (1) the appointed trustee; (2) the committee, guardian, or other legal representative appointed by a court of competent jurisdiction; or (3) directly to the member following a determination that the member is capable of managing his/her affairs. Disbursing officers shall seek direction from the Judge Advocate General when information from other sources indicates a member is not competent to manage his/her affairs.

§ 726.8 Procedure for designation of a trustee.

Upon receipt of a report from medical authorities that a member has been found mentally incapable of managing his/her affairs, the Judge Advocate General or DAJAG (CA) shall initiate action to appoint a trustee, provided a committee, guardian, or other legal representative has not been appointed by a court of competent jurisdiction. The Judge Advocate General or DAJAG (CA) may direct any appropriate Navy or Marine Corps activity to interview prospective trustees and make recommendations concerning their suitability. The interviewing officer will determine whether the prospective trustee can obtain an appropriate bond as directed by the Judge Advocate General or DAJAG (CA) and ascertain that the prospective trustee is willing to execute an affidavit acknowledging that all moneys shall be applied solely to the use and benefit of the member and his/her legal dependents and that no fee, commission, or charge, for any service performed by the trustee except for payment of the required bond, can be made from Federal moneys. The interviewing officer will forward recommendations to the Office of the Judge Advocate General for appropriate action.

§ 726.9 Emergency funds.

Until such time as a trustee is appointed, the Judge Advocate General or DAJAG (CA) may appoint the member's commanding officer or other appropriate official to receive up to $1000 due from the account of the member without the necessity of a bond. The money shall be applied for the benefit of the member and his/her legal dependents.

§ 726.10 Reports and supervision of trustees.

(a) *Annual accounting report.* The trustee designated under this part shall submit accounting reports annually or at such times as the Judge Advocate General or DAJAG (CA) directs. The report shall account for all funds received from the Navy or Marine Corps on behalf of the servicemember. NAVJAG Forms 5800/13 (Rev. 8–76) and 5800/13A (Rev. 8–76) will be provided for these reports. When requested by the Judge Advocate General or DAJAG (CA), bank records, receipts, canceled checks, or vouchers shall be attached to the report. If the trustee fails to promptly make a satisfactory report, the Judge Advocate General or DAJAG (CA) may terminate payments and appoint a successor trustee. Report Control Symbols JAG 5800–5 and 5800–5A have been assigned to the reports.

(b) *Final accounting.* When payments under this part are terminated, the trustee shall submit a final accounting to the Judge Advocate General or DAJAG (CA), as appropriate. Upon approval of the report, the trustee and the surety will be discharged from liability. In the event of death or disability of a trustee, the final accounting shall be filed by the legal representative of the trustee.

(c) *Finance centers.* The Commanding Officer, Navy Finance Center, Commanding Officer, Marine Corps Finance Center, or the cognizant disbursing officer shall notify the Judge Advocate General or DAJAG (CA) of any fact affecting the pay of a member who is not mentally capable of managing his/her affairs. This includes waiver of retired pay in favor of Veterans Administration compensation; death of the member; death of the trustee; or notice of appointment of a legal representative by a court of competent jurisdiction. At the request of the Judge Advocate General or DAJAG (CA), the cognizant disbursing officer shall report all disbursements from the servicemember's account.

§ 726.11 Authority of the Judge Advocate General to issue instructions.

The Judge Advocate General and the DAJAG (CA) may issue instructions for implementation of this part.

Dated: September 15, 1982.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy, Alternate Federal Register, Liaison Officer.

[FR Doc. 82–25995 Filed 9–20–82; 8:45 am]

BILLING CODE 3810–AE–M

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32 CFR Part 727

Legal Assistance; Military Members and Dependents

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its regulations concerning the provision of legal assistance to military members and dependents to reflect recent changes to Chapter XIX of the Manual of the Judge Advocate General.

EFFECTIVE DATE: September 21, 1982.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Steven E. Wright, JAGC, U.S. Navy, Head, Legal Assistance Policy Branch, Civil Affairs Division, Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, Virginia 22332, Telephone number: (202) 325–9752.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR Part 727, which is derived from Chapter XIX of the Manual of the Judge Advocate General, to reflect changes in that regulation. The amendment relates

to internal naval management and personnel practices, and is being published by the Department of the Navy solely for the guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). It has been determined that invitation of public comment on this amendment prior to adoption would be impracticable and is not required under the public rulemaking provisions of 32 CFR Parts 296 and 701. It has also been determined that this final rule is not a "major rule" within the criteria specified in § 1(b) of Executive Order 12291, and does not have substantial impact on the public.

List of Subjects in 32 CFR Part 727

Legal services, Military law, Military personnel.

PART 727—LEGAL ASSISTANCE

Accordingly, 32 CFR Part 727 is amended as follows:

1. The authority citation for Part 727 reads as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 32 CFR 700.206 and 700.1202

§ 727.6 [Amended]

2. In § 727.6, paragraph (d) is added to read as follows:

* * * * *

(d) *Professional legal advice.* Only legal assistance officers are authorized to render services that call for the professional judgment of a lawyer. The legal assistance officer may delegate tasks to clerks, secretaries, and other lay personnel provided the officer maintains a direct relationship with the client, supervises the delegated work, and has complete professional responsibility for the work product. Services that call for the professional judgment of a lawyer include, but are not limited to, the preparation of wills and powers of attorney, advising personnel with respect to legal rights and relationships, negotiating contracts, and other matters requiring an educated ability to relate the general body and philosophy of law to a specified legal problem of a client. Guidance in this matter may be had from various official sources including the ethical considerations under Canon 3 of the Code of Professional Responsibility of the American Bar Association and particularly EC 3–2, 3–5, 3–6, and DR 3–101(A).

3. Section 727.10 is revised to read as follows:

§ 727.10 Fees, compensation, solicitation, and representation in civilian courts.

(a) *General.* Active duty military personnel and civilian employees of the Navy and Marine Corps are prohibited from accepting or receiving, directly or indirectly, any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person entitled to legal assistance under this part whether or not the service rendered is normally provided or available to such person under this part and whether or not the service is rendered during duty hours as a part of official duties. Reserve judge advocates on inactive duty are prohibited from accepting or receiving any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person entitled to legal assistance under this part with respect to matters about which they consulted or advised said person in an official capacity. The prohibition may be waived only by the Judge Advocate General of the Navy or the Director, Naval Legal Service, as appropriate, in extraordinary circumstances on a case by case basis for inactive duty Reserve judge advocates who consulted with or advised an eligible client in an official capacity. Before a waiver may be granted, the following criteria, as well as other relevant criteria, shall be considered: (1) Whether the waiver is specifically requested by the party concerned or an appropriate representative, (2) whether there is a likelihood that undue and substantial prejudice will otherwise be suffered by the party concerned, (3) whether adequate continued representation for compensation is otherwise reasonably available, and (4) whether the requested representation will violate the Code of Professional Responsibility of the American Bar Association or other applicable legal or ethical requirements.

(b) *Solicitation.* Active duty military personnel, civilian employees of the Navy and Marine Corps, and inactive reservists, acting in an official capacity, are prohibited from soliciting, or advising that any person entitled to legal assistance under this part retain, consult, or seek legal services from themselves in their private capacities, or from any attorney who is a partner or associate of a law firm of which they are partners or associates, or from any attorney with whom they share office spaces; *Provided* that nothing herein shall prevent such person from being referred to civilian counsel as provided in § 727.9.

(c) *Representation before civilian courts or agencies.* No active duty Navy or Marine Corps judge advocate may appear as counsel on behalf of any person entitled to legal assistance, except as provided in paragraph (a)(3) of § 727.6 and under guidelines prescribed in the Manual of the Judge Advocate General before any civil court, civil administrative tribunal, civil regulatory body, or civil governmental agency, in any proceeding, whether or not a fee or other compensation is accepted or received, without prior written approval of the Judge Advocate General, or the Director, Naval Legal Service, as appropriate. Requests for such permission may be in the form prescribed in the Manual of the Judge Advocate General.

§ 723.13 [Amended]

4. Section 727.13 is amended by removing the word "January" in line 2 and inserting in its place the word "October"; by removing the words "two copies" in line 4 and inserting in their place the words "one copy"; by removing the figures "5–71" in line 6 and inserting in their place the figures "12–78"; and by removing the words "calendar-year period" in lines 6–7 and inserting in their place the words "fiscal year".

Dated: September 15, 1982.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 82-25996 Filed 9-20-82; 8:45 am]

BILLING CODE 3810-AE-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[W-1-FRL 2204-2]

New Hampshire Water Supply and Pollution Control Commission Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Programs.

SUMMARY: The State of New Hampshire has submitted an application under Section 1422 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) Program governing Classes I, II, III, IV, and V injection wells. After careful review of the application, the Agency has determined that the State's injection well program for all classes of injection wells meets the requirements of Section 1422 of the Act and, therefore, approves it.

EFFECTIVE DATE: This approval is effective October 21, 1982.

FOR FURTHER INFORMATION CONTACT: Jerome J. Healey, Drinking Water Branch, Environmental Protection Agency, Region I, JFK Federal Building,

Boston, Massachusetts 02203, (617) 723–6486.

SUPPLEMENTAL INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) Program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which in his judgment a State UIC Program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC Program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC Program.

The State of New Hampshire was listed as needing a UIC Program on March 19, 1980 (45 FR 17632). The State of New Hampshire submitted an application under Section 1422 on April 12, 1982, for the approval of an UIC Program governing Classes I, II, III, IV, and V injection wells to be administered by the New Hampshire Water Supply and Pollution Control Commission (NHWSPCC). On May 7, 1982, EPA published notice of its receipt of the application, requested public comments, and scheduled a public hearing on the New Hampshire UIC Program submitted by the NHWSPCC (47 FR 19726). Neither requests for public hearing nor requests to offer testimony at such hearing were received by EPA. Therefore, pursuant to the provisions of 40 CFR 123.54(c), the public hearing was cancelled on June 1, 1982 because of expressed lack of sufficient public interest.

After careful review of the application I have determined that the New Hampshire UIC Program submitted by the NHWSPCC meets the requirements established by Federal regulations pursuant to Section 1422 of the SDWA, and hereby approve it.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indians—lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

OMB Review

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1422 of the Safe Drinking Water Act of the application by the New Hampshire Water Supply and Pollution Control Commission will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

Dated: September 9, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-25942 Filed 9-20-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 122 and 260

[SWH-FRL 2209-1]

EPA Administered Permit Programs: The Hazardous Waste Permit Program; and Hazardous Waste Management System: General

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of document; Amendment to final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing the availability of a second edition of the EPA manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846. This notice provides information on when and where the manual is available and how it differs from the first edition. This notice also amends the sections of EPA's consolidated permit regulations and hazardous waste regulations that incorporate the manual by reference, to reflect the availability of a second edition of the manual.

EFFECTIVE DATE: September 21, 1982.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424–9346 (toll free), or (202) 382–3000. For technical information contact David Friedman, Office of Solid Waste (WH–565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755–9187.

SUPPLEMENTARY INFORMATION:

I. Second Edition of Manual

The EPA manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," (1980) (EPA Publication No. SW–846), is incorporated by reference in several sections of EPA's regulations. EPA first published the manual in May, 1980 when the Agency promulgated Phase I of the hazardous waste regulations in the **Federal Register** (45 FR 33065–33588). Three revisions to the manual—Revision A (August 1980), Revision B (July 1981), and Revision C (February 1982)—have been published since that date. EPA is today announcing the publication of a second edition of the manual which incorporates all three revisions. Although the second edition is significantly reorganized and contains additional explanatory information, EPA views this edition as equivalent to the first edition (with revisions), for regulatory compliance purposes.

II. Availability of Manual and Revisions

In the past, the manual and revisions to the manual have been made available to the public free of charge on request from the EPA Solid Waste Information Office in Cincinnati, Ohio. The Agency is no longer able to distribute these publications on this basis. From now on, these materials will be available to the public as follows:

- A limited number of Revisions A and B are available free of charge from the EPA RCRA Hotline (see telephone number above).
- Revision C is available for $7.50 from the National Technical Information Service (NTIS) at 5285 Port Royal Road in Springfield, Virginia 22161. The order number is PB 82–172–156.
- The second edition of the manual is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, on a subscription basis. The subscription includes both the second edition of the manual and a number of future updates (approximately six mailings). Because the updates will be available only through this subscription, EPA recommends that persons interested in future updates to the manual subscribe to the second edition. The cost is $55.00 per subscription for domestic mailing ($68.75 if mailed to a foreign address).

III. Amendments to 40 CFR 122.20 and 260.11

Sections 122.20 and 260.11 of Title 40 of the Code of Federal Regulations set

forth information about publications incorporated by reference in EPA's consolidated permit regulations and hazardous waste regulations, respectively. Among other things, these sections identify the specific publications being incorporated by reference and explain how they may be obtained.

Sections 122.20 and 260.10 list the manual as one of the publications that EPA incorporates by reference in its regulations. However, they currently refer only to the 1980 edition, and indicate that the 1980 edition is available from the EPA Solid Waste Information Office in Cincinnati. As discussed above, this is no longer accurate since (1) the first edition is no longer available at all, (2) revisions to the first edition are not available from the Solid Waste Information Office, and (3) persons may use the second edition of the manual in lieu of the first edition. Accordingly, EPA is amending §§ 122.20 and 260.11 to reflect these changes.

EPA has determined under Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, that there is good cause for promulgating these amendments without prior notice and opportunity for comment. These amendments are entirely technical in nature and do not change any substantive requirements. Furthermore, in light of the current inaccuracies in §§ 122.20 and 260.11, delaying promulgation of these amendments would be contrary to the public interest.

IV. List of Subjects

40 CFR Part 122

Administrative practice and procedure, Air pollution control, Hazardous materials, Reporting requirements, Waste treatment and disposal, Water pollution control, Confidential business information.

40 CFR Part 260

Administrative practice and procedure, Hazardous materials, Waste treatment and disposal.

Dated: September 9, 1982.

Rita M. Lavelle,

Associate Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 reads as follows:

Authority: Secs. 1006, 2002(a), 3001–3007 and 3010 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921–6927 and 6930).

2. Section 260.11 is amended by revising the fourth reference in paragraph (a) to read as follows:

§ 260.11 References.

(a) * * *

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 (First Edition, 1980, as updated by Revisions A (August, 1980), B (July, 1981), and C (February, 1982)) *or* (Second Edition, 1982). The first edition of SW–846 is no longer in print. Revisions A and B are available from EPA, Office of Solid Waste, (WH–565B), 401 M Street, S.W., Washington, D.C. 20460. Revision C is available from NTIS, 5285 Port Royal Road, Springfield, Virginia 22161. The second edition of SW–846 includes material from the first edition and Revisions A, B, and C in a reorganized format. It is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238, on a subscription basis, and future updates will automatically be mailed to the subscriber.

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PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; THE HAZARDOUS WASTE PERMIT PROGRAM; AND THE UNDERGROUND INJECTION CONTROL PROGRAM

3. The authority citation for Part 122 reads as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.; and Clean Water Act, 33 U.S.C. 1251 et seq.

4. Section 122.20 is amended by revising the first reference in paragraph (a) to read as follows:

§ 122.20 References.

(a) * * *

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 (First Edition, 1980, as updated by Revisions A (August, 1980), B (July, 1981), and C (February, 1982)) *or* (Second Edition, 1982). The first edition of SW–846 is no longer in print. Revisions A and B are available from EPA, Office of Solid Waste, (WH–565B), 401 M Street, SW., Washington, D.C. 20460. Revision C is available from NTIS, 5285 Port Royal Road, Springfield, Virginia 22161. The second edition of SW–846 includes material from the first edition and Revisions A, B, and C in a reorganized format. It is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238, on a subscription basis, and future updates will automatically be mailed to be the subscriber.

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[FR Doc. 82–25943 Filed 9–20–82; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

Equipment Acquired Under Public Assistance Programs

AGENCY: Health Care Financing Administration, HHS.

ACTION: Final rule.

SUMMARY: This Final Rule revises and consolidates current regulations concerning Federal financial participation in the cost of equipment under the Medicaid Program (Title XIX of the Social Security Act). The rule also revises and consolidates current regulations on the management and disposition of equipment under the Program.

The rule would permit State public assistance agencies to claim the cost of most of their equipment at the time of purchase rather than depreciating the equipment over its useful life as required by the current regulations. This change would allow these agencies to claim Federal financial participation in the cost of the equipment at an earlier date than under the current regulations and would simplify the accounting requirements associated with the equipment.

EFFECTIVE DATE: October 21, 1982.

FOR FURTHER INFORMATION CONTACT: Edward M. Tracy, (202) 245–7411.

SUPPLEMENTARY INFORMATION: A Notice of proposed rulemaking was published in the **Federal Register** on July 24, 1981 at 46 FR 38280 inviting public comments on a proposed revision to the Departments' current regulations concerning Federal financial participation in the cost of equipment acquired under HHS supported public assistance programs. The regulation, Subpart G of 45 CFR Part 95, allows for the claiming of the cost of equipment costing $25,000 or less in the period the equipment was acquired. Public comments were invited for 60 days ending September 22, 1981. Comments were received from eleven State or local agencies and two medical care

providers and are discussed in the preamble to Subpart G of 45 CFR Part 95 located elsewhere in the issue.

Accordingly, 42 CFR Part 433 is amended as follows:

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, claims, Grant programs—health; Mechanized Claims Processing and Information Retrieval System, Medicaid, Third party liability.

The Department has determined that this is not a major rule as defined in Executive Order 12291. Pursuant to the provisions of 5 U.S.C. Section 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Dated: August 18, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

PART 433—STATE FISCAL ADMINISTRATION

42 CFR 433.35 is revised to read as follows:

§ 433.35 Equipment—Federal financial participation.

Claims for Federal financial participation in the cost of equipment under the Medicaid Program are determined in accordance with Subpart G of 45 CFR Part 95. Requirements concerning the management and disposition of equipment under the Medicaid Program are also prescribed in Subpart G of 45 CFR Part 95.

[FR Doc. 82-25966 Filed 9-20-82; 8:45 am]

BILLING CODE 4120-03-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6417]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule, Correction.

SUMMARY: This document makes a correction to a final rule of a list of communities eligible for the sale of flood insurance under the National Flood Insurance Program, published August 9, 1982, 47 FR 34395. The City of Arkansas City, Cowley County, Kansas should be deleted from this list.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Chief, Natural Hazards Division, (202) 287–0270, 500 C Street Southwest, Donohoe Building—Room 505, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: As a result of a recent engineering analysis, the Federal Emergency Management Agency deleted the final rule of flood elevation determinations for the City of Arkansas City, Kansas. The rule deletion cancels the community's July 5, 1982 entry in the regular phase of the National Flood Insurance Program. The community should be deleted from the list of eligible communities published August 9, 1982, 47 FR 34395.

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

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-25934 Filed 9-20-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

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

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated in the table below.

ADDRESS: See table below.

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

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

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Agency has resolved the appeals presented by the community.

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

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prescribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The final base (100-year) flood elevations for selected locations are:

FINAL BASE (100 YEAR) FLOOD ELEVATIONS

State	City/town/county (Docket No.)	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arizona	Flagstaff, City Coconino County (FEMA-6124)	Rio de Flag	Most downstream intersection of Rio de Flag and centerline of Interstate Highway 40.	*6,765
			Intersection of Hopi Drive and Navajo Drive	*6,835
			Intersection of Rio de Flag and center of O'Leary Street.	*6,886
			Intersection of Rio de Flag and center of Cresent Drive.	*6,969
			100 feet upstream of center of Fremont Boulevard	*7,090
		Rio de Flag Split Flow	Intersection of Thorpe Road and Bonito Street	*6,833
		Penstock Avenue Wash	100 feet upstream from center of Railhead Avenue	*6,787
			50 feet upstream from center of Allen Avenue	*6,835
		Peaceful Valley Wash	Intersection of Peaceful Valley Wash and center of Oakmont Drive.	*6,765
		Country Club Wash	Intersection of Country Club Wash and center of Country Club Drive.	*6,777
		Fanning Drive Wash	Intersection of Fanning Drive Wash and center of Interstate Highway 40 west bound lane.	*6,782
			150 feet north from intersection of Linda Vista Drive and Schevene Boulevard.	*6,984
		Switzer Canyon Wash	Intersection of Switzer Canyon Wash and Butler Avenue.	*6,785
			150 feet south of intersection of Switzer Canyon Wash and center of Huntington Drive.	*6,838
			Intersection of Switzer Canyon Wash and center of Switzer Drive.	*6,868
		Spruce Avenue Wash	40 feet upstream from intersection of Third Street and Sixth Avenue.	*6,876
			Intersection of Spruce Avenue Wash and center of Linda Vista Drive.	*6,962
			850 feet north-northwest from intersection of Paradise Road and Park Way.	#1
		West Street Wash	Intersection of West Street Wash and center of Santa Fe Avenue.	*6,839
			100 feet upstream from center of North High School Driveway.	*6,925
		West Street Wash Split Flow	Intersection of West Street Wash Split Flow and center of First Avenue.	*6,850
		Bow and Arrow Wash	200 feet upstream from confluence with Rio de Flag	*6,799
			50 feet upstream from center of Lake Mary Road	*6,928
		Sinclair Wash	Intersection of Sinclair Wash and O'Leary Street	*6,851
			100 feet upstream from center of University Heights-Drive South.	*6,891
		Clay Avenue Wash	Intersection of Clay Avenue and Leroux Street	*6,892
			170 feet upstream from center of Atchison, Topeka, and Santa Fe Railroad.	*7,022
		Clay Avenue Wash Split Flow	Confluence with Clay Avenue Wash	*6,956
		Peak View Wash	Intersection of Peak View Wash and center of Red Rock Street.	*7,110
	Maps available for inspection at Department of Engineering, 15 North Beaver Street, Flagstaff, Arizona.			
Mississippi	City of Belzoni, Humphreys County (FEMA-5215)	Fisk Bayou	At Jackson Street	*112
			At Virginia Street	*112
		Yazoo River	At Humphreys County Bridge	*114
		County Ditch No. 26	Just downstream of Jackson Street	*108
			Just upstream of Jackson Street	*109
	Maps available for inspection at City Hall, 102 W. Jackson Street, Belzoni, Mississippi 39038.			
Mississippi	Unincorporated areas of Humphreys County (FEMA-5216).	Unnamed Tributary of Yazoo River	Just upstream of Pecan Street	*111
			Just upstream of First Street	*111
		Fisk Bayou	At Fourth Street	*112
		Drainage District Ditch No. 22	Just downstream of State Highway No. 7	*112
		Drainage District Ditch No. 26	Approximately 100 feet upstream of U.S. Highway 49	*107
		Yazoo River	At Humphreys County Bridge	*114
	Maps available for inspection at Chancery Clerk's Office, Humphreys County Courthouse, Castleman Street, Belzoni, Mississippi 39038.			
Texas	City of Temple Bell County (FEMA-6143)	Leon River	Just downstream of Atchison, Topeka and Santa Fe Railway.	*490
			Approximately 500 feet downstream of State Highway 317.	*499
		Fryers Creek	Just upstream of Waters Dairy Road	*590
			Just upstream of Fryers Creek Circle South	*635
			Just upstream of Avenue T	*659
			Just upstream of Avenue P	*670
		Fryers Creek Tributary 1	Just upstream of Corporate Limits (Southern)	*577
		Bird Creek	Just downstream of Shallow Ford Road	*487
			Just upstream of Briar Cliff Road	*534
			Approximately 150 feet downstream of Interstate Highway 35.	*594
			Just downstream of State Highway 36	*661
		Bird Creek Tributary 1	Just downstream of Hemlock Boulevard	*538
			Approximately 120 feet upstream of Cottonwood Lane	*617
		Pepper Creek	Just downstream of Atchison, Topeka and Santa Fe Railway.	*490
			Just downstream of FM 2305 (Adams Avenue)	*566
			Just upstream of State Highway 36	*600

FINAL BASE (100 YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county (Docket No.)	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Pepper Creek Tributary 1	Approximately 120 feet upstream of State Highway Loop 363.	*600
			Just upstream of Dam	*655
		Knob Creek	Just downstream of Atchison, Topeka and Santa Fe Railway (Downstream Crossing).	*599
			Just upstream of 30th Street	*631
			Just upstream of Missouri Kansas Texas Railroad	*668
		Little Elm Creek	Approximately 150 feet upstream of Dairy Road	*562
			Approximately 100 feet downstream of Zenith Avenue	*593
			Just upstream of Gun Club Road	*609
			Just upstream of Missouri Kansas Texas Railroad	*642
		Little Elm Creek Tributary 1	Just downstream of Tower Road	*595
			Just downstream of 34th Street	*636
			Just upstream of 16th Street	*677
		Williamson Creek	Just upstream of State Highway 53	*597
			Just downstream of French Street	*622
			Just upstream of Hoover Street	*661
			Just upstream of Walker Avenue	*698
		Williamson Creek Tributary 1	Just upstream of Missouri Kansas Texas Railroad	*667
			Just upstream of 7th Street	*707
		Little Elm Creek Tributary 2	Just downstream of Center Street	*711

Maps available for inspection at Temple Municipal Building, Main and Adams Streets, Temple, Texas 76501.

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

Issued: September 1, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-25794 Filed 9-20-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENDA: FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

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

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated in the table below.

ADDRESSES: See table below.

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

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

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

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

Pursuant to the provisions of 5 USC 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the (final) flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The final base (100-year) flood elevations for selected locations are:

FINAL BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
Arkansas	City of Mountain Home, Baxter County (FEMA-6262)	Hicks Creek	Just upstream of Russell Street	*780
			Just downstream of U.S Highway 62	*793
			Just downstream of College Street	*805
		Tributary A	Just downstream of Langston Street	*790
			Just downstream of U.S. Highway 62	*805
		Indian Creek	Just downstream of Cedar Street extended	*775
			Approximately 100 feet upstream of Buzzard Roost road.	*780
			Just downstream of U.S. Highway 62	*821
Maps available for inspection at City Hall, 720 South Hickory Street, Mountain Home, Arkansas 72153.				
California	Nevada County (Unincorporated areas) (FEMA-6286)	Squirrel Creek	50 feet upstream from center of Clover Road	*1,410
		Squirrel Creek Tributary 1	500 feet upstream from confluence with Squirrel Creek	*1,358
		Squirrel Creek Tributary 2	30 feet upstream from center of Penn Valley Drive	*1,364
		Squirrel Creek Tributary 2-1	50 feet upstream from center of Devonshire Circle	*1,411
		Clear Creek	75 feet upstream from center of Penn Valley Drive	*1,408
		Wolf Creek	60 feet southwest from center of intersection of Sutton Way and Idaho-Maryland Road.	*2,528
		South Fork Wolf Creek	500 feet upstream from center of Colfax Highway	*2,436
		Little Wolf Creek	Intersection of Grass Valley corporate limits and creek	*2,447
		Deer Creek	150 feet southwest from center of intersection of Willow Valley Road and Grove Street.	*2,511
		Truckee River	Intersection of Truckee River and center of Old U.S. Highway 40.	*5,640
			25 feet upstream from center of Bridge Street	*5,793
		Donner Creek	30 feet upstream from center of State highway 89	*5,880
		Summit Creek	25 feet upstream from center of Summit Creek Drive	*5,954
		Trout Creek	100 feet upstream from center of East Main Street	*5,822
		Donner Lake	300 feet north from intersection of Dogwood Street with South Shore Drive.	*5,942
Maps available for inspection at Department of Planning, HEW Building, 10433 Willow Valley Road, Nevada City, California.				
Florida	Belleair (town), Pinellas County (FEMA-6278)	Gulf of Mexico-Clearwater Harbor	Belleview Island	*13
			Western end of Winston Drive	*11
Maps available for inspection at Town Hall, 901 Ponce de Leon Boulevard, Belleair, Florida.				
Florida	Belleair Bluffs (city), Pinellas County (FEMA-6278)	Gulf of Mexico-Clearwater Harbor	Approximately 1,000 feet west along West Bay Drive from its intersection with Harbor View Lane.D*12.	
Maps available for inspection at City Hall, 115 Florence Drive, Belleair Bluffs, Florida.				
Florida	Gainesville (city), Alachua County (FEMA-6286)	Hogtown Creek	At the center of Northwest 8th Avenue crossing	*89
		Hogtown Creek Tributary 1	75 feet upstream from center of Northwest 34th Street	*107
		Hogtown Creek Tributary 2	50 feet upstream from center of Northwest 43rd Avenue.	*166
		Little Hatchet Creek	30 feet upstream from center of Airport Service Road	*110
		Sweetwater Branch	40 feet upstream from center of southeast 4th Street	*113
		Tumblin Creek	At the center of corporate limit crossing	*68
		Newnans Lake Tributary 1	500 feet south from the intersection of Southeast 26th Street and Southeast 26th Terrace.	*121
Maps available for inspection at Public Works Department, Thomas Center, 306 NE 6th Avenue, Room 319, Gainesville, Florida.				
Florida	Marion County (Unincorporated areas) (FEMA-6286)	Withlacoochee River	At the center of State Highway 200 crossing	*41
		Blue Run	At the City of Dunnellon corporate limit crossing	*93
		Lake Kerr and Little Lake Kerr	At Petes Island	*27
		Lake Weir and Little Lake Weir	900 feet south from center of intersection of seaboard coast line and Alternate U.S. Highways 27 and 441.	*60
		Mill Dam Lake	500 feet north from center of intersection of State Highway 40 and Levee Hammock Road.	*54
		Halfmoon Lake	900 feet southeast from center of intersection of State Highway 40 and Levee Hamamock Road.	*55
		Lake Bryant	3,000 feet south from center of intersection of State Highway 40 and Levee Hammock Road.	*55
Maps available for inspection at Engineering Department, County Office Building, 19 NW Pine Avenue, Ocala, Florida.				
Georgia	City of Porterdale, Newton County (FEMA-6286)	Yellow River	Just upstream of Highway 81	*622
Maps available for inspection at City Hall, Broad Street, Covington, Georgia 30270.				
Illinois	(C) Cuba, Fulton County (Docket No. FEMA-6286)	Shallow Flooding (ponding due to rainfall).	At the intersection of Douglas Street and 9th Avenue	#1
			About 700 feet northeast of the intersection of Toledo Peoria and Western Railroad and 3rd Avenue.	#1
Maps available for inspection at the City Hall, 403 Jefferson Street, Cuba, Illinois.				
Illinois	(V) Lakemoor, McHenry County (Docket No. FEMA-6286).	Lily Lake	Shoreline	*750
		Shallow Flooding (ponding from rainfall).	Intersection of Rose Dale Drive and Sherry Side Road	*752
Maps available for inspection at the Village Hall, 234 West Rand Road, McHenry, Illinois.				
Kentucky	Unincorporated areas of Greenup County (FEMA-6186).	Ohio River	At confluence of Tygarts Creek	*536
			Just upstream of Greenup Locks and Dam	*541

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
		Pond Run	Just upstream of Private Road (located approximately 5,500 feet downstream of City of Raceland corporate limits).	*560
		Chinns Branch	Approximately 3,000 feet south of the intersection of U.S. Highway 23 and Chinns Branch Road.	*559
		Coal Branch	Just upstream of Duck Puddle Road	*559
		Smith Branch	Just upstream of Right Fork Smith Branch Road	*548
		Lower White Oak	Just upstream of John Road	*588
			Just upstream of Belleview Drive	*602
Maps available for inspection at Greenup County Judge's Office or County Clerk's Office, Greenup County Courthouse, Greenup, Kentucky 41144.				
Kentucky	Unincorporated areas of Rowan County (FEMA-6286).	Triplett Creek	Just downstream of Round Street	*680
			just downstream of State Highway 32	*748
			Just upstream of Private Road located at Alec Hall Branch.	*796
		Mill Branch	Just upstream of McBrager Road	*723
		Morgan Fork	Just upstream of State Highway 519 crossing Morehead and North Fork Railroad.	*750
			Just upstream of State Highway 519 located approximately 250 feet upstream of Warren Branch.	*830
		Dry Creek	Just upstream of State Highway 519	*718
			Just downstream of County Road located approximately 300 feet upstream of Timber Branch.	*789
		Christy Creek	just upstream of Private Road located at Patties Lick Branch.	*813
			Just downstream of Private Road located approximately 500 feet upstream of Kidd Branch.	*850
		North Fork Triplett Creek	Just downstream of State Highway 32	*699
			Just upstream of Private Road located approximately 200 feet downstream of confluence of Big Brush Creek.	*714
			Just downstream of Private Road located approximately 800 feet downstream of Harvey Branch.	*742
		Big Brush Creek	Just downstream of State Highway 377	*715
			Just downstream of Old Sport Arena Road located approximately 1,500 feet downstream of State Highway 785.	*799
			Just upstream of Middle Prong Brush Creed Road	*845
Maps available for inspection at Rowan County Judge Executive's Office, County Courthouse, Morehead, Kentucky 40351.				
Kentucky	City of Russell, Greenup County (FEMA-6286)	Ohio River	At the border of Boyd County line	*547
		White Oak Creek	Just upstream of State Highway 693 (Deidrick Boulevard).	*557
			Just upstream of Verna Drive	*569
Maps available for inspection at City Clerk's City Hall, Russell, Kentucky 41169.				
Maine	Kennebunk, town York County (Docket No. FEMA-6286).	Kennebunk River	Approximately 600 feet upstream of mouth	*9
			Upstream of U.S. Route 1	*45
			Approximately 2,700 feet upstream of U.S. Route 1	*58
		Day Brook	At confluence with Mousam River	*46
		xl	Approximately 9,500 feet upstream of Cat Mousam Road.	*68
		Atlantic Ocean	From corporate limits to confluence of Mousam River	*14
			From approximately 320 feet east of confluence of Mousam River to Access Road extended.	*21
			From approximately 130 feet east of Access Road extended to Great Hill Road extended.	*18
			From approximately 160 feet west of Lords Point Road extended to approximately 700 feet east of Lords Point Road extended.	*19
			From approximately 400 feet east of Bruen Place extended to Woodland Avenue extended.	*16
			Tidal flooding affecting Little River and Branch Brook	*9
		Mousam River	At State Route 9	*9
			Approximately 2,960 feet upstream of Boston and Maine Railroad.	*10
			Downstream U.S. Route 1	*28
			Upstream of Mousam River Spillway	*44
			At Interstate Route 95	*49
			Downstream of Twine Mills Dam	*55
			Upstream of Twine Mills Dam	*74
			Upstream Dane Perkins Dam	*89
Maps available for inspection at the Town Manager's Office, Kennebunk Town Hall, 1 Summer Street, Kennebunk, Maine.				
Massachusetts	Saugus, town, Essex County (Docket No. FEMA-6278).	Atlantic Ocean	Along the entire southern corporate limits	*10
		Saugus River	Confluence of Shute Brook	*10
			Upstream of Bridge Street	*13
			Upstream of U.S. Route 1	*39
			Approximately 800 feet upstream of Richardson Circle extended.	*47
			Upstream of Water Street	*55
			Upstream corporate limits	*59
		Shute Brook	Confluence with Saugus River	*10
			Upstream of Central Street culvert	*16

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
			Upstream of Highland Street	*25
			Approximately 480 feet upstream of Pennybrook Road	*26
		Fiske Brook	Confluence with Shute Brook	*26
			Approximately 820 feet upstream of confluence with Shute Brook.	*26
		Bennett's Pond Brook	Confluence with Saugus River	*37
			Upstream of Laurine Drive	*48
			Corner of Main Street and Lynn Falls Parkway	*58
			Approximately 1,500 feet upstream of Falmouth Street	*65
Maps available for inspection at the Engineering Department, Town Hall, 298 Central Street, Saugus, Massachusetts.				
Michigan	(Twp) Kochville, Saginaw County (Docket No. FEMA-6286).	Kochville Drain	About 2.5 miles above mouth at Saginaw River	*585
			At confluence of North Branch Kochville Drain	*587
		South Branch Kochville Drain	Just upsteam of Michigan Road	*588
			Just downstream of State Highway 84	*599
		North Branch Kochville Drain	Just upstream of Davis Road	*589
			Just downstream of State Highway 84	*596
		Shallow Flooding	West of Venoy Road and south of Interstate 675	*585
Maps availabe for inspection at Mr. Trautners' Home, 4510 Pierce Road, Saginaw, Michigan.				
Michigan	(Twp.) Thomas, Saginaw County (Docket No. FEMA-6286).	Tittabawassee River	Just upstream of Conrail	*597
			Just downstream of Tittabawassee Road	*603
		Swan Creek	About 3,600 feet downstream of State Highway 46	*593
			Just downstream of Dice Road	*600
		Hatch Run	At confluence with Swan Creek	*598
			About 2,840 feet upstream of Dice Road	*604
Maps available for inspection at the Township Offices, 249 North Miller Road, Saginaw, Michigan.				
Minnesota	(C) Beltrami, Polk County (Docket No. FEMA-6224)	Sandhill River	Western corporate limits	*894
			About 100 feet downstream of Burlington Northern railroad.	*900
			Just upstream of Burlington Northern railroad	*904
			Just upstream Highway 1	*905
			Eastern corporate limits	*908
Maps available for inspection at the City Hall, Beltrami, Minnesota.				
Minnesota	(C) Winona, Winona County (Docket No. FEMA-6286).	Mississippi River	About 1.3 miles downstream of Burlington Northern Railroad.	*658
			About 2.7 miles upstream of State Route 43	*662
		Gilmore Creek	About 150 feet downstream of U.S. Route 14	*672
			Just upstream of St. Mary's College Bridge	*688
			At upstream corporate limits	*703
		Burns Valley Creek	About 150 feet downstream of County Highway 17	*667
			About 1,100 feet upstream of Sugar Loaf Road	*678
			About 5,800 feet upstream of Sugar Loaf Road	*691
		Pleasant Valley Creek	Just upstream of County Highway 15	*662
			About 1,300 feet upstream of Holler Hill Road	*665
		Crooked Slough	Shoreline	*654
		Shallow Flooding	North of intersection of Goodview Road and U.S. Route 14.	*662
			Each of intersection of Goodview Road and U.S. Route 14.	*671
			South of intersection of Goodview Road and U.S. Route 14.	*671
Maps available for inspection at the Director of Public Works' Office, City Hall, 207 Lafayette Street, Winona, Minnesota.				
Missouri	(C) Fayette, Howard County (Docket No. FEMA-6286).	Adams Fork	About 200 feet downstream of abandoned Missouri-Kanasas-Texas Railroad.	*636
			About 800 feet upstream of County Highway E	*658
		Bonne Femme	About 1,500 feet downstream of State Highway 240	*629
			About 3,600 feet upstream of State Highway 240	*635
		West Branch Bonne Femme Creek	About 1,900 feet upstream of mouth	*634
			Just downstream of Reynolds Street	*654
Maps available for inspection at the City Hall, 117 South Main, Fayette, Missouri.				
Missouri	(T) New Franklin, Howard County (Docket No. FEMA-6286).	Bonne Femme Creek	At southeastern corporate limits	*599
			At northern corporate limits	*600
		Missouri River	About 0.9 mile downstream of Highway 40	*599
			About 0.17 mile upstream of U.S. Highway 40	*600
Maps available for inspection at City Hall, New Franklin, Missouri.				
Missouri	(C) Orrick, Ray County (Docket No. FEMA-6286)	Missouri River	About 0.34 mile downstream of Atchison, Topeka and Santa Fe Railway.	*718
			About 1.67 miles upstream of Atchison, Topeka and Santa Fe Railway.	*721
		Keeney Creek	About 2,900 feet downstream of Fleenor Street	*718
			About 260 feet downstream of State Highway 210	*720
Maps available for inspection at the City Hall, Orrick, Missouri.				
Missouri	(Uninc.) Ray County, (Docket No. FEMA-6286)	Missouri River	At downstream county boundary	*692

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
			Just upstream of State Highway 13	*703
			About 0.75 mile upstream of county boundary	*723
		Fishing River	At mouth	*714
			About 0.1 mile downstream of Norfolk and Western Railway.	*722
			At upstream county boundary	*731
		East Fork Fishing River	About 0.9 mile downstream of County Road	*789
			About 0.3 mile upstream of County Road	*813
		Crooked River	Mouth at Missouri River	*696
			Just downstream of Burlington Northern Railroad	*722
			Just downstream of County Highway D	*795
			About 5.4 miles upstream of County Highway D	*834
		East Fork Crooked River	At confluence with Crooked River	*704
			Just upstream of Burlington Northern Railroad	*721
			Just upstream of County Road K	*747
			About 1.5 miles upstream of County Highway	*792
		West Fork Crooked River	At mouth	*711
			Just upstream of State Highway 13	*733
			Just upstream of State Route 10 (upstream crossing)	*788
		Keeney Creek	At mouth	*714
			About 0.05 mile downstream of State Highway 210	*720
			Just downstream of Burlington Northern Railroad	*743
		West Fork Crooked River Tributary No. 1	At mouth	*752
			Just downstream of Swanwick Road	*770
		Cockerel Creek	At mouth	*809
			About 0.1 mile upstream of County Highway BB	*820
		Tributary A	At mouth	*752
			Just downstream of County Highway B	*773
		Tributary B	At mouth	*764
			Just downstream of County Highway V	*817
			About 0.3 mile upstream of County Highway V	*824
		Rocky Fork Crooked River	At mouth	*757
			Just upstream of County Highway	*770
		Fire Branch Crooked River	At confluence with Crooked River	*771
			About 0.1 mile downstream of County Highway HH	*806
			About 0.05 mile upstream of County Road D	*898
		Davis Branch Crooked River	At mouth	*785
			Just upstream of County Highway	*787
		Kings Branch Crooked River	At confluence with Crooked River	*791
			About 0.9 mile upstream of confluence with Crooked River.	*793

Maps available for inspection at the Ray County Courthouse, Richmond, Missouri.

Nebraska	(Uninc.), Saunders County (Docket No. FEMA-6286	Platte River (Riverward of Levee)	At south county boundary 1.1 miles downstream of U.S. Highway 6.	*1,059
			Just 500 feet upstream of State Highway 92	*1,123
			Just downstream of City of Fremont extraterritorial jurisdiction about 1.5 miles downstream of U.S. Highway 77.	*1,189
			Just downstream of Chicago and North Western Railroad.	*1,224
			At west county boundary 7.16 miles upstream of State Highway 79.	*1,306
		Platte River (Landward of Levee)	About 1.0 miles downstream of the confluence of Elkhorn River.	*1,075
			About 1.5 miles downstream of State Highway 92	*1,114
			About 1.7 miles upstream of State Highway 92	*1,130
			About 400 feet upstream of the Union Pacific Railroad	*1,146
			About 800 feet upstream of State Highway 64	*1,156
			About 1.0 miles upstream of State Highway 64	*1,161
			About 5.9 miles upstream of State Highway 64	*1,183
			Just upstream of State Highway 79	*1,272
			About 1.7 miles upstream of State Highway 79	*1,280
		Clear Creek	Just upstream of County Road 29	*1,077
			Just downstream of County Road 37	*1,079
		Johnson Creek	At mouth	*1,078
			Just downstream of County Road 37	*1,079
		Cottonwood Creek	Just upstream of County Road 77	*1,312
			Just downstream of County Road 85	*1,358
		Tributary to Cottonwood Creek	At mouth	*1,330
			Just upstream of County Road 18	*1,351
		Salt Creek	About 0.6 miles downstream of U.S. Highway 6	*1,059
			Just downstream of County Road 110	*1,085
		Wahoo Creek	At mouth	*1,068
			Just upstream of Burlington Northern Railroad	*1,070
			About 1.6 miles upstream of Old State Highway 63	*1,073
		Shallow Flooding (overflow from Platte River).	West of Burlington Northern Railroad (from County Road 45 south to County Road 21).	*1

Maps available for inspection at the Zoning Administrator's Office, County Courthouse, Wahoo, Nebraska.

New Jersey	Linwood, city, Atlantic County (Docket No. FEMA-6286).	Patcong Creek	Upstream corporate limits	*12
			From downstream corporate limits to spillway at Central Avenue.	*9
		Scull Bay	Entire shoreline within community	*9

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
		Isaac's Creek	Entire shoreline within community	*9
		Mulburry Thorofare	Entire shoreline within community	*9
		Steelman Bay	Entire shoreline within community	*9
		Sod Thorofare	Entire shoreline within community	*9
Maps available for inspection at the Municipal Building, 400 Poplar Avenue, Linwood, New Jersey.				
New Jersey	Northfield, city, Atlantic County (Docket No. FEMA-6286.	Patcong Creek	Downstream corporate limits	*12
			Confluence with Maple Run	*12
		Maple run	Confluence with Patcong Creek	*12
			Mill Road upstream side	*14
			Upstream corporate limits	*14
		Great Egg Harbor Bay	Tidal flooding affecting Isaac's Creek and the eastern portion of the community.	*9
Maps available for inspection at the Municipal Building, 1600 Shore Road, Northfield, New Jersey.				
New Jersey	Pleasantville, city, Atlantic County (Docket No. FEMA-6286).	Lakes Bay	Entire shoreline within community	*9
		Absecon Bay	In the vicinity of the northeast portion of the community.	*9
Maps available for inspection at the Municipal Building, 18 North Front Street, Pleasantville, New Jersey.				
New York	Cobleskill, town, Schoharie County (Docket No. FEMA-6262).	Cobleskill Creek	Downstream corporate limits	*719
			Upstream of Howes Cave Road	*754
			Upstream of Barnerville Road	*824
			Approximately 20,000 feet downstream of upstream corporate limits.	*879
			Upstream corporate limits	*919
Maps available for inspection at the Town Office, Union Street, Cobleskill, New York.				
New York	Fort Johnson, village, Montgomery County (Docket No. FEMA-6299).	Mohawk River	Downstream corporate limits (extended)	*278
			Upstream corporate limits (extended)	*280
		Kayaderosseras Creek	Confluence with Mohawk Creek	*279
			Upstream of State Route 67/Fort Johnson Avenue	*315
			Upstream corporate limits	*350
Maps available for inspection at the Office of the Village Clerk, 36 Fort Johnson Avenue, Fort Johnson, New York.				
New York	Hastings, town, Oswego County (Docket No. FEMA-6286).	Oneida River	Downstream corporate limits	*372
			Approximately 19,000 feet upstream of corporate limits	*373
		Oneida Lake	Entire shoreline within community	*373
Maps available for inspection at the Town Hall, Route 11, Hastings, New York.				
New York	Hewlett Bay Park, village, Nassau County (Docket No. FEMA-6247).	Macy Channel	Entire shoreline	*8
Maps available for inspection at the Village Hall, 30 Piermont Avenue, Hewlett, New York.				
New York	Hewlett Neck, village, Nassau County (Docket No. FEMA-6247).	Brosewere Bay	Entire shoreline within community including the shoreline of Georges Creek within the community.	*8
Maps available for inspection at the Village Hall, 30 Piermont Avenue, Hewlett, New York.				
New York	Kensington, village, Nassau County (Docket No. FEMA-6286).	Manhasset Bay	Entire shoreline within Kensington	*15
Maps available for inspection at the Village Hall, 2 Nassau Drive, Great Neck, New York.				
New York	Madison, town, Madison County (Docket No. FEMA-6286).	Oriskany Creek	Downstream corporate limits	*1,000
			Approximately 3,000 feet upstream of corporate limits	*1,025
			Approximately 10,500 feet upstream of corporate limits	*1,066
			Upstream of Water Street	*1,086
			Approximately 2,700 feet upstream of Dam	*1,126
		Payne Brook	Downstream corporate limits	*1,125
			Downstream of Spillway Road	*1,165
Maps available for inspection at the Town Hall, Route 20, Madison, New York.				
New York	Massapequa Park, village, Nassau County (Docket No. FEMA-6278).	Jones Creek	Shoreline from northern corporate limits to approximately 50 feet south of extended Wall Court.	*7
			Shoreline from approximately 50 feet south of extended Wall Court to confluence with South Oyster Bay.	*8
		South Oyster Bay	Shoreline from confluence with South Oyster Bay to approximately 230 feet south of extended Sue Drive.	*8
			Shoreline from approximately 230 feet south of extended Sue Drive to northern corporate limits.	*7
Maps available for inspection at the Village Hall, 151 Front Street, Massapequa, New York.				
New York	Minden, town Montgomery County (Docket No. FEMA-6286).	Mohawk River	Downstream corporate limits	*307
			Upstream of Bridge Street	*314
			Upstream corporate limits	*320
		Otsquago Creek	Downstream corporate limits	*353
			Upstream of State Route 80	*368

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
			Upstream of Spring Street	*410
			At Hoffman Road (extended)	*416
			Salt Springville Road	*522
Maps available for inspection at the Minden Town Office, Route 80, R.D. 3, Fort Plain, New York.				
New York	Oriskany Falls, village, Oneida County (Docket No. FEMA-6286).	Oriskany Creek	Downstream corporate limits	*927
			Upstream of Cassidy Street	*963
			Upstream of Madison Street	*985
			Upstream corporate limits	*995
		Lindsley Brook	Confluence with Oriskany Creek	*945
			Upstream corporate limits	*945
Maps available for inspection at the Village Hall, 185 Main Street, Oriskany Falls, New York.				
New York	Saltaire, village Suffolk County (Docket No. FEMA-6262).	Atlantic Ocean	Entire shoreline within community	*14
Maps available for inspection at the Village Hall, Saltaire, New York.				
New York	Shelter Island, town, Suffolk County (Docket No. FEMA-6262).	Gardiners Bay	Shoreline from Hay Beach Point to Cornelius Point	*12
			Shoreline from Cornelius Point to Reel Point	*13
			Shoreline from Reel Point to a Point 0.02 mile northwest of Little Ram Island Drive (extended).	*12
			Shoreline from a point 0.02 mile northwest of Little Ram Island Drive (extended) to a point 0.1 mile northwest of Little Ram Island Drive (extended).	*11
			Shoreline from a point 0.1 mile northwest of Little Ram Island Drive (extended) to a point 0.5 mile northwest of Little Ram Island Drive (extended).	*10
			Shoreline from a point 0.5 mile northwest of Little Ram Island Drive (extended) to a point 0.6 mile northwest of Little Ram Island Drive (extended).	*11
			Shoreline from a point 0.6 mile northwest of Little Ram Island Drive (extended) to a point 0.9 mile east of Cobbetts Lane (extended).	*10
			Shoreline from 0.9 mile east of Cobbetts Lane (extended) to Burns Road (extended).	*11
			Shoreline from Burns Road (extended) to a point 0.59 mile east of Emerson Lane (extended).	*12
			Shoreline from a point 0.59 mile east of Emerson Lane (extended) to a point 0.31 mile southeast of Emerson Lane (extended).	*10
			Shoreline from a point 0.31 mile southeast of Emerson Lane (extended) to 0.46 mile east of Congdon Road (extended).	*12
			Shoreline from a point 0.46 mile east of Congdon Road (extended) to a point 0.31 mile east of Jupiters Lane (extended).	*10
			Shoreline from a point 0.31 mile east of Jupiters Lane (extended) to a point 0.5 mile southeast of Jupiters Lane (extended).	*12
			Shoreline from a point 0.5 mile southeast of Jupiters Lane extended to a point 0.86 mile southeast of Jupiters Lane (extended).	*10
			Shoreline from a point 0.86 mile southeast of Jupiters Lane (extended) to a point 0.18 mile southeast of Sungic Point.	*12
			Shoreline from a point 0.18 mile southeast of Sungic Point to Nichols Point.	*13
			Shoreline from Nichols Point to Mashomack Point	*12
		Shelter Island Sound	Shoreline from Mashomack Point to a point 0.19 mile northwest of Mashomack Point.	*12
			Shoreline from a point 0.19 mile northwest of Mashomack Point to a point 0.03 mile northeast of South Ferry Road (extended).	*10
			Shoreline from a point 0.03 mile northeast of South Ferry Road (extended) to Gracies Lane (extended).	*11
			Shoreline from Gracies Lane (extended) to a point 0.11 mile west of Tarkettle Road (extended).	*10
			Shoreline from a point 0.11 mile west of Tarkettle Road (extended) to a point 0.15 mile northwest of Tarkettle Road (extended).	*9
			Shoreline from a point 0.15 mile northwest of Tarkettle Road (extended) to a point 0.09 mile northeast of Simpson Road (extended).	*8
			Shoreline from a point 0.09 mile northeast of Simpson Road (extended) to a point 0.09 mile southeast of Simpson Road (extended).	*9
			Shoreline from a point 0.09 mile southeast of Simpson Road extended to a point 0.06 mile northwest of Montclair Road (extended).	*10
			Shoreline from a point 0.06 mile northwest of Montclair Road (extended) to a point 0.73 mile northwest of Montclair Road (extended).	*9

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
			Shoreline from a point 0.73 mile northwest of Montclair road (extended) to a point 0.26 mile northwest of Petticoat Lane (extended).	*8
			Shoreline from a point 0.26 mile northwest of Petticoat Lane (extended) to a point 0.12 mile south of Wheeler Drive (extended).	*9
			Shoreline from a point 0.12 mile south of Wheeler Drive (extended) to a point 0.03 mile northeast of Bayview Road (extended).	*8
			Shoreline from a point 0.03 mile northeast of Bayview Road (extended) to North Brand Drive (extended).	*9
			Shoreline from North Brand Drive (extended) to a point 0.90 mile northeast of South Silver Beach.	*10
			Shoreline from a point 0.9 mile northeast of South Silver Beach to Crab Creek Point.	*11
			Shoreline from Crab Creek Point to Hay Beach Point	*10
Maps available for inspection at the Town Hall, 44 North Ferry Road, Shelter Island, New York.				
New York	Stockport, town, Columbia County (Docket No. FEMA-6278).	Claverack Creek	Confluence with Kinderhook Creek and Stockport Creek.	*27
			Upstream of County Route 25	*38
			Downstream of Dam	*70
			Downstream of State Route 401	*99
			Upstream corporate limits	*121
		Fitting Creek	Confluence with Claverack Creek	*39
			Downstream of Fitting Road	*76
			Upstream corporate limits	*93
		Hudson River	Entire shoreline within community	*13
		Kinderhook Creek	Confluence with Claverack Creek and Stockport Creek	*27
			Upstream of Rossman Road	*41
			Upstream of Rossman Falls	*69
			Upstream corporate limits	*68
		Stockport Creek	Downstream of U.S. Route 9	*13
			Confluence with Claverack Creek and Stockport Creek	*27
Maps available for inspection at the Town Hall, Stottsville, New York.				
New York	Tully, village, Onondaga County (Docket No. FEMA-6286).	West Branch	Downstream corporate limits	*1,229
		Tioughnioga River	Downstream of Clinton Street	*1,246
			Upstream corporate limits	*1,275
		Tributary A	Confluence with West Branch Tioughnioga River	*1,235
			Upstream of Grove Street	*1,236
Maps available for inspection at the Municipal Building, One Railroad Avenue, Tully, New York.				
North Carolina	City of Monroe, Union County (FEMA-6286)	Bearskin Creek	Just downstream of Morgan Mill Road	*524
			Just downstream of U.S. Highway 74 and 601	*561
			Just downstream of Charlotte Avenue	*573
		Richardson Creek	Just upstream of Walker Avenue	*486
			Just upstream of U.S. Highway 601	*495
		Bearskin Creek Tributary	Just upstream of Seaboard Coast Line Railroad	*579
			Just downstream of Franklin Street	*588
		Richardson Creek Tributary	Just downstream of Quarry Road	*544
		Still Branch	Just downstream of the confluence of Still Branch Tributary.	*530
			Just downstream of Cresent Street	*574
		Still Branch Tributary	Just upstream of Parker Street	*533
			Just upstream of Hayne Street	*544
Maps available for inspection at City Hall, 300 West Crowell Street, Monroe, North Carolina 28110.				
Ohio	(Uninc.) Miami County (Docket No. FEMA-6286)	Great Miami River	About 1.68 miles downstream of Conrail	*813
			Just upstream of Eldean Road	*842
			Just upstream of U.S. Highway 36	*863
			About 0.27 mile upstream of county boundary	*863
		Great Miami River Bypass	At confluence with Great Miami River	*824
			At City of Troy corporate limits	*825
		Stillwater River	About 0.71 mile downstream of Sugar Grove Road	*871
			Just upstream of Falknor Road	*879
			At Village of Covington corporate limits (about 0.57 miles upstream of Conrail).	*895
		Garbry Creek	At Village of Piqua corporate limits	*903
			Just upstream of Looney Road	*924
			Just downstream of Troy Sidney Road	*976
		Greenville Creek	At mouth at Stillwater River	*869
			About 0.24 mile upstream of Range line Road	*924
			Just upstream of Croft Mill Road	*946
			Just downstream of State Route 721	*961
		Honey Creek	About 1.11 miles downstream of State Route 201	*814
			Just upstream of Dayton-Brandt Road	*842
			At county boundary	*860
		Shawnee Creek	At confluence with Rush Creek	*864
			Just upstream of Industry Road	*901
			About 0.29 mile upstream of Industry Road	*906
		Spring Creek	At mouth at Great Miami River	*838
			Just upstream of Piqua-Troy Road	*846
			About 2.48 miles upstream of Piqua-Troy Road	*899

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
		Rush Creek	At mouth at Great Miami River	*864
			Just upstream of Hetzler Road	*886
			Just downstream of Interstate 75	*916
		Island No. 3 Tributary	About 0.41 mile downstream of Chessie System	*813
			Just downstream of Interstate 75	*863
			Just upstream of Barnhart Road	*880
			Just upstream of McKaig Road	*902
			Just upstream of Stanfield Road	*922
			Just upstream of Washington Road	*936
			About 0.71 mile upstream of Washington Road	*945
		Eldean Tributary	At mouth at Great Miami River	*839
			Just upstream of Chessie System	*843
			Just downstream of Eldean Road	*868
		Swailes Road Tributary	At confluence with Island No. 3 Tributary	*817
			Just downstream of Peters Road	*835
		Staunton Tributary	At mouth at Great Miami River	*822
			Just upstream of Staunton Road	*835
			Just upstream of Piqua-Troy Road	*846
			Just upstream of Deweese Road	*881
			About 150 feet downstream of Polecat Road	*917
		Jones Run	About 0.1 mile downstream of State Highway 48	*902
			Just upstream of Jay Road	*959
			About 0.78 mile upstream of Jay Road	*991
Maps available for inspection at the County Engineer's Office, 201 West Main Steet, Troy, Ohio.				
Pennsylvania	Franklin, township, York County (Docket No. FEMA-6254).	North Branch Bermudian Creek	Downstream Corporate Limits	*490
			Approximately 100 feet upstream of Franklintown Road.	*505
			Confluence of Tributary No. 2	*515
			Confluence of Tributary No. 3	*527
			Approximately 200 feet upstream of U.S. Route 15	*549
			Approximately 200 feet upstream of Century Lane	*565
		Tributary No. 1	Approximately 100 feet downstream of downstream Corporate Limits.	*508
			At first upstream Corporate Limits	*540
			At second upstream Corporate Limits	*572
			Approximately 50 feet upstream of Stoney Run Road	*586
			Approximately 100 feet upstream of Private Road located upstream of State Route 194.	*604
		Tributary No. 2	Confluence with North Branch Bermudian Creek	*515
			Approximately 150 feet upstream of U.S. Route 15	*526
		Tributary No. 3	Confluence with North Branch Bermudian Creek	*527
			Approximately 700 feet upstream of Franklin Church Road.	*538
		Dogwood Run	Approximately 200 feet downstream of downstream of Corporate Limits.	*635
			Approximately 1,400 feet upstream of Greenhouse Road.	*660
			Approximately 3,100 feet upstream of Greenhouse Road.	*687
Maps available for inspection at the Franklin Township Building, Dillsburg, Pennsylvania.				
Utah	North Ogden, city, Weber County (FEMA)-6157)	North Ogden Tributary	140 feet downstream from center of 3100 North Street	*4,545
		Coldwater Gulch	200 feet upstream from center of 500 East Street (at culvert entrance under 500 East Street).	*4,396
		Barrett Gulch	At retention pond east of 450 East Street	*4,750
Maps available for inspection at City Hall, 505 East 2600 North, North Ogden, Utah.				
Utah	Ogden, city, Weber County (FEMA-6153)	Weber River	Downstream edge of 24th Street Viaduct	*4,295
			Upstream edge of State Highway 79	*4,319
		Odgen River	Approximately 150 feet upstream of center of Wall Avenue.	*4,287
			Downstream edge of Valley Drive	*4,407
		Burch Creek	Upstream edge of Shadow Valley Drive	*4,905
		Beus Creek	Approximately 100 feet upstream of center of intersection of 4600 South and Old Post Road.	*4,767
		Jumpoff Gulch	Upstream edge of Jackson Avenue	*4,416
Maps available for inspection at Planning Department, 252 25th Street, Odgen, Utah.				
Washington	Naches, town, Yakima County (Docket No. (FEMA-6286).	Naches River	Approximately 2,700 feet downstream of South Naches Road.	*1,440
			Approximately 2,300 feet upstream of South Naches Road.	*1,470
Maps available for inspection at the Town Hall, Naches, Washington.				

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

Issued: September 1, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-25885 Filed 9-20-82; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 95, 205, 304 and 1392

Equipment Acquired Under Public Assistance Programs

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This rule revises and consolidates current HHS regulations concerning Federal financial participation in the cost of equipment under HHS supported public assistance programs. The rule also revises and consolidates current regulations on the management and disposition of equipment under these programs.

The rule would permit State public assistance agencies to claim the cost of most of their equipment acquired at the time of purchase rather than depreciating the equipment over its useful life as required by the current regulations. This change would allow these agencies to claim Federal financial participation in the cost of the equipment at an earlier date than under the current regulations and would simplify the accounting requirements associated with the equipment.

EFFECTIVE DATE: October 21, 1982.

FOR FURTHER INFORMATION CONTACT: Edward M. Tracy, (202) 245-7411.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the **Federal Register** on July 24, 1981 at 46 FR 38280 inviting comments on a proposed revision to the Department's current regulations concerning Federal financial participation in the cost of equipment acquired under HHS supported public assistance programs. The regulation, Subpart G of 45 CFR Part 95, allows equipment costing $25,000 or less to be claimed in the period acquired. Public comments were invited for 60 days ending September 21, 1981. Comments were received from eleven State or local agencies and two medical care providers and were considered in the development of the final regulation.

All the comments to the Notice of Proposed Rulemaking were favorable and many suggested that the Department liberalize its requirements even further by eliminating all prior approval requirements. The following summarizes and discusses the major public comments in response to the Notice of Proposed Rulemaking:

1. Applicability.

Comment: The regulation does not indicate whether the undepreciated amount of equipment acquired prior to the effective date of the regulation can be claimed as of the effective date of this rule.

Response: Equipment acquired before the rule and not fully depreciated as of the effective date of the rule will continue to be subject to the established depreciation schedule in effect prior to the rule.

2. Scope.

Comment: Two medical care providers, while supporting the concept, wanted to know if the rule was applicable to other than State public assistance agencies.

Response: The Notice of Proposed Rulemaking indicated that this Subpart applied to equipment purchased by State public assistance agencies, and under certain conditions, to other providers under contract with a State public assistance agency. Section 95.705(b) identifies these conditions. Specifically, equipment costing $25,000 or less may be claimed by a provider under a service agreement or cost-type contract with the State public assistance agency where the State agency (1) approves the specific purchase and agrees to accept its cost as a claim, and (2) the service agreement or cost-type contract requires the transfer of the equipment or its residual value to the State agency when the equipment is no longer needed to carry out the work under the service agreement or cost-type contract.

3. Relationship to the Food and Nutrition Service (FNS) Requirements.

Comment: To achieve the maximum benefit associated with simplification, the requirements of both the Department of Health & Human Services and the Department of Agriculture's FNS should be the same.

Response: We agree with the comment. Standardization and simplification of a State agency's system of accounting for depreciation requires a uniform approach by the Federal Government. HHS is working with the FNS to standardize these requirements.

Finally, the rule reflects several technical changes resulting from the review of the proposed rule, however, it does not contain any substantive changes. Reference to Parts 1393 and 1396 were eliminated since the Interim Final Block Grant rules issued on October 1, 1981 at 46 FR 48582 removed these two Parts.

The Department has determined that this is not a "major rule" as defined in Executive Order 12291. Because of the continuing nature of the programs affected, the proposed regulation is not expected to have a significant effect on costs in the long-term. There will probably be some additional costs during the transition period where some States convert from depreciation on newly acquired equipment to expensing of the equipment in the year of purchase. However, this is not expected to result in a substantial increase in the overall administrative costs of the programs since equipment is only a relatively small part of these costs, and because a number of States currently expense equipment purchases. Pursuant to the provisions of 5 USC Section 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Dated: August 18, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

List of Subjects

45 CFR Part 95

Claims, Computer technology, Grant programs—health programs—social programs, Social security.

45 CFR Part 205

Administrative practice and procedure, Aid to families with dependent children, Grant programs—social programs, Public assistance programs, Reporting requirements.

45 CFR Part 304

Child welfare, Grant programs—social programs.

45 CFR Part 1392

Aid to families with dependent children, Child welfare, Grant programs—social programs, Guam, Northern Marjana Islands, Puerto Rico, Virgin Islands, Volunteers.

Accordingly, a new Subpart G is added to 45 CFR Part 95, and 45 CFR Parts 205, 304 and 1392 are amended as follows:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

A. 45 CFR 205.160 is revised to read as follows:

§ 205.160 Equipment—Federal financial participation.

Claims for Federal financial participation in the cost of equipment for the cash assistance programs under Titles I, IV–A, X, XIV, XVI [AABD] and for the separate administrative unit established under Section 402(a)(19)(G) of the Social Security Act are to be determined in accordance with Subpart G or 45 CFR Part 95. Requirements concerning the management and disposition of equipment under these Titles are also prescribed in Subpart G of 45 CFR Part 95.

PART 304—FEDERAL FINANCIAL PARTICIPATION

B. 45 CFR 304.24 is revised to read as follows:

§ 304.24 Equipment—Federal financial participation.

Claims for Federal financial participation in the cost of equipment under the Child Support Enforcement Program are to be determined in accordance with Subpart G of 45 CFR Part 95. Requirements concerning the management and disposition of equipment under the Child Support Enforcement Program are also prescribed in Subpart G of 45 CFR Part 95.

PART 1392—SERVICE PROGRAM FOR FAMILIES AND CHILDREN; TITLE IV: PARTS A AND B OF SOCIAL SECURITY ACT

C. 45 CFR 1392.66 for the Title IV–B Child Welfare Services Program and the Title IV–A Services Program in the Territories is revised to read as follows:

§ 1392.66 Equipment—Federal financial participation.

Claims for Federal financial participation in the cost of equipment under the Child Welfare Services Program and the Services Program in the Territories are to be determined in accordance with Subpart G of 45 CFR Part 95. Requirements concerning the management and disposition of equipment under these programs are also prescribed in Subpart G of 45 CFR Part 95.

PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS (PUBLIC ASSISTANCE AND MEDICAL ASSISTANCE)

F. 45 CFR 95.641 is revised to read as follows:

§ 95.641 Exemption from Subpart G of this part.

The capitalization and depreciation provisions of Subpart G of this Part do not apply to ADP equipment provided the Department approves the ADP equipment purchase and approves the claiming of the equipment costs in the period acquired. The equipment management and equipment disposition provisions of Subpart G of this Part do apply to ADP equipment.

G. 45 CFR Part 95 is amended by adding a new Subpart G to read as follows:

Subpart G—Equipment Acquired Under Public Assistance Programs

Sec.

95.701 Purpose and scope of subpart.
95.703 Definitions.
95.705 Equipment costs—Federal financial participation.
95.707 Equipment management and disposition.

Authority: Sec. 1102.49 Stat. 647, 42 U.S.C. 1302.

Subpart G—Equipment Acquired Under Public Assistance Programs.

§ 95.701 Purpose and scope of subpart.

(a) This subpart prescribes requirements concerning the computation of claims for Federal financial participation in the cost of equipment under public assistance programs. This subpart also prescribes requirements for the management and disposition of equipment whose costs are claimed for Federal financial participation under these programs.

(b) This subpart applies to equipment purchased by State agencies (as defined in § 95.703) and to equipment purchased under service agreements with other State agencies and under cost-type contracts.

§ 95.703 Definitions.

As used in this subpart: "Acquisition cost" of an item of purchased equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective intransit insurance shall be included in or excluded from the unit acquisition cost in accordance with the regular accounting practices of the organization purchasing the equipment. If the item is acquired by trading in another item and paying an additional amount, "acquisition cost" means the amount received for trade-in plus the additional outlay.

"Equipment" means an article of tangible personal property that has a useful life of more than two years and an acquisition cost of $500 or more. Any recipient may use its own definition of equipment, if its definition would at least include all items of equipment as defined here.

"Public Assistance Programs" means programs authorized by Titles I, IV–A, IV–B, IV–C, IV–D, IV–E, X, XIV, XVI (AABD) and XIX of the Social Security Act, and programs authorized by the Immigration and Nationality Act as amended by the Refugee Act of 1980 (Pub. L. 96–212).

"State" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Northern Mariana Islands and Guam.

"State Agency" means the State agency administering a public assistance program(s). This term includes local government public assistance agencies which administer public assistance programs under a State supervised system and the State agencies which supervise the local agencies.

§ 95.705 Equipment costs—Federal financial participation.

(a) *General rule.* In computing claims for Federal financial participation, equipment having a unit acquisition cost of $25,000 or less may be claimed in the period acquired or depreciated, at the option of the State agency. Equipment having a unit acquisition cost of more than $25,000 shall be depreciated. For purposes of this section, the term "depreciate" also includes use allowances computed in accordance with the cost principles precribed in Subpart Q of 45 CFR Part 74.

(b) *Exceptions.* (1) Equipment purchased under service agreements with other State agencies and under cost-type contracts shall be depreciated. However, equipment having a unit acquisition cost of $25,000 or less may be claimed in the period acquired if (a) the State agency approved the specific purchase and the claiming of the cost of the item, and (b) the contract or service agreement requires that the equipment or its residual value be transferred to the State agency when the equipment is no longer needed to carry out the work under the contract or service agreement.

(2) Reimbursement for ADP equipment having an acquisition cost in excess of $25,000 and subject to Subpart F of this Part must be depreciated over its useful life unless otherwise specifically provided for by the Department. ADP equipment not subject to Subpart F is subject to the requirements of this Subpart.

§ 95.707 Equipment management and disposition.

(a) An item of equipment is subject to the property rules in Subpart O of 45 CFR Part 74 if the total cost of the item was claimed in the period acquired and if the item was accepted for Federal financial participation as a direct cost under a single program or program activity. These rules also apply to ADP equipment where the State agency was permitted under Subpart F of this part to claim the total cost of the equipment in the period acquired.

(b) Other items of equipment whose costs are claimed for Federal financial participation (i.e., equipment that is capitalized and depreciated or is claimed in the period acquired and charged to more than one program) are not subject to the specific requirements in Subpart O of 45 CFR Part 74. However, the State agency is responsible for adequately managing the equipment, maintaining records on the equipment, and taking periodic physical inventories. Physical inventories may be made on the basis of statistical sampling. The following requirements apply to the disposition of this equipment:

(1) If the cost of the equipment was claimed in the period acquired and the equipment is later sold, the proceeds of the sale shall be credited to current expenditures in approximate proportion to the distribution of the equipment's cost.

(2) If the cost of the equipment was claimed in the period acquired and the equipment is later transferred to an activity which is not involved in the performance of programs currently or previously funded by the Federal Government, an amount equal to the fair market value of the Equipment on the date of the transfer shall be credited to current expenditures in approximate proportion to the distribution of the equipment's costs.

(3) If the cost of the equipment was claimed in the period acquired and the equipment is later traded in on other equipment claims for Federal financial participation in the costs of replacement equipment shall be limited to the additional outlay.

(4) If the equipment was depreciated, any gain or loss on the disposition of the equipment shall be treated as a decrease or an increase to the depreciation expense of the period in which the disposition takes place. This provision does not apply to equipment whose costs were claimed for Federal financial participation through use allowances.

[FR Doc. 82-25967 Filed 9-20-82; 8:45 am]

BILLING CODE 4150-04-M

Proposed Rules

Federal Register
Vol. 47, No. 183
Tuesday, September 21, 1982

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1207

Potato Research and Promotion Plan; Hearing on Proposed Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rule.

SUMMARY: Notice is hereby given of a public hearing to be held to consider a proposed amendment of the Potato Research and Promotion Plan (hereinafter called the "Plan"). The proposal was submitted by the Potato Board, the industry organization administering the plan. The principal changes proposed would authorize an increase in the rate of assessment, the addition of a public member to the Board, and reimbursement of referendum and administrative costs to the Department. The text of the proposals to be considered is set forth below.

DATE: The hearing is scheduled for September 28, 1982, at 9:30 a.m.

ADDRESS: The hearing will be held in the Denver Federal Building, Room 1083, 1961 Stout Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–2615.

SUPPLEMENTARY INFORMATION: This action is exempt from the requirements set forth in E.O. 12291 and has been classified as nonmajor in accordance with USDA guidelines. The hearing is called pursuant to the provisions of the Potato Research and Promotion Act, as amended (title III of Pub. L. 91–670, 91st Congress, approved January 11, 1971, 84 Stat. 2041), and in accordance with the applicable rules of practice and procedure governing proceedings to formulate a plan (7 CFR Part 1200).

Seven days notice for this hearing should be sufficient since this amendment has already been widely discussed and strongly endorsed by all known potato organizations and the proposal is well-known within the industry. Therefore, any persons directly affected by the proposal would not be prohibited from participating in the hearing because of this notice period. Further, increasing operating costs since 1972 have seriously eroded the ability of the Potato Board to conduct an effective promotion program as mandated by Congress in approving the Potato Research and Promotion Act and the amendment to it. Therefore, it is impracticable and contrary to the public interest to give additional notice.

The public hearing is for the purpose of:

(a) Receiving evidence about the economic and marketing conditions which relate to the proposed amendment and the program under which it would be effective;

(b) Determining whether there is a need for an amendment to the Potato Research and Promotion Plan to carry out an effective and continuous coordinated program of research, development, advertising, and promotion for potatoes;

(c) Determining whether the proposed amendment or an appropriate modification of it will tend to effectuate the declared policy of the act.

The Regulatory Flexibility Act (Pub. L. 96–354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of this action, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Under the provisions of the Potato Research and Promotion Act, potato producers who grow less then five acres of potatoes are exempt from paying assessments. Nonexempt potato producers are subject to the same regulatory, recordkeeping, and reporting requirements of the law. In addition, all such nonexempt producers may receive a refund of their assessment upon demand to the National Potato Promotion Board. Interested parties are invited to present evidence at the hearing on the probable regulatory and informational impact of the proposals on small businesses.

List of Subjects in 7 CFR Part 1207

Administrative practice and procedure, Advertising, Agricultural research, Potatoes.

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

The proposed amendment, set forth below, has not received the approval of the Secretary of Agriculture.

Proposal No. 1

Revise paragraphs (a) and (b) of § 1207.320 to read:

§ 1207.320 Establishment and membership.

(a) There is hereby established a National Potato Promotion Board, hereinafter called the "Board," composed of producers and the public as selected by the Secretary. The public representative to the Board shall be nominated by Board members in such manner as recommended by the Board and approved by the Secretary. Producer members shall be selected from nominations submitted by producers in the various States or groups of States pursuant to § 1207.322.

(b) Producer membership on the Board shall be determined on the basis of the potato production set forth in the latest Crop Production Annual Summary Report issued by the Crop Reporting Board, U.S. Department of Agriculture. Each of the 48 contiguous State's producer membership shall be initially determined on the basis of one member for each five million hundredweight of production, or major fraction thereof, produced within such State. Each State initially shall be entitled to at least one producer member on the Board. The public member shall have no direct financial interest in the commercial production or marketing of potatoes except as a consumer and shall not be a director, officer or employee of any firm so engaged. The basis for determining the membership of future boards shall be determined by the Secretary upon recommendation of the Board.

* * * * *

Proposal No. 2

§ 1207.320 [Amended]

Add a new paragraph (e) to § 1207.320 to read:

* * * * *

(e) In the event that producer Board members fail to select a public representative nominee the Secretary may appoint such a member.

Proposal No. 3

§ 1207.322 [Amended]

Where "members" or "nominees" appears in paragraphs (a), (b), and (c) of § 1207.322 insert "producer" before each. Also, add a new paragraph (d) to § 1207.322 to read:

* * * * *

(d) The public member shall be nominated by the producer members of the Board. The Board shall prescribe such additional qualifications, administrative rules and procedure for selection and voting for each candidate as it deems necessary and the Secretary approves.

Proposal No. 4

§ 1207.328 [Amended]

Amend paragraph (a) of § 1207.328 by adding "to nominate the public member;" after "of Board members;".

Proposal No. 5

§ 1207.341 [Amended]

Revise paragraph (b) of § 1207.341 to read:

* * * * *

(b) The Board is authorized to incur such expenses for research, development, advertising, or promotion of potatoes and potato products, such other expenses for the administration, maintenance, and functioning of the Board, and any referendum and administrative costs incurred by the Department of Agriculture as are approved pursuant to § 1207.361.

* * * * *

Proposal No. 6

§ 1207.342 [Amended]

Revise paragraph (a) of § 1207.342 to read:

(a) The funds to cover the Board's expenses shall be acquired by the levying of assessments upon handlers as designated in regulations issued by the Board. Such assessments shall be levied at a rate fixed by the Secretary which shall not exceed one-half of one per centum of the immediate past ten calendar year average United States average price received for potatoes by growers as reported by the Department of Agriculture and not more than one such assessment may be collected on any potatoes.

* * * * *

Proposal No. 7

Make such changes as may be necessary to make the entire Plan conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the Plan may be obtained from Kurt J. Kimmel, Fruit and Vegetable Division, AMS, Room 2545–S, U.S. Department of Agriculture, Washington, D.C. 20250, or from Robert B. Case, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, 721 19th Street, Room 365, Denver, Colorado 80202.

From the time this hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture;

Office of the Administrator, Agricultural Marketing Service;

Office of the General Counsel;

Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

(Title III of Pub. L. 91–670; 84 Stat; 7 U.S.C. 2611–2627)

Signed at Washington, D.C., on September 17, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82–26099 Filed 9–20–82; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 145

[Docket No. 82N–0160]

Canned Fruits; Proposal To Remove Standards of Identity for Canned Fruits With Rum

AGENCY: Food and Drug Administration.

ACTION: Proposal.

SUMMARY: The Food and Drug Administration (FDA) is proposing to remove the standards of identity for canned apricots with rum, canned cherries with rum, canned peaches with rum, and canned pears with rum and is inviting comments regarding the need for such standards. This action is taken in conjunction with FDA's plan for the retrospective review of existing standards to minimize regulatory burdens as required by the Regulatory Flexibility Act and Executive Order 12291.

DATE: Comments by November 22, 1982.

ADDRESS: Written comments, data, or information to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: FDA is required by the Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act of 1980 to review its existing regulations. FDA published a notice in the **Federal Register** of July 14, 1981 (46 FR 36333) announcing the undertaking of a systematic review of its regulations to minimize regulatory burden while maintaining an acceptable level of consumer protection. Among the regulations scheduled for review by FDA during the retrospective review process are the four standards of identity for canned fruits with rum. This action is also in accordance with the Administration's desire for fewer regulations.

In the **Federal Register** of October 23, 1947 (12 FR 6907), FDA published standards of identity for canned apricots with rum (21 CFR 27.13), canned cherries with rum (21 CFR 27.33), canned peaches with rum (21 CFR 27.3), and canned pears with rum (21 CFR 27.23). In the **Federal Register** of March 15, 1977 (42 FR 14302), these regulations were recodified as 21 CFR 145.118, 145.128, 145.173, and 145.178, respectively. Canned apricots with rum, canned cherries with rum, canned peaches with rum, and canned pears with rum conform to the definitions and standards of identity prescribed for canned apricots (21 CFR 145.115), canned cherries (21 CFR 145.125), canned peaches (21 CFR 145.170), and canned pears (21 CFR 145.175), respectively, except that they contain added rum in an amount such that the alcohol content is more than 3 percent but less than 5 percent by weight.

FDA is unaware of any manufacturer producing these foods. Therefore, the agency believes that the standards of

identity are no longer necessary to protect the interest of consumers. Comments are invited on whether there is a need for these standards. If the comments received do not indicate a need for these standards, FDA will remove them.

In accordance with the Regulatory Flexibility Act, FDA has reviewed the proposed rule to repeal the standards of identity for canned apricots with rum, canned cherries with rum, canned peaches with rum, and canned pears with rum and determined that this proposal would not have a significant impact on small entities including 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.

List of Subjects in 21 CFR Part 145

Canned fruit, Food standards, Fruits.

PART 145—CANNED FRUITS

§§ 145.118, 145.128, 145.173 [Removed]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Part 145 be amended by removing § 145.118 *Canned apricots with rum*, § 145.128 *Canned cherries with rum*, § 145.173 *Canned peaches with rum*, and § 145.178 *Canned pears with rum*.

Interested persons may, on or before November 22, 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: September 13, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-25713 Filed 9-20-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 168

[Docket No. 81N-0238]

Fructose; Termination of Consideration of Codex Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; termination of consideration.

SUMMARY: The Food and Drug Administration (FDA) is terminating consideration of the establishment of a United States standard for fructose based on the Recommended International Standard for Fructose (Codex standard) because there is neither sufficient interest nor need to warrant proposing a U.S. standard for this food.

EFFECTIVE DATE: September 21, 1982.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HHF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 11, 1981 (46 FR 60625), FDA published an advance notice of proposed rulemaking that offered interested persons an opportunity to review the Codex standard and to comment on the desirability and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration for acceptance by the Joint Food and Agriculture Organization/World Health Organization Codex Alimentarius Commission.

Four letters, each containing several comments, were received from three trade associations and an ingredient supplier, which stated that there is no need for a United States standard for fructose and recommended that the proposed standard be withdrawn from the rulemaking process.

One comment stated that it is inappropriate for FDA to state that fructose complying with the Codex standard may move in interstate commerce because the loose requirements of the standard would allow the use of fructose of lower quality than that defined by the Food Chemicals Codex specifications.

The agency advises that, inasmuch as this notice terminates consideration of need for a U.S. standard for this food, fructose which moves in interstate commerce in this country will continue to be a nonstandardized food and, regardless of whether it meets Codex requirements, must meet the requirements of all applicable U.S. laws and regulations. FDA considers fructose to be a generally recognized as safe (GRAS) ingredient, even though the agency has not published this determination, and as such, the agency advises that the food Chemicals Codex specifications for fructose constitute adequate minimum purity specifications for this ingredient in accordance with § 182.1(b)(3) (21 CFR 182.1(b)(3)).

Having considered all the comments received and all relevant information, FDA has concluded that there is neither sufficient interest nor need to warrant proposing a U.S. standard at this time for fructose under authority of section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

Therefore, under procedures in 21 CFR 130.6, notice is given that the Commissioner of Food and Drugs has terminated consideration of developing a U.S. standard for fructose based upon the Codex standard. This action is without prejudice to further consideration of the development of a U.S. standard for fructose upon appropriate justification.

The Codex Alimentarius Commission will be informed that an imported food that complies with the requirements of the Codex standard may move freely in interstate commerce in this country, providing it complies with applicable U.S. laws and regulations and the specifications for fructose in the Food Chemicals Codex, 3d Ed. (1981).

Dated: September 13, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-25992 Filed 9-20-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 330

[Docket No. 82N-0050]

Over-the-Counter Human Drugs Which Are Generally Recognized as Safe and Effective and Not Misbranded; Proposed Amendment of General Provisions; Correction

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration is correcting several items in the preamble of a proposal to include a warning concerning the use of systematically absorbed OTC drugs by pregnant or nursing women.

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 FR Doc. 82-24452 appearing at page 39470 in the issue for Tuesday, September 7, 1982 (47 FR 39470), the following changes are made:

1. On page 39470 in the second column in the first sentence of the second complete paragraph, the words "enacted legislation" are changed to read "adopted a regulation", and the words "Health and Safety" are changed to read "Administrative". In the third sentence, "statute" is changed to read "requirement".

2. On page 39471 in the second column in the third sentence of the first complete paragraph, the "law" is removed. In the fourth sentence, "law" is changed to read "regulation".

3. On page 39471 in the third column in the third sentence of the first complete paragraph, "law" is changed to read "regulation".

Dated: September 15, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-25991 Filed 9-20-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 357

[Docket No. 79N-0378]

Anthelmintic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In FR Doc 82-23024, at page 37062, in the issue of Tuesday , August 24, 1982, make the following corrections:

1. On page 37063, first column, first paragraph, line 3, correct "on" to read "no".

2. On page 37065, first column, ninth line from the bottom, correct "20:5484" to read "20:584".

3. On page 37066, last column, fifth paragraph, line 14, correct "December 22, 1980." to read "December 22, 1982."

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Foreign Investment In United States Real Property; Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary income tax regulations relating to foreign investment in U.S. real property interests. The temporary regulations also serve as a notice of proposed rulemaking for final income tax regulations.

DATES: Written comments and requests for a public hearing must be delivered or mailed before November 22, 1982.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-30-81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Diane L. Renfroe of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (LR-154-82), 202-566-3289.

SUPPLEMENTARY INFORMATION: The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** add a new part 6a, Temporary Income Tax Regulations under Subtitle C of Title XI of the Omnibus Reconciliation Act of 1980, to Title 26 of the Code of Federal Regulations. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR Part 1.

For the text of the temporary regulations, see FR Doc. 82-25829 [T.D. 7832] published in the Rules and Regulation portion of this issue of the **Federal Register.**

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not subject to Executive Order 12291.

List of Subjects in 26 CFR Part 1

Income taxes, Administration and procedure, Aliens, Exports, DISC, Filing requirements, Foreign investment in U.S., Foreign tax credit, Sources of income, United States investments abroad.

Comments and Requests For a Public Hearing

Before adopting the temporary and proposed regulations referred to in this document as final regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 82-25830 Filed 9-16-82; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Cancellation of Public Hearing on Modified Portion of the Illinois Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Cancellation of public hearing.

SUMMARY: OSM is announcing the cancellation of a public hearing on the adequacy of a proposed amendment to the Illinois permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977. This notice cancels the public hearing but does not alter the time and location at which the Illinois program and proposed amendment are available for public inspection, or the comment period during which interested persons may submit written comments on the proposed program amendment.

DATE: The following hearing is cancelled: The public hearing on the proposed amendment to the Illinois program scheduled for September 23, 1982, at 1:00 p.m.

ADDRESS: Written comments should be mailed or hand-delivered to: Daniel Jones, Field Office Director, Illinois Field Office, Office of Surface Mining, No. 4 Old Capital Plaza North, Springfield, Illinois 62701.

FOR FURTHER INFORMATION CONTACT: Daniel Jones, Field Office Director, Illinois Field Office, Office of Surface Mining, No. 4 Old Capital Plaza North, Springfield, Illinois 62701, Telephone: (217) 492-4486.

SUPPLEMENTARY INFORMATION: On September 1, 1982, notice of opportunity

for a public hearing on the proposed amendment to the Illinois program was published in the **Federal Register** (47 FR 38555). The notice stated that any person interested in making an oral or written presentation at the hearing should contact Daniel Jones by September 14, 1982, and that if no person contacted Mr. Jones to express an interest in participating in the hearing by the above date, the hearing will be cancelled. Because no one expressed an interest in attending the hearing, the hearing has been cancelled.

While there is no public hearing, interested persons may still submit written comments on the proposed amendment. Written comments must be received on or before 4:00 p.m. on September 27, 1982, to be considered in the Director's decision on whether to approve or disapprove the amendment. Written comments should be mailed or hand-delivered to the address listed above under "Address".

Dated: September 15, 1982.

Arthur W. Abbs,

Assistant Director, Program Operations and Inspection.

[FR Doc. 82-25855 Filed 9-20-82; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 944

Public Comment and Opportunity for Public Hearing on Modified Portions of the Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule: Notice of receipt of permanent program modifications; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of program amendments submitted to satisfy conditions imposed by the Secretary of the Interior on the approval of the Utah Permanent Regulatory Program (hereinafter referred to as the Utah program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This notice sets forth the times and locations that the Utah program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed at the public hearing.

DATES: Written comments from members of the public must be received by 4:30 p.m. on October 15, 1982, to be considered in the Secretary's decision on whether the proposed amendments satisfy the conditions of approval.

A public hearing on the proposed amendments has been scheduled for October 8, 1982. Any person interested in making an oral or written presentation at the hearing should contact Mr. Robert Hagen at the address and telephone number listed below by September 25, 1982. If no person has contacted Mr. Hagen by this date to express an interest in participating in this hearing, the hearing will be cancelled. A notice announcing any cancellation will be published in the **Federal Register.**

ADDRESSES: The public hearing will be held between 8:30 a.m. and 12 p.m. at the Conference Room, Room No. 4108, 4241 State Office Building, Salt Lake City, Utah. Written comments and requests for an opportunity to speak at the public hearing should be sent to Mr. Robert Hagen, Director, New Mexico Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central, N.W., Albuquerque, New Mexico 87102.

Copies of the Utah program, the proposed modifications to the program and all written comments received in response to this notice will be available for public review at the OSM Field Office above and at the OSM Headquarters office and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Utah Division of Oil, Gas and Mining, Department of Natural Resources, 4241 State Office Building, Salt Lake City, Utah, Telephone: (801) 533-5771

Office of Surface Mining, Room 5315, 1100 "L" Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, D.C. 20240, Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION: On March 3, 1980, the State of Utah submitted to the Department of the Interior its proposed permanent regulatory program under SMCRA.

On October 3, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved in part and disapproved in part the proposed program. Notice of that decision and the Secretary's findings were published in the **Federal Register** on October 24, 1980 (45 FR 70481-70510). The State of Utah resubmitted the program for approval by the Secretary on December 23, 1980. The resubmitted program included those portions of the initial submission not approved by the Secretary on October 3, 1980. After thoroughly reviewing the program resubmission and providing an opportunity for the public to comment, the Secretary of the Interior determined that the Utah program, including the resubmission did, with minor exceptions, meet the Federal permanent program regulations. Accordingly, the Secretary of the Interior conditionally approved the Utah program subject to the correction of twelve minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the January 21, 1981 **Federal Register** (46 FR 5899-5915).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Utah program can be found in the January 21, 1981 **Federal Register** (46 FR 5899-5915).

In accepting the Secretary's conditional approval, Utah agreed to satisfy conditions "a"-"e" by December 1, 1981, and conditions "f"-"l" by July 1, 1981.

Subsequently, Utah requested an extension of the deadline to meet conditions "f", "g", and "h" until January 1, 1982. On October 30, 1981 (46 FR 54070), OSM announced the Secretary's decision to approve the extension.

Upon the State's request the deadline for the State to meet condition "f" was further extended to September 1, 1982, and the deadline for the State to meet condition "h" to January 1, 1983 (47 FR 234155-234156, May 27, 1982).

On June 29, 1981, Utah submitted statutory and regulatory revisions intended to satisfy conditions "a"-"e", "g" and "i"-"l".

On June 22, 1982 (47 FR 26827-26831), the Assistant Secretary for Energy and Minerals announced his decision to remove conditions "a"-"e", "j"and "l" and to grant Utah until September 1, 1982, to submit modifications to satisfy conditions "g", "i" and "k". In the June 22, 1982 notice, the Assistant Secretary also announced his decision to impose a new condition "m" requiring the State to correct by January 1, 1983, a deficiency in the State program which had come to OSM's attention.

On August 26, 1982, Utah adopted and submitted to OSM regulatory modifications intended to satisfy conditions "f", "g", "i" and "k". With regard to conditions "g", "i" and "k", Utah previously submitted on June 29, 1981, amendments to address those conditions. Because the Secretary determined that the provisions submitted by Utah on June 29, 1981, did not fully satisfy the conditions of approval, the State was granted an extension until September 1, 1982, to submit additional modifications to meet those conditions.

Following is a description of the provisions submitted by the State on August 26, 1982, and of the conditions they are intended to satisfy:

Condition "f" of the Secretary's approval of Utah's program stipulates that Utah must submit to the Secretary by September 1, 1982, copies of fully enacted regulations adopting standards for the reduction of highwalls in UMC 817.101(b)(1) to be consistent with 30 CFR 817.101 and Section 510 of SMCRA, or otherwise amend its program to accomplish the same result. To satisfy this condition, Utah amended UMC 817.101(b) by adding a new paragraph (8) which sets forth three additional criteria that must be met before the Division may allow the retention of highwalls.

Condition (g) of the Secretary's conditional Utah program approval states that Utah must submit by September 1, 1982, copies of fully enacted regulations adopting a sediment pond exemption provision in UMC 817.42(a)(3) consistent with 30 CFR 817.42(a)(ii)(A).

In response to this condition, the State previously submitted on June 29, 1981, the following amended version of UMC 817.42(a)(3)(i) and 817.42(a)(3)(ii)(A)(B): 817.42(a)(3)(i): The person who conducts the underground coal mining activities demonstrates, by the use of alternative sediment control measures, that the drainage will:

(A) Either meet all applicable State and Federal effluent limitation standards, or

(B) Not degrade the quality of receiving waters.

817.42(a)(3)(ii)(A): There shall be no mixture of undisturbed drainage with a discharge from the underground workings

(B) Any mixing of disturbed area drainage with a discharge from underground mine workings shall:

(1) Be passed through approved treatment facilities, as necessary, and

(2) Meet all applicable State and Federal effluent limitation standards, where it leaves the permit area.

After reviewing this provision, the Director determined that it was inconsistent with the Federal standard in two respects (see 47 FR 26827–26831, June 22, 1982).

The above version of UMC 817.42(a)(3)(i) specified that the regulatory authority may authorize an exemption from the sedimentation pond requirement if the underground mine operator demonstrates that the drainage *either* meets applicable effluent limitation standards *or* does not degrade the quality of receiving waters. The Secretary determined that the State's provision was inconsistent with OSM's regulations at 30 CFR 817.42(a)(3)(i) which requires that the operator demonstrate that the drainage meets both the effluent limitation standards and the water quality standards for receiving streams.

In addition, the previously submitted version of UMC 817.42(a)(3)(i)(B) provided that the person who conducts underground coal mining activities shall demonstrate that the drainage will not degrade the quality of receiving waters. However, the State regulation did not specify what standards were to be used in determining whether the quality of receiving waters had been degraded. The Secretary determined that Utah's regulation must specify that the State will rely on applicable State and Federal water quality standards to determine whether the quality of receiving waters had been degraded.

Because Utah submitted material to satisfy this condition which the State, in good faith believed to be adequate, the Secretary decided to extend the deadline for Utah to satisfy condition "g" until September 1, 1982, in order to allow the State time to submit further modifications to address the deficiencies noted above.

The amendment submitted by Utah on August 26, 1982, on which the Secretary invites comment, further revises UMC 817.42(a)(3) to provide (1) that the sedimentation pond exemption may be granted only for small areas and (2) that UMC 817.42(a)(3)(i) be revised to read as follows: "The person who conducts the underground coal mining activities demonstrates, by the use of alternative sediment control measures, that the drainage will met all applicable State and Federal effluent limitation standards."

Condition (i) of the Secretary's conditional Utah program approval states that Utah must submit by September 1, 1982, copies of fully enacted regulations adopting well transfer liability provisions in UMC 817.53(c) consistent with 30 CFR 817.53(c).

In response to this condition, the State previously submitted on June 29, 1981, the following amended sections UMC 817.53(c) and SMC 816.53(c): (c) Upon an approved transfer of a well, the transferor shall be secondarily responsible to the regulatory authority for the transferee's obligations under subparagraphs (b)(2) and (b)(3) of this section until final release of the bond or other equivalent guaranty required by Subchapter J for the area in which the well is located. Any legal liability of the transferor for damage to persons or property from the well shall be determined in accordance with applicable law.

The Secretary found (47 FR 26827–26831, June 22, 1982) that the amended rules previously submited by Utah were less effective than the corresponding Federal regulations. Under 30 CFR 816.53(c), the transferor shall be secondarily liable for damages to "persons or property from the well" until release of the bond. Utah's rules differed from their Federal counterparts in that the transferor was not secondarily liable for damage to persons or property but rather "secondarily responsible" to the regulatory authority for meeting the requirements of the State program regulations. Under Utah's previously submitted regulation the legal liability of the transferor for damage to persons or property from the well would have been determined in accordance with applicable law. The Secretary determined that the State's provision was, therefore, not as effective as the Federal regulations because the transferor was not held secondarily liable in all cases for damages to persons or property. Because Utah submitted material to satisfy this condition which the State, in good faith, believed to be adequate, the Secretary decided to extend the deadline for Utah to satisfy this condition to September 1, 1982.

On August 26, 1982, Utah submitted for OSM's approval an amendment to UMC 817.53(c) and SMC 816.53(c) which deletes in each the words "responsible to the regulatory authority" and inserts "secondarily liable" in their place.

Condition (k) of the Secretary's conditional Utah program approval states that Utah must submit by September 1, 1982, copies of fully enacted regulations prohibiting the placement of certain materials on the downslope in steep slope areas in UMC 817.101(c) consistent with 30 CFR 826.12(a).

In response to this condition, the State previously submitted the following amended section UMC 817.101(c):

(c) The following materials shall be prevented from being placed on the downslope of a steep slope as defined in UMC 700.5, except that nothing in this section shall prohibit the placement of material in road and portal pad embankments located on the downslope, so long as the material used and the embankment design comply with the applicable requirements of UMC 817.150–817.180 and the material is moved and placed in a controlled manner.

(1) Spoil;

(2) Waste materials, including waste mineral matter;

(3) Debris, including that from clearing and grubbing of land road construction or portal pad construction, and;

(4) Abandoned or disabled equipment.

Nothing in this subsection (c) prohibits placement of the following materials on steep slopes in accordance with provisions of other performance standards.

The Secretary determined that this provision previously submitted by Utah was consistent with 30 CFR 826.12(a) with one exception. The last sentence in the State's rule appeared to create ambiguity with respect to when an exemption to the requirements of UMC 817.101 could be granted. To eliminate any ambiguity with regard to the State's provision, OSM asked Utah to submit a clarifying statement regarding the last sentence of UMC 817.101(c) explaining what "materials" could be placed on steep slopes under the deadline for Utah to meet condition "k" until September 1, 1982, to allow the State time to submit the clarifying statement.

On August 26, 1982, Utah submitted to OSM an amendment to UMC 817.101(c) revising the last sentence of that section to read: "Nothing in this subsection (c) prohibits placement of durable rock in an engineered fill in accordance with 817.71(e)(2)."

The provisions submitted by Utah on August 26, 1982, are available in full text for public review at the addresses listed above. The Secretary seeks comment on whether the amendments submitted by Utah on that date satisfy the Secretary's conditions as listed at 30 CFR 944.11(f), (g), (i), and (k).

Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Compliance With the Regulatory Flexibility Act

The Secretary hereby determines that this proposed rule will not have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

2. Compliance With Executive Order No. 12291

On August 28, 1981, the Office of Management and Budget (OMB) granted the Office of Surface Mining exemption from sections 3, 4, 6, and 8 of Executive Order 12291 for all actions taken to approve, or conditionally approve, State regulatory programs, actions, or amendments. Therefore a Regulatory Impact Analysis and regulatory review by OMB is not needed for this program amendment.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 14, 1982.

J. Steven Griles,

Deputy Director, Office of Surface Mining.

[FR Doc. 82-25870 Filed 9-7-82; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 947

Surface Mining and Reclamation Operation Under a Federal Program for Washington

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: On June 21, 1982 (47 FR 26794), OSM published the proposed Federal program for the State of Washington for public comment that would regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in Washington. Since its publication OSM extended the public comment period and postponed the public hearing twice for the convenience of commenters who had indicated that additional time was needed to adequately review and comment on the proposed Federal Program. OSM finds it necessary to extend the public comment period for the same reasons.

DATES:

Written Comments: The close of the comment period on the proposed Federal program is extended to 5:00 p.m. on October 20, 1982.

Public Hearing: The public hearing on the proposed Federal program was held on September 17, 1982, at 1:00 p.m., as scheduled.

ADDRESSES:

Written Comments: Hand-delivered to the Office of Surface Mining, Wyoming State Office, Freden Bldg., 935 Pendell Blvd., Mills, Wyoming 82244, or mail to Administrative Record (R&I–21), Office of Surface Mining, Wyoming State Office, P.O. Box 1420, Mills, Wyoming 82644.

Public Hearing: State of Washington General Administation Building Conference Room, Capitol Campus, Olympia, Washington 98504 beginning at 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; 202–343–5866.

Dated: September 16, 1982.

Donald Willen,

Acting Assistant Director, Program Operations and Inspection, Office of Surface Mining.

[FR Doc. 82-25860 Filed 9-20-82; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5 FRL 2053-6]

Approval and Promulation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes rulemaking on revisions to the total suspended particulate (TSP) and legal authority portions of the Ohio State Implementation Plan. These revisions were made pursuant to Part D of the Clean Air Act. EPA is today proposing to conditionally approve the overall Ohio TSP plan and to approve the revisions made to the legal authority portion of the SIP. EPA notes that today's proposed approval does not supersede EPA's previous rulemaking action on the area specific SIP revision developed for Middletown, Ohio (46 FR 19468) and the site-specific SIP revision developed for Owens-Corning Fiberglass (46 FR 62848), General Motors Central Foundry (47 FR 13535) and Republic Steel Youngstown Plant (47 FR 9834). Presented below in the Supplementary Information portion of this notice is a discussion of EPA's

evaluation of and proposed action on specific portions of the Ohio TSP plan and legal authority. Interested individuals are invited to comment on these revisions and on EPA's proposed action on them.

DATE: Comments on these revisions and on EPA's proposed action must be received by October 21, 1982.

ADDRESSES: Copies of the SIP revision are available at the following addresses. (It is recommended that you telephone the contact person lists below before visiting the Region V Office of EPA).

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

Ohio Evironmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, EPA, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Seija, Regulatory Analysis Section, Air Programs Branch, EPA, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604, (312) 886–6038.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) and on October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Act, EPA designated certain areas in each state as nonattainment with respect to the National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP).

Part D of the Clean Air Act requires State Implementation Plans (SIP) to include strategies and regulations adequate to insure attainment of the primary NAAQS as expeditiously as practicable, but no later than December 31, 1982, and in the interim, to provide reasonable further progress toward attainment through the application of reasonable available control technology (RACT). The requirements for an approvable SIP are described in a **Federal Register** notice published on April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

Where attainment cannot be demonstrated despite the application of RACT to traditional sources of particulate matter, EPA will accept a commitment by the State to conduct additional studies on the causes of particulate nonattainment and to develop and to submit to EPA additional strategies and enforcement regulations, measures, and orders adequate to demonstrate attainment of the primary TSP standards by the statutory attainment date. These studies would include information on the degree to which nontraditional area sources of particulate matter, such as dust from construction or traffic activities, affect air quality. EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by an application of control technology that is reasonably available considering technological and economic feasibility. EPA articulated its definition of RACT in the April 4, 1979 **Federal Register** and in a memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management, to Regional Administrator, Regions I–X, on "Guidance for Determining Acceptability of SIP Regulations in Non-attainment Areas." Section 1.a. (December 9, 1978), reprinted in (1976) 7 Environmental Reporter, Current Developments (BNA) 1210 col. 2; and in EPA's publication Workshop on Requirements for Non-attainment Area Plans-Compilation of Presentations 154 (OAQPS No. 1.2–103, revised edition April 1978). Depending on site specific considerations, such as geographic constraints, RACT can differ for similar sources.

EPA believes that the burden of demonstrating that a regulation represents RACT rests on the state. In reviewing a proposed SIP revision to determine its adequacy, EPA can verify independently that the provisions in the state plan represent RACT. Although EPA has not specified uniform RACT standards for the iron and steel industry, it has collected data which reflect the emission limitations achieved by various iron and steel sources applying control technology. As EPA noted in the September 8, 1980 **Federal Register** (45 FR 59198) these data are available for review at EPA's, Region V Offices. Where a state proposes regulations which are not technically supported by EPA's data, the state must submit adequate data supporting its proposal as representing RACT.

EPA's proposed rulemaking can take one of three forms: approval, conditional approval and disapproval. A discussion of conditional approval and its practical effect appears in the July 2, 1979 **Federal Register** (44 FR 38583) and the November 23, 1979 **Federal Register** (44 FR 67182). A conditional approval requires the State to submit additional materials by the specified deadlines negotiated between the State and EPA prior to final rulemaking. A conditional approval will mean that the restrictions on new major source construction in the area will not apply unless the State fails to submit the necessary material by the scheduled date, or if it is not approved by EPA. Conditional approvals will not be granted without assurance by the appropriate State official(s) that the deficiencies will be corrected by the date specified.

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

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

In Ohio, there are 47 counties which are presently designated, either in part or entirely, nonattainment for the primary and/or secondary TSP NAAQS. These counties are listed in Chapter 81.355 of title 40 of the Code of Federal Regulations (40 CFR 81.335). Defiance, Henry, Ross and Clermont Counties, which were designated nonattainment in the October 5, 1978 **Federal Register**, were redesignated to attainment or unclassifiable on July 16, 1981 (46 FR 36701), September 25, 1981, (46 FR 47221), October 8, 1981, (46 FR 49857)

and November 25, 1981 (46 FR 57677), respectively.

To remedy its TSP nonattainment problems, the State of Ohio on June 13, 1980, September 19, 1980, February 18, 1981 and August 11, 1981 submitted revisions to the TSP portion of the Ohio SIP. The State also submitted supplementary information on September 14, 1981, November 10, 1981, January 5, 1982, March 16, 1982, and March 23, 1982.

The June 13, 1980 submittal consists of revisions to rules 01 to 11 of Chapter 3745–17 of the Ohio Administrative Code (rules 3745–17–01 to 11) and technical support data for Coke Oven Battery charging and door visible emission limitations specified in rule 3745–17–07. The September 19, 1980 submittal consists of modeling analyses conducted for rule 3745–17–08. The February 18, 1981 submittal consists of a revised version of rule 3745–17–08. This version of the rule replaces the version submitted on June 13, 1980. The August 11, 1981, submittal is an analysis of the economic impact of the implementation of the revised Ohio TSP plan. The September 14, 1981 submittal contains comments and supplementary information from the State. The November 10, 1981 submittal consists of two letters; one withdraws Rule 3745–17–04(A) the other provides EPA with additional information and commitments. The January 5, 1982, submittal consists of a letter which details the State's commitment to correct certain deficient portions of the TSP plan which are discussed below. The March 16, 1982, submittal consists of a site-specific revision for the Southerly Wastewater Treatment Plant in Columbus, Ohio. The March 23, 1982, submnittal consists of a revised version of Volume XXXIX. This volume replaces the volume submitted on September 19, 1980.

As previously noted, this notice also proposes rulemaking on the July 1, 1980, revisions to the Legal Authority portion of the Ohio SIP. In particular, this notice will discuss the approvability of revisions made to Section 11 of Chapter 3704 of Title 37 of the Ohio Revised Code (§ 3704.11). Section 3704.11 defines the enforcement and promulgation authority delegated to a political subdivision relative to the prevention, control and abatement of air pollution.

Rules 3745–17–01 through 11 were previously codified as AP–3–01 to 12. AP–3–01, 04 and 06 through 12 are part of the present Ohio TSP SIP. Rules 3745–17–01 through 11 were submitted by the State to replace rules AP–3–01, 04 and 06 through AP–3–12. Presented below is a summary table for rules AP–3–01 through 12 and rules 3745–17–01 through 11.

Old rule	Title	New rule	Title
AP–3–01	Definitions	3745–17–01	Definitions.
AP–3–02	Ambient Air Quality Standards	3745–17–02	Ambient Air Quality Standards.
AP–3–03	Methods of Measurement	3745–17–03	Measurement Methods and Procedures.
AP–3–04	Compliance Time Schedule	3745–17–04	Attainment Dates and Compliance Time Schedules.
AP–3–05	Non-degradation Policy	3745–17–05	Non-degradation Policy.
AP–3–06	Classification of Regions	3745–17–06	Classification of Regions (Repealed).
AP–3–07	Control of Visible Air Contaminants from Stationary Sources.	3745–17–07	Control of Visible Air Contaminants from Stationary Sources.
AP–3–09	Restriction of Emission of Fugitive Dust and Gases.	3745–17–08	Restriction of Emission of Fugitive Dust.
AP–3–10	Restriction on Emissions from Incinerators.	3745–17–09	Restriction on Particulate Emissions and Odors from Incinerators.
AP–3–11	Restriction on Emission of Particulate Matter from Fuel Burning Equipment	3745–17–10	Restriction on Particulate Emissions from Fuel Burning Equipment.
AP–3–12	Restriction of Emission of Particulate Matter from Industrial Processes.	3745–17–11	Restriction on Particulate Emissions from Industrial Processes.

The control strategy developed by the State of Ohio relies on implementation of RACT on point sources of particulate matter emissions where Ohio defines a point source as any source which emits particulate matter through a stack. All other sources of particulate matter emissions are considered fugitive sources and are specifically regulated by rule 3745–17–08. Appendix A to rule 3745–17–08 lists those areas of the State in which fugitive sources are required to adhere to the provisions of rule 3745–17–08. Under certain circumstances, the Director of Ohio EPA (Director) may require a source located in an area not listed in Appendix A to comply with rule 3745–17–08.

The State conducted a modeling analysis for each nonattainment area to determine which area to include in Appendix A. These modeling analyses were used to predict those areas of the State where RACT on point sources would not be sufficient by itself to attain the primary and secondary TSP NAAQS by December 31, 1982. The State determined that, in these areas, additional control measures would have to be implemented. The additional control measures consist of RACT on traditional sources of fugitive dust (rule 3745–17–08) and a commitment to study methods of controlling nontraditional sources of fugitive emissions. Examples of traditional sources of fugitive dust are coal piles, shiploading operations and certain industrial processes. Examples of nontraditional fugitive dust sources include reentrained dust from public and private roadways as well as dust generated as a result of construction or agricultural activities. In addition to requiring certain fugitive sources to adhere to rule 3745–17–08 the State committed to meet the secondary TSP standard by December 31, 1987.

In this **Federal Register** EPA will summarize its proposed action on: rules 3745–17–01 through 11, the modeling analysis conducted for Appendix A, Revised Section 3704.11 and a site specific revision for Southerly Wastewater Treatment Plant in Columbus, Ohio. A more detailed description of EPA's analysis of these elements of the Ohio SIP is contained within its document entitled "Rationale for Rulemaking on the Ohio Particulate SIP." A copy of this document may be obtained upon request by contacting any of the persons listed at the beginning of this notice.

EPA's summary on the revisions to the Ohio SIP is segregated below into four separate sections below: (I) The adequacy of rules 3745–17–01 through 11, (ii) The adequacy of the modeling analyses to determine the counties listed in Appendix A, (III) The approvability of revised § 3704.11, and (IV) The approvability of a site specific revision for Southerly Wastewater Treatment Plant.

I. The Adequacy of Rules 3745–17–01 Through 11

Rule 3745–17–01

Synopsis of the Rule (Synopsis). This rule defines the terms used in rules 3745–17–01 through 3745–17–11. It replaces rule AP–3–01 in the existing Ohio SIP, which contained definitions for AP–3–01 through AP–3–12. Rule 3745–17–01 changes AP–3–01 by:

- Adding the following new terms: British Thermal unit, facility, fuel, grain elevators, particulate emissions, permanent storage capacity, stand-by-boiler, start-up, topping-off, total suspended particulates;
- Modifying the following terms: fuel burning equipment, fugitive dust, incinerator, opacity, single fuel burning unit, uncontrolled mass rate of emission;
- Deleting the following terms: agricultural waste, domicile waste,

garbage, landscape waste, open burning, restricted areas, Ringlemann Chart, and trade waste.

EPA's Assessment of the Rule (Assessment)

The deletions, and the new and modified definitions are acceptable.

Note.—The definition of particulate emissions in rule 3745–17–01(B)(9), under certain circumstances allows the Director to modify the definition of particulate emissions by changing the test method used to measure particulate emissions. The test methods to be used are specified in rule 3745–17–03 and are generally EPA Methods 1 through 5 and 17 in certain circumstances. These procedures can be found in "Appendix A" 40 CFR Part 60 Standards of Performance for New Stationary Sources. Although EPA proposes to approve the definition of particulate emissions contained in rule 3745–17–01(B)(9), it notes that when the Director allows a source to measure its emissions by a test method other than Methods 1 through 5 or 17 such a substitution constitutes a revision to the SIP and must be submitted to EPA for review and approval.

EPA's Proposed Action (Action)

- Approval.

Rule 3745–17–02

Synopsis, Assessment and Action. This rule establishes the Ohio ambient air quality standards for TSP. These are identical to the NAAQS for TSP. EPA finds this rule acceptable and proposes to approve it.

Rule 3745–17–03

Synopsis. This rule does the following three things:

1. *It specifies the test methods and procedures which are to be used when measuring particulate matter mass and visible emissions from a source, for the purposes of determining compliance with rules 3745–17–07, 09, 10 and 11.*

The rule specifies that Methods 1 through 5 in "Appendix A" of 40 CFR, Part 60 "Standards of Performance for New Stationary Sources" are the measurement methods to be used for measuring mass emissions from incinerators, fuel burning equipment and industrial processes. EPA reference Method 9, 40 CFR 50, Appendix A is to be used for measuring the visible emissions from those stack sources which are regulated by paragraphs (A) and (B) of new rule 3745–17–07.

2. *In Section (B), rule 3745–17–03 specifies testing procedures and formulae for measuring visible emissions from Coke Oven Batteries.* These procedures are to be used when determining a source's compliance status with new rule 3745–17–07(E).

Of special interest here are the following:

- *In paragraph (B)(2)(b)(ii), the specific procedures for determining compliance with the visible emissions regulations that apply to offtake piping and charging hole lids at a coke oven battery.* These procedures require the observer to record the identity of visible emissions from all topside emission points in a single traverse of the topside of a coke oven battery. Further, the inspection procedure for offtake piping and charging hole lids in (B)(2)(b)(ii) exempts visible emissions from those charging hole lids and standpipe caps which are opened during a decarbonization or charging period. The procedure in 3745–17–03 does not limit the number of charging hole lids and standpipe caps that may be exempted from the count.
- *In Paragraph (B)(2)(b)(iii), the formula for determining compliance with the offtake piping and charging hole lid visible emissions limitations.*
- *In paragraph (B)(2)(c)(ii), the formula for determining compliance with the oven door visible emissions limitation.*

3. *Under specific circumstances, rule 3745–17–03 gives the Director the authority to modify the required measuring techniques if he has determined that this is appropriate.* In particular, paragraphs (B)(6)(a) and (B)(7)(a) allow the Director to make any other modification to the testing procedure which may be required by specific sampling needs or conditions. In its September 14, 1981, response, and again in a letter dated January 5, 1982, the State indicated that the modifications referred to above will be minor in nature. Further, the State indicated that it will allow new testing procedures to be substituted for required procedures only when necessitated by characteristics that are unique to particulate sampling of the individual source. In its January 5, 1982, letter, the State committed itself to submit to EPA for review and approval any test method other than Methods 1 through 5, and 17 that the Director approves for a particulate emission source.

Assessment

EPA finds that the provisions of this rule are acceptable except for paragraphs (B)(2)(b)(ii), (B)(2)(b)(iii) and (B)(2)(c)(ii). EPA's reservations on these paragraphs are as follows:

1. *(B)(2)(b)(ii):* EPA believes that the procedures are deficient in two ways:

- They do not allow an observer more than one traverse when measuring visible emissions from the topside of a double collector main battery.

EPA believes that one traverse is adequate for a single collector main battery, but that the procedure should be revised to allow the observer to traverse the battery twice when measuring emissions from batteries with double collector mains.

They do not limit the number of charging hole lids and standpipe caps which are open during a decarbonization or charging period, and which are exempted from the visible emissions requirements. EPA believes that a specified number of charging hole lids and standpipe caps should be exempted from this count and that a three-oven maximum exemption is reasonable.

EPA notes at this time that EPA narrowly interprets the exemption provided in this paragraph for visible emissions caused by maintenance work in progress at an oven. EPA recommends that the State develop guidelines for determinng the type of maintenance work which qualifies for this exemption and the amount of time for which such activity will be allowed.

2. *(B)(2)(b)(iii).* The formula outlined in this paragraph must be clarified to reflect the concept that visible emissions observations of offtake piping and charging hole lids must be based upon total operating coke ovens rather than the total number of piping or lids irrespective of oven operational status. In addition to restricting the denominator in this formula to reflect operating ovens, the formula should permit appropriate corrections in the denominator for any exemptions granted under (B)(2)(b)(ii), such as for charging hole lids or standpipe caps that are opened during decarbonization or charging periods.

3. *(B)(2)(c)(ii).* The formula outlined in this paragraph must be clarified to reflect the concept that visible emissions observations of coke oven doors must be based upon total operating coke ovens rather than the total number of coke oven doors irrespective of oven operational status.

Note on paragraphs (B)(6)(a) and (B)(7)(a): Although these paragraphs are acceptable, EPA notes that when the Director allows a source to measure its emissions by a test method other than Methods 1 through 5 or 17, this substitution constitutes a revision to the SIP and must be submitted to EPA for review and approval.

Action

Approval of all the provisions of this rule except for those provisions contained within paragraphs (B)(2)(b)(ii), (B)(2)(b)(iii) and (B)(2)(c)(ii).

Conditional approval of paragraphs (B)(2)(b)(ii), (B)(2)(b)(iii) and (B)(2)(c)(ii). To satisfy the conditions of this approval, the State must correct the deficiencies in these paragraphs described above by December 31, 1982, as it agreed to do in a letter dated January 5, 1982.

Rule 3745–17–04

Synopsis. New rule 3745–17–04 replaces old rule AP–3–04. Old rule AP–3–04 set a date of April 1, 1975, for attainment of the TSP NAAOS in all of the counties in the State. For sources which are subject to the requirements of new rules 3745–17–07(E), 08 and 10(C)(3)–(5) (explained below), new rule 3745–17–04:

Sets compliance deadlines, and

Specifies certification and permit application requirements.

With regard to compliance deadlines, this rule requires a source to achieve final compliance with Rule 3745–17–07(E), 08 and 10(C)(3)–(5) ". . . as expeditiously as practicable. . .", but in no event later than December 31, 1982. In some cases final compliance is to be achieved by no later than several months before December 31, 1982. As stated in EPA's Continuity Policy (44 FR 20372) the Clean Air Act allows additionsl time for sources to comply with new regulations when the new regulations establish more stringent requirements which the source can meet only by installing new or additional control equipment.

Assessment

1. *The compliance deadlines:* EPA believes that, consistent with the Act and its Continuity Policy, Rule 3745–17–04, through its "as expeditiously as practicable" language, requires certain sources to comply immediately with Rules 3745–17–07(E), 08 and 10. In particular, EPA interprets this rule to require immediate compliance in those instances where a source has already installed the type of equipment and has implemented the operation and maintenance practices that would be necessary to comply with the RACT level standards in Ohio's new plan, as a means of complying with the current federally-approved SIP.

The State has committed itself to scrutinize carefully any request for an extension of a compliance schedule to ensure that compliance is achieved as expeditiously as practicable. Further, the State, in its January 5, 1982 letter, has indicated that—in addition to rule 3745–17–04—parts of certain other rules also give the Director of Ohio EPA the legal authority to require sources to achieve compliance "as expeditiously as practicable." These are: (a) paragraph (E) and (j) of Section 3704.03 of the Ohio Revised Code, (b) paragraph (C)(1) of rule 3745–35–02 of the Ohio Administrative Code (OAC), and (c) paragraph (E)(2)(c) of rule 3745–35–03 of the OAC. Finally, in conversations with the State, the State has indicated that, to the extent appropriate, it may require interim emission standards within the permits issued to any source. These interim emission limitation swill prevent any further degradation of ambient air quality and will act to ensure reasonable further progress towards attainment of the particulate standard.

2. *The certification and permit application requirements.* As a part of the permits to be developed for process fugitive sources within the iron and steel industry the State will set fugitive dust control requirements for these sources. In its January 5, 1982, letter the State committed itself to make those requirements consistant with the control requirements contained in Federal Consent Orders with any such sources. EPA believes that this includes establishing interim emission standards where the Consent Orders contain such standards.

Action

• Approval of the certification and permit application requirements of this rule.

• Approval of the *specified compliance dates,* with the understanding that the State will ensure that all sources will be required to achieve compliance with applicable rules as expeditiously as practicable. EPA reiterates that the present, federally-approved emission control regulations for any source will remain applicable and enforceable to prevent a source from operating without controls, or under less stringent controls, while it is moving toward compliance with the new regulations.

Rule 3745–17–05

Synopsis, Assessment and Action. This rule articulates the State's non-degradation policy. It prohibits significant and avoidable deterioration of air quality in any part of an area where the present air quality is equal to or better than that required by the ambient standards established in rule 3745–17–02. EPA's review of this rule indicates that it is acceptable. Therefore, EPA proposes to approve this rule.

Rule 3745–17–06

Synopsis, Assessment and Action. Rule 3745–17–06, previously codified as AP–3–06, has been repealed by the State. This rule classified areas of the State into one of three air quality priority categories. The emission limitations placed on industrial processes and/or fuel burning equipment were dependent on an area's priority category. Emissions from these source categories are now subject to new rules 3745–17–10 and 3745–17–11. Rules 3745–17–10 and 11 specifically state the counties which are subject to their requirements. Therefore, the separate priority categories specified in rule 3745–17–06 are no longer necessary. EPA proposes to approve this revision to the SIP which will in effect repeal new rule 3745–17–06 (old rule AP–3–06).

Rule 3745–17–07

Synopsis. This rule establishes visible emission (V.E.) limits for stack sources and coke oven batteries. AP–3–07 is its counterpart in the existing Ohio TSP SIP.

Under AP–3–07, a source is prohibited from discharging into the atmosphere air contaminants of a shade or density equal to or greater than 20% opacity. The rule further provides that while emissions may equal or exceed 20% opacity for not more than an aggregate of three minutes in any 60 minute period, they may never exceed 60% opacity.

New rule 3745–17–07 prohibits emissions from exceeding 20% opacity and also incorporates the following changes:

1. *Applicability.* Except for paragraph E which establishes specific V.E. limits for certain coke oven battery sources, new rule 3745–17–07 explicity states that it is applicable only to stack sources. It does not regulate fugitive sources. Although EPA previously regulated mass and V.E. limits from these fugitive sources through AP–3–07, they will henceforth be regulated by rule 3745–17–08. (A discussion of the adequacy of rule 3745–17–08, as it applies to industrial process fugitive sources, follows this discussion).

2. *Data Reduction Methodology and Exemptions.* For stack sources, the three minute exemption permitted in AP–3–07 has been amended to allow a source to exceed the 20% opacity limit for "not more than six consecutive minutes." This change was proposed to make the exemption consistent with USEPA Reference Method 9, the test method required by Rule 3745–17–03 (B)(1) for determining a stack source's compliance with 3745–17–07.

Method 9 specifies that the opacity of emissions from a particular source is to be determined as an average of 24 consecutive observations recorded at 15 second intervals (i.e. six consecutive

minutes). Thus, in any 60 minute interval, there will be a maximum of ten "average" readings.

Applying this test method to rule 3745–17–07, EPA believes that the rule allows for one of these ten average six-minute opacity readings to have a value which is greater than 20% but less than 60%. EPA interprets this rule to specify that a violation occurs only when, in any 60 minute interval, there are either (1) two or more six-minute average opacity readings, each with a value greater than 20% or (2) one or more of these readings with value greater than 60%. In its September 14, 1981, submittal the State indicated that this interpretation of the revised rule is correct.

3. *In new paragraph (D), additional exemptions from V.E. limits.* The exemptions in paragraph (D) are from the rule's general V.E. limits, and are in addition to the "six-minute exemption" discussed above. Specifically:

- (D)(1) exempts the start-up of any fuel burning equipment for up to six hours, or some other specified length of time as determined by the Director.
- (D)(2) exempts the shut down of any fuel burning equipment.
- (D)(3) exempts a stack source during shut-down or malfunction, but only if the source complies with rule 3745–15–06. In the case of a malfunction of a source or its control equipment, rule 3745–15–06 requires the source to notify Ohio EPA of the emissions episode immediately, if its emissions are in violation of any applicable law.
- (D)(4) exempts intermittent soot blowing operations for fuel burning equipment.
- (D)(5) exempts salt glazing operations conducted in a gas-fired periodic brick or tile kiln, for a period of not more than two hours during any twenty one consecutive days of operation of this kiln.

4. *In new paragraph (E), V.E. limits for coke oven batteries.*

- (E)(1) sets limits for coke oven battery charging operations such that visible emissions may not exceed 170 seconds during 5 consecutive charges (170/5).
- (E)(2) sets limits applicable to offtake piping such that visible emissions are not permitted from more than ten percent of the offtake piping.
- (E)(3) sets limits applicable to charging hole lids, such that visible emissions are not permitted from more than 5% of the charging hole lids.
- (E)(4) sets limits applicable to oven doors such that visible emissions are not permitted from more than 16% of the doors, (defined as the oven door and the associated chuck door on the pusher side of the battery).
- (E)(5) sets limits for pushing operations, such that visible emissions may not exceed 20% opacity read above the battery top.

5. *In new paragraph (F), allowance for "equivalent visible emission limitations".*

Paragraph (F) allows a source which is subject to the V.E. limits of paragraphs (A) and (B) of this rule to request an "equivalent visible emission limitation" from the Director of Ohio EPA. The equivalent V.E. limitation is the average of the opacity of the emissions from the source during any performance test(s) conducted in accordance with rule 3745–17–03(B).

According to paragraph (F), the owner or operator of a source may obtain an equivalent V.E. limitation if the owner or operator: (a) formally requests the Director to establish such limitation; (b) demonstrates compliance with the applicable mass emission limitations of rule 3745–17–09, 10, or 11, by conducting performance test(s) in accordance with the methods and procedures established in rule 3745–17–03; and (c) demonstrates that during such performance tests the source and its associated control equipment were operated in a manner so as to minimize the average opacity of the emissions.

Assessment

The State has indicated to EPA that it does not consider the opacity limitations in 3745–17–07 for stack sources to be an integral part of its overall control strategy to reduce particulate emissions and achieve the TSP ambient air quality standards. The State has asserted that, with the exception of the V.E. limits for coke oven batteries, which reflect a certain level of control technology, the V.E. limits of 3745–17–07 are of primary importance in enforcing the applicable mass emission limits in rules 3745–17–09 through 11.

In evaluating Ohio's Part D SIP, EPA's primary concern in regard to those sources proposed by Ohio to be covered by rule 3745–17–07, was that the associated mass particulate emission limits in 3745–17–09 through 11 require the implementation of reasonably available control measures, and that, at a minimum, rule 3745–17–07 contains clear, specific and enforceable visible emission limits which will be of use in enforcing the mass particulate limitations.

Based on the general criteria, EPA has reviewed new rule 3745–17–07 and has determined that paragraphs (A), (B), (C), (D)(3), (D)(5), (E)(2), (E)(3), (E)(5) and (F) are acceptable, while the remainder are in some way deficient. The following will explain the acceptability of (D)(3) and (F) and will then present the deficiencies in paragraphs (D)(1), (D)(2), (D)(4), (E)(1) and (E)(4).

1. *The acceptability of (D)(3).*

(D)(3)—when taken in conjunction with rule 3745–15–06—is consistent with EPA's malfunction policy. According to the malfunction policy, EPA will not approve any regulatory provision which would automatically exempt a source from complying with its applicable emission limitations. The intent is to ensure a case-by-case evaluation of the circumstances surrounding any excess emissions which result from an alleged malfunction. This case-by-case analysis is necessary because of the potentially significant impact of emissions from malfunctions on the attainment and maintenance of the NAAQS.

In a **Federal Register** action published on May 7, 1982, EPA proposed to approve amended rule 3745–15–06 (47 FR 19722). This rule requires a source claiming a malfunction exemption to notify the Ohio EPA immediately, whenever its emissions violate any applicable law. EPA interprets paragraph (C) of rule 3745–15–06 as allowing the Director of Ohio EPA to refrain from taking action against a violating source claiming a malfunction exemption only if he determines that (1) shutdown or reduction of the source operation during the breakdown would be or would have been impossible or impracticable; (2) the estimated breakdown period will be or was reasonable in duration, based on installation or repair time, delivery dates for equipment, replacement parts, or materials, or current unavailability of essential equipment, parts, or materials; (3) available alternative operating procedures and interim control adverse affects on public health or welfare; and (4) all actions necessary and required by any applicable preventive maintenance and malfunction abatement plan will be or have been implemented.

If all of these conditions are not satisfied, EPA believes that the exemption in (D)(3) has no effect on the compliance status of the source and the Director is required to take appropriate action. If all these elements are present, (D)(3) and rule 3745–15–06 read together merely provide a structure for the Director to exercise his review and to take action as necessary. In either case, the result is consistent with EPA's malfunction policy, and thus (D)(3) can be approved.

2. *The acceptability of (F).*

EPA notes that although the general concept of an equivalent visible emission limitation is acceptable, any specific equivalent V.E. limit which is

approved by the Director constitutes a revision of the SIP and as such must be submitted to EPA for review and approval. In conjunction with paragraph (F), Ohio has developed Ohio Engineering Guides #13, 14 and 15. These guidelines establish the procedures which Ohio will use when actually determining an equivalent V.E. limitation. EPA has reviewed these guidelines and believes that when they are used in conjunction with paragraph (F), they provide sufficient criteria by which the Agency can consistently determine, for a particular source its equivalent V.E. limitation. EPA therefore believes that if the State were to revise rule 3745–17–07(F) specifically to incorporate by reference Ohio Engineering Guides #13, 14 and 15 as the method for determining the equivalent V.E. limitation, then individual SIP revisions would not need to be submitted for review and approval. The State would only need to submit the equivalent V.E. limitation for a specific source for informational purposes and to ensure consistent State and Federal enforcement.

3. *The deficiencies in (D)(1) and (D)(2).*

EPA does not believe that the exemptions in these paragraphs should be expressed exclusively in terms of time, since such an exemption may be excessive for some sources. EPA believes that it is more appropriate for these exemptions to be expressed in terms of the exhaust gas temperature and operation mode of the equipment, as well as time.

4. *The deficiencies in (D)(4).*

EPA agrees that some exemption could be granted to those small sources which only occasionally blow soot. EPA does not believe, however, that such an exemption should be granted to those sources which blow soot routinely during the day. EPA believes that paragraph (D)(4), as presently written, could be interpreted as providing such an exemption. In order to correct this deficiency EPA believes that the State can either: (1) develop an acceptable definition for what constitutes "intermittent soot blowing operations" or (2) revise paragraph (D)(4) to make the exemption applicable to the appropriate sources.

5. *The deficiencies in E(1).*

EPA does not believe that paragraph (E)(1) of this rule satisfies the RACT requirements for coke oven battery charging operations since it allows visible emissions of up to 170 seconds during 5 consecutive charges (170/5) EPA has studied coke oven charging across the United States and has concluded, based upon technical data which is available for review in the rulemaking docket on this notice, that a standard of 125 seconds over 5 consecutive charges is supportable by current data as representative of the application of stage charging. PEDCo Environmental, Inc., Ohio's environmental contractor, has identified stage charging as the appropriate RACT control alternative in a document entitled "Reasonably Available Control Measures for Fugitive Dust Sources."

Further, EPA would support, in conjunction with the 125/5 standard, a provision in the rule which would permit the exemption from the visible emission standard of one charge, representing the highest charge in every 20 consecutive charges observed. The 125/5 (1-in-20) standard would result in significantly less emissions than that which the submitted 170/5 standard would permit, with no change in the technology necessary to comply.

EPA has evaluated the data submitted by Ohio in support of the 170/5 standard and has computed the rates of compliance which were achieved with the 125/5 (1-in-20) standard and the 170/5 standard at plants using RACT procedures. The 125/5 (1-in-20) standard was met a higher proportion of the time at more plants than was the 170/5 standard (96% versus 95% compliance rate). Furthermore, EPA's exerience indicates that when emissions from the charging operation are relatively small in duration, they are relatively small in amount. The amount of particulate pollution produced by the charging operation is not, however, directly proportional to the number of seconds of visible emissions per charge. When the duration of emissions increases, as in this instance to 1170/5 from the recommended RACT limit of 125/5, the increase in pollution is more rapid than would be obtained if the relationship between seconds of emissions and pollution were more linear in nature. EPA therefore believes that more emissions control is obtained by limiting the large percentage of charges to a small number of seconds per charge, and permitting a few charges to exceed some higher value, than by permitting the average of a set of charges to emit at a higher level. The recommended RACT standard effectively balances stringency and achievability because most visible emissions from the charging operation statistically occur at very low values, with an occasional charge recorded at values three or four times the norm. The technical data upon which EPA based its decision is included in the docket on this rulemaking notice.

6. *The deficiencies in (E)(4).*

EPA does not believe that paragraph (E)(4) represents a RACT-level of control technology since it would permit up to 16% of the doors on a coke battery to be leaking. In its review of visible emissions data for coke oven doors, EPA has determined that this data supports a standard of no more than 10% of the doors on operating coke ovens to be leaking at any one time. EPA would also accept, in conjunction with a 10% standard, an exemption from the visible emissions standard for an additional two doors, representing the last oven charged.

Action

- Approval of paragraphs (A), (B), (C), (D)(3), (D)(5), (E)(2), (E)(3), (E)(5), and (F).
- Conditional approval of paragraphs (D)(1), (D)(2), (D)(4), (E)(1), and (E)(4).

To satisfy the conditions of approval for these paragraphs, the State must revise the paragraphs to correct the deficiencies discussed above. In a letter dated January 5, 1982, the State committed itself to revise paragraphs (E)(1) and (E)(4) and to submit them to EPA by December 31, 1982. In that same letter, the State committed itself to revise paragraphs (D) (1), (2) and (4) if EAP provides the State both with its recommended wording for these exemptions, and with adequately detailed technical support for this wording. If—prior to final rulemaking on these three paragraphs—the State commits itself to revise them by December 31, 1982, EPA will finally approve these three paragraphs on the condition that the State submit the revised version of these rules by December 31, 1982.

Rule 3745–17–08

Synopsis. Rule 3745–17–08 replaces rule AP–3–09, which is part of the existing Ohio TSP SIP. As EPA interprets it, AP–3–09 regulates fugitive dust from what are commonly referred to as "open dust fugitive sources,"—for example: storage piles, sandblasting activities, unpaved roads, and material handling operatings. AP–3–09 requires the owner or operator of any open dust source to use reasonable precautions to prevent particulate matter from becoming airborne. The rule articulates, but does not require, the implementation of certain control measures which are considered reasonable.

New rule 3745–17–08 is designed to control particulate emissions not only from open dust sources, but also from any industrial process which emits particulate matter into the ambient air by means other than a stack. (Examples

of such process fugitive sources are charging operations from a Basic Oxygen Furnace (BOF), or Electric Arc Furnace.) Under the existing Ohio TSP SIP, EPA regulates these sources with rules AP–03–07 and AP–3–12.

New rule 3745–17–08 consists of paragraphs (A), (B) and (C). In accordance with paragraphs (A) and (B) an owner or operator of a process or open dust fugitive source must not operate his source without taking or installing reasonably available control measures to prevent fugitive dust from becoming airborne. Paragraph C contains procedural requirements for fugitive dust sources located in Appendix A areas. EPA believes that the application and requirements of paragraph (A) and (B) differ significantly from SIP rule AP–3–09. The following discussion highlights the more significant provisions.

1. *Applicability of RACT requirements (Paragraph (A)).*

Paragraph (A)(1) and (2), require RACT on those sources which are either:

- Located in an Appendix A area, or
- Specifically required by the Director, regardless of location, to comply with the rule.

Appendix A generally lists those nonattainment areas in which, according to Ohio EPA modeling, controls on all stack point sources will not be enough to ensure attainment of the primary or secondary TSP NAAQS by December 31, 1982. Appendix A also lists a few areas which are designated as attainment. (The adequacy of Appendix A and the modeling analysis is discussed in Section II below).

Paragraph (A)(4) lists those sources in Appendix A areas which are exempted from the RACT requirements of this rule. These sources are:

- Any fugutive dust source which is located at a grain elevator having a permanent storage capacity of less than 2.5 million bushels,
- Fugitive dust generated by the Number 3 Blast Furnace and Numbers 15 and 16 Basic Oxygen Furnaces located at the Armco Middletown Works Plant, and
- Any source which satisfies paragraph (A)(3) of this rule.

2. *Determining compliance on a facility-wide basis (Paragraph (A)).*

Paragraph (A)(3) of this rule allows the Director to determine compliance with the requirements of this rule on a facility-wide basis. In conjunction with paragraph (A)(3), the State submitted to EPA for informational purposes, a copy of Ohio EPA Engineering Guide #24 (Guide), which further explains the application of rule 3745–17–08. The Guide points out that rule 3745–17–08 is general in nature and encompasses a large number of sources.

EPA originally interpreted paragraph (A)(3) as enabling the Director to accept a control strategy whereby a facility might under-control emissions from one source in exchange for over-control on another source located at the same facility ("bubble"). However, in its September 14, 1981, letter, Ohio pointed out that this interpretation is incorrect.

In light of this and the Guide, EPA now interprets rule 3745–17–08 in general and paragraph (A)(3) specifically, to require the Director of Ohio EPA to first determine whether each fugitive source will be required to install or implement controls as outlined in paragraph (B) of this rule. This determination must be based upon a careful analysis of reasonably available control measures, which may include an assessment of the economic reasonableness of additional control measures. If, after this analysis, the Director determines that an individual source should not be required to implement controls, such a permit for this source may be issued under paragraph (A)(3).

3. *Control measures for achieving RACT (Paragraph (B)).*

Paragraph B outlines control measures which a source may adopt to establish its RACT program. Subparagraphs (B)(1)–(2) and (B)(5)–(9) specify examples of control measures for open dust sources, paragraph (B)(3) specifies examples of control measures for industrial process fugitive sources, and paragraph (B)(4) specifies control measures for grain terminals. For open dust sources such as unpaved roads and material stockpiles, measures such as "periodic spraying with suitable dust suppressants" or "adequate containment methods which minimize or eliminate visible emissions of airborne dust," are techniques generally considered acceptable by the State. According to the language of paragraph (B), a source, after securing the State's approval, may implement control measures which are different from those contained in subparagraphs (B)(1)–(9).

4. *Minimum criteria for the control of fugitive dust from certain industrial processes (subparagraph (B)(3)).*

Under the existing Ohio SIP, EPA has regulated mass and visible emissions from these sources with AP–3–07 and AP–3–12. Paragraph (B)(3) requires the use of hoods, fans and other equipment which would adequately enclose, contain, capture, vent and control fugitive emissions and achieve a certain collection efficiency and mass emission limitation.

Paragraphs (B)(3)(a) and (B)(3)(b) specify the collection efficiency and mass emission limitation, respectively, which the equipment must meet. According to paragraph (B)(3)(a), the control equipment must have a collection efficiency sufficient to "minimize or eliminate visible emission of fugitive dust at the point of capture to the extent possible with good engineering design (GED)." Paragraph (B)(3)(b) requires that the gas cleaning device installed in conjunction with the particulate control equipment (eg., hoods, fans and ducts) must be capable of cleaning a particular volume of air to either a standard of .030 gains per dry standard cubic foot (.030 gr/dscf), as measured at the outlet, or to such a degree that there are no visible emissions from the exhaust stack, whichever is less stringent.

5. *Minimum criteria for the control of fugitive dust from shiploading operations (Subparagraph (B)(4)).*

Subparagraph (B)(4) allows the owner or operator of such a source to choose between two possible methods of control:

- The use of tarpaulins to cover the hatches and loading spouts of the ship [(B)(4)(a)], or
- The installation of control devices on the loading spouts [(B)(4)(b)].

If the owner or operator uses tarpaulins, fugitive dust emissions from the operation must be vented to control equipment which will achieve an outlet grain loading of .030 gr/dscf. There is no visible emission limitation specified. Furthermore, the use of tarpaulins is not required during the period known as topping-off.

If the owner or operator instead chooses to install control devices—such as deadbox or bullet type loading spouts—the device must have an overall control efficiency which is equivalent to or better than .030 gr/dscf. As with the use of tarpaulins, the proposed new rule does not specify a visible emission limitation or a test method.

Assessment of Paragraph (B)

1. *Acceptability of (B)(1)–(2) and (B)(5)–(9), and the allowance for other control measures.*

EPA believes that paragraphs (B)(1)–(2) and (B)(5)–(9) contain adequate parameters within which acceptable site-specific permits may be developed by Ohio, and, therefore, proposes to approve paragraphs (B)(1)–(2) and (B)(5)–(9). Although the requirements of these subparagraphs are stated in general terms, the specific details of

each source's RACT program will be negotiated between the State and the source. A RACT program which implements the control measures contained in these subparagraphs generally will be acceptable to the State. The State will include each source's RACT program, to the extent possible in the source's permit to operate. According to SIP rule AP–32–02(B)(6), once these permits have been approved by the State and signed by the appropriate representative of the source, they constitute "an agreement * * * to operate and maintain the source in a manner designed to assure compliance with applicable air pollution control regulations," including new rule 3745–17–08. After these permits have been issued, the State must submit them to EPA for informational purposes.

Additionally, EPA finds acceptable the "shall include, but not be limited to," language of paragraph (B). This authorizes control methods other than those specified in paragraphs (B)(1)–(9), provided that the State submits to EPA for review and approval the permits developed for those sources which implement such control measures.

2. *Deficiencies in paragraph (B)(3).*

• (B)(3) fails to provide a clean method of measuring the collection efficiency of control equipment.

(B)(3)(a) specifies neither a V.E. limitation and associated test method nor a mass test for measuring the capture efficiency of the control equipment. This renders the mass emission limitations specified in (B)(3)(b) of little use. Pollution control equipment may be capable of cleaning a particular volume of air to a standard of .030 gr/dscf, but if the equipment fails to collect a large percentage of the air to be cleaned, the environmental benefit will be negligible.

• EPA believes that the universal mass emission limitation of .030 gr/dscf is not always consistent with the installation of pollution control equipment of RACT-level stringency.

For certain iron and steel sources, EPA believes that a mass emission limitation of 0.03 gr/dscf would not represent RACT. Since the outlet concentration from gas cleaning equipment is related to the amount of fugitive emissions generated, the percent of emissions captured by a hood, and the amount of hood draft (in ft^3/min) needed to capture fugitive emissions, and since all of these factors are process and site-specific, a single outlet concentration value is inappropriate.

• EPA does not believe that paragraph (B)(3), as presently written, provides the State with adequate authority to issue permits containing RACT-level limitations in all cases.

Since rule 3745–17–08 does not contain specific enforceable visible and mass emission standards for process fugitive sources, Ohio will control these sources by establishing individual limitations in operating permits which it will issue. EPA believes that an acceptable alternative to promulgating generic visible and mass emission limitations for specific categories of process fugitive sources would be for Ohio to include enforceable RACT-level limitations in the operating permits which it issues to a source under paragraph (B)(3) of this rule. However, (B)(3) may not allow the State to do this, since, as indicated above, the rule does not contain any provisions which require a V.E. limitation in the permits nor does the rule contain an appropriate grain loading standard which would allow Ohio to require RACT-level control from all sources. EPA believes that these deficiencies can be corrected if the State:

1. Revises 3745–17–08 to require that the operating permits issued under 3745–17–04 for the process fugitive sources include a V.E. limitation which represents the performance of each source utilizing the reasonably available control measures required in 3745–17–08(B), and an appropriate test method for each source.

2. Revises 3745–17–08(B)(3)(b) to require that the control equipment which a source installs achieve a grain loading not to exceed a maximum value of .030 gr/dscf.

Even with these changes, which should provide the State with adequate authority to require RACT-level of control, EPA cannot predict at this time if the level of control which a source may implement will represent RACT. Such a determination will not be possible until after the source has developed and submitted its control program to the Director of Ohio EPA for review and approval. Only at that time will it be possible for EPA to approve the program as representing RACT and as being enforceable. EPA has compiled a list of source categories which are currently believed to represent the bulk of the significant fugitive dust sources which will be regulated by rule 3745–17–08(B)(3). EPA solicits comments on whether this list covers all significant process fugitive sources and source categories in Ohio. The list is presented as Table A to this notice.

Note: During the course of rulemaking proceedings on its proposed nonattainment area revisions, Ohio contracted with PEDCo Environmental, Inc. to develop a guidance document which would provide assistance to industry and the State when determining whether control equipment proposed by industry would be RACT and meet the requirements of rule 3745–17–08. This study analyzes all potential control devices for certain categories of sources and recommends control equipment which constitutes RACT. EPA notes at this time that while it generally agrees [1] with PEDCo's recommendations on the type of control equipment to be employed, EPA believes that the study, by itself, is deficient since the study does not contain any visible or mass emission limitations which would coincide with the equipment proposed as RACT for a source.

EPA has compared PEDCo's recommendations in regard to the iron and steel industry to data which EPA has collected. These data reflect the emission limitations achieved by various iron and steel sources applying specific control technology. To aid Ohio in the process of issuing permits which include RACT-level visible and mass emissions limitations, EPA has placed in the rulemaking docket on this notice, specific visible emissions data and methods of testing for BOF, electric arc and blast furnace casthouse sources which correspond to the control alternatives identified by PEDCo in its guidance document. A review of this data indicates that an outlet grain loading standard of .030 grains per dry standard cubic foot of exhaust gases is inconsistent with, and is less stringent than, the levels of control which have been achieved by facilities in Ohio. Some of these facilities are using control equipment which has been recommended by PEDCo as reasonably available control measures for iron and steel sources in Ohio. As an illustration, EPA notes that the outlet from fabric filters on captured electric arc furnace furming typically is on the order of 0.005 gr/dscf, an order of magnitude less than the .03 gr/dscf limitation in 3745–17–08.

3. *Deficiencies in paragraph (B)(4).*

EPA believes that there are deficiencies in the two alternatives for controlling particulate emissions during shiploading operations—presented in paragraphs (B)(4)(a) and (B)(4)(b).

The problems associated with paragraph (B)(4)(a) are that it does not require the use of tarpaulins during the topping-off period and does not specify a V.E. standard. EPA believes particulate emissions are significant during the topping-off period and can be controlled by other devices. Without a V.E. limitation specified for these operations, it is not possible to

[1] For blast furnace casthouses, recent technological developments make the extensive controls recommended by the PEDCo report inappropriate for most sources.

determine whether the tarpaulins are being employed correctly in order to prevent the escape of the fugitive dust emitted as a result of the shiploading operations.

The problem with paragraph (B)(4)(b) is that, although it requires the owner to use acceptable control devices, this paragraph does not specify a V.E. standard by which EPA can determine whether the devices are operating properly and collecting the fugitive emissions which are being generated. Furthermore, while it may require the owner to choose an otherwise acceptable control device, it would permit the owner to design and operate this device at a level of control efficiency which may be less than RACT stringency.

Action

Paragraph (A)

- Approval of paragraphs (A)(2), (A)(3) and (A)(4).
- Approval of paragraph (A)(1) on the condition that the State revises Appendix A to reflect the commitments which it made in its September 14, 1981 letter.

In that letter the State committed itself to remodel the Mahoning, Trumbull and Scioto nonattainment areas; to amend Appendix A to include Madison Township in Sandusky County; and to submit appropriate remedial documentation for these counties by December 31, 1982.

Paragraph (B)

- Approval of paragraphs (B)(1)–(2) and (B)(5)–(9), and the "shall include, but not be limited to," language of paragraph (B).
- Approval of paragraph (B)(3) on the condition that the State revises the rule to reflect the commitments which it made in its January 5, 1982 letter.

In that letter, the State committed itself to submit to EPA for review and approval the permits issued to those sources covered by Table A. The State committed itself to submit these permits by not later than December 31, 1982. In that letter the State also agreed to revise rule 3745–17–08:

(1) To add a new paragraph to this rule to indicate that, wherever possible, the Director will establish V.E. limitations in the terms and conditions of any permit issued to those process fugitive sources which are specified in Table A. Furthermore, the State committed itself to ensure that the V.E. limitations will be set for any capture and control system installed for a source and will be set at levels which will ensure that the systems will be operated and maintained properly. EPA expects that the V.E. limitation will represent the performance of RACT-level control measures which each source will be using.

(2) to revise paragraph (B)(3)(b) such that it requires the control equipment to achieve a grain loading which will not exceed a maximum of .030 gr/dscf.

For any process fugitive source which may not be covered by Table A EPA expects that Ohio will scrutinize these sources in accordance with the RACT criteria of this rule and will issue new permits which reflect the implementation of RACT as outlined in this rule.

- Approval of paragraph (B)(4) on the condition that the State by December 31, 1982, either:

(1) Revises and submits to EPA a version of this rule which specifies in both (B)(4)(a) and (B)(4)(b) an acceptable V.E. limitation and test methodology and which eliminates the "topping off" exemption in (B)(4)(a); or

(2) Revises and submits to EPA a version of this rule which specifies in both (B)(4)(a) and (B)(4)(b) an acceptable V.E. limitation and test methodology and submits an acceptable demonstration which shows that either:

(a) The use of tarpaulins and the elimination of tarpaulins during topping-off represents RACT or

(b) The uncontrolled emissions which result from the "topping-off" period are not significant.

Alternatively, the State could choose to withdraw paragraph (B)(4) and submit to EPA for review and approval, as the Part D plan for shiploading operations, site-specific SIP revisions. These site-specific SIP revisions would be in the form of permits developed for each shiploading source subject to the general RACT requirements of rule 3745–17–08. If the State should choose this option it must withdraw paragraph (B)(4) and submit to EPA these site-specific SIP revisions by December 31, 1982.

EPA will review each permit and will only approve a site-specific permit which includes the following criteria:

(1) A RACT-level V.E. limitation for the entire shiploading period.

(2) A control device which operates during the entire shiploading period, including the topping-off period, unless an acceptable demonstration that emissions generated during the topping-off period are not significant accompanies any permit which grants an exemption from the use of tarpaulins during topping-off, and

(3) A RACT-level overall control efficiency, where a source chooses control measures other than tarpaulins, such as deadbox or bullet-type loading spouts.

Paragraph (C)

- Approval.

Note on this action: The State submitted rule 3745–17–08 to EPA originally on June 13, 1980. On February 18, 1981, the State submitted a revised version of this rule which supersedes the June 13, 1980 version. The February 18, 1981 version differs from the June 13, 1980 submittal in that it exempts from its control requirements three sources located at the ARMCO Middletown Works Plant. EPA in the March 31, 1981 **Federal Register** (46 FR 19468), approved these exemptions and conditionally approved rule 3745–17–08 for the Middletown primary nonattainment area. Today's proposed action does not sepersede EPA's final action announced in the March 31, 1981, **Federal Register**, but proposes action on rule 3745–17–08 as is applies to the remainder of the State.

Rule 3745–17–09

Synopsis

This rule establishes restrictions on emissions and odors from incinerators. It is essentially identical to old rule AP–3–10, except that it deletes the burning capacity and the compliance test method for the incinerators. (These are now specified in rule 3745–17–03). The new rule specifies an emission limit of 0.10 pound of particulate per one hundred pounds of refuse charged for an incinerator with a capacity equal to or greater than one hundred pounds per hour. This limit is relaxed to 0.20 pound of particulate per one hundred pounds charged if the incinerator has a capacity less than one hundred pounds per hour.

Assessment

EPA's review of this rule indicates that it is acceptable.

Action

- Approval of all the provisions of this rule except for those contained within paragraph (C).
- No action on paragraph (C). EPA is not taking any action on paragraph (C), since it deals exclusively with the control of odorous emissions from incinerators. The Clean Air Act does not give EPA any authority to restrict odorous emissions. The agency is responsible only for restricting emissions of the criteria pollutants.

Rule 3745-17-10

Synopsis

This rule establishes mass emission limits for fuel burning equipment. Under the existing Ohio SIP, these limits are established by AP-3-11. Under existing rule AP-3-11, and generally under new rule 3745-17-10, the particulate emission limit applicable to a source is determined by first calculating the maximum heat input into the fuel burning unit or units. Next, the maximum total heat input for all units combined either physically or operationally is calculated. Finally, the maximum allowable emission limitation for a unit is determined by referring to either the P-1 or P-2 curves specified in the Figure 1 graph which is part of the rule. The State also interprets 3745-17-10 to set particulate emission limits for coke oven battery combustion stacks. Under the existing Ohio SIP, EPA has regulated these battery stacks with AP-3-12, the process weight regulation.

However, new rule 3745-17-10 differs from AP-3-11 in the following respects:

- Any product or by-product of a manufacturing process is not to be regulated by rule 3745-17-10.
- The test methods and procedures used to measure compliance have been deleted from rule 3745-17-10. They are, however, specified in rule 3745-17-03.
- Provisions have been included for "derating" a boiler and exempting certain "stand-by-boilers" from the emission limitation calculations.
- Specific emission limitations have been established for sources which burn gaseous fuels and/or number two fuel oil. Consequently, if these sources are part of a multi-unit operation, they are not to be included in the mass emission limitation calculations.
- The P-1 and P-2 curves of Figure 1, which are used to determine the emission limitations for the fuel burning equipment, have been made applicable only to certain counties. In addition, for sources located in the counties of Allen, Clinton, Coshocton, Defiance, Henry, Jackson, Muskingum, Noble, Richland, Ross, Sandusky, Seneca, Shelby and Wyandot, the rule specifies that "Curve P-1," of "Figure I" is to be used in determining that source's emission limitation. Under the existing SIP, sources in these counties are required to meet the emission limitations specified in "Curve P-2."
- Specific emission limits have been set for the coal-fired boilers at the following Ford Motor Company facilities: Brookpark, Sharonville, Canton, Lima, Lorain and Sandusky.

Assessment

EPA's review of this rule indicates that it is acceptable for all sources with the exception of coke oven battery combustion stacks. EPA's technical information contained in the docket on this rulemaking indicates that battery stack emissions falling within the range of .020-.050 gr/dscf represent that degree of control available through the application of RACT. EPA performed numerous caculations using the formulae and curves in rule 3745-17-10, and has determined that this rule would allow emissions from battery stacks, on the average, to approach .1 gr/dscf.

Action

- Approval of 3745-17-10 for all sources except for coke oven battery combustion stacks (battery stacks).
- Approval of 3745-17-10 for battery stacks on the condition that the State revises this rule to represent RACT.

The State in a letter dated January 5, 1982, has given EPA assurances that it will correct this deficiency by promulgating a standard for the combustion stacks which requires the level of control which EPA has indicated represents RACT. The State committed itself to submit a revised version of this rule to EPA for approval by December 31, 1982.

Note: Although EPA is proposing to approve the stand-by boiler and boiler derating provisions of this rule, whenever a boiler is derated or converted to stand-by status, the State must submit the applicable permit to EPA for informational purposes and to ensure consistent enforcement of the SIP.

Rule 3745-17-11

Synopsis. This rule restricts the emission of particulate matter from industrial processes. The present Ohio SIP relies on rule AP-3-12 to restrict particulate matter emission from industrial processes.

1. *Applicability of 3745-17-11 compared to AP-3-12.*

In contrast to AP-3-12, new rule 3745-17-11:

- Does not regulate fugitive emissions from industrial processes (These are instead regulated by rule 3745-17-08 in paragraph (A)(1).)
- Exempts from compliance shiploading operations, grain drying operations at grain elevators, and—during specified time periods—certain salt glazing operations.
- Includes specific provisions for Catalytic Cracking Units at Petroleum Refineries.

2. *The limits established by 3745-17-11.*

For the sources it regulates, the rule sets emission limits with reference to two graphs in "Figure II" and "Table I." The two graphs are county specific and paragraphs (B)(1)-(3) specify their application in terms of counties. Where either of the two graphs may apply to determine a source's emission limits, then—with certain exceptions—the more stringent of the two is to be used.

Figure II uses the uncontrolled mass rate of emissions from a source to determine the maximum mass rate of particulate matter allowed from that source. Figure II consists of three curves—"P-I," "P-2" and "P-3"—to determine, on a county specific basis, the appropriate emission limitations. Paragraphs (B)(1)-(3) of the rule specify which curve is to be used in which county. Under the existing SIP, sources located in Allen, Clinton, Coshocton, Defiance, Henry, Jackson, Muskingum, Noble, Richland, Ross, Sandusky, Seneca, Shelby and Wyandot are subject to either Curves P-2 or P-3. According to the new rule 3745-17-11 sources in these counties, as well as certain other counties specified in paragraph (B)(1), must comply with the emission limitations of Curve P-1.

Table I uses the process weight of all materials introduced into a particular process to determine the maximum mass rate of particulate emissions allowed for that process. Table 1 is not to be used in the counties specified by subparagraphs (B)(2) and (B)(3). Among these counties are some that are primary and secondary nonattainment.

3. *Control of coke quenching (paragraph (B)(4)).*

Paragraph (B)(4) of this regulation proposes to establish a requirement for the control of the coke quenching operation. This paragraph requires that an owner or operator of a quenching tower equip it with an interior baffle system that is designed and maintained in accordance with good engineering practice. This paragraph would modify the existing Ohio SIP, which requires that coke plant quench towers meet the process weight limitations of regulation AP-3-12. EPA believes that compliance with AP-3-12 would require clean water quenching.

4. *Limits for sinter plants and certain BOF shops.*

Rather than relying on rule 3745-17-11, the Ohio Part D plan for Sinter plants and for those BOF shops which use a "closed hood" system to control particulate emissions from the primary stacks, will consist of site-specific emission limitations for the affected

sources. These site-specific emission limitations will be contained within operating permits which will be submitted to EPA for review and approval. The State has indicated that these site-specific emission limitations will not be superseded by rule 3745–17–11.

In Ohio there are only two operating Sinter plants (Armco Inc. of Middletown, Ohio and Republic Steel Corporation of Youngstown, Ohio) and two operating BOF shops which use a "closed hood" system to control particulate emissions from the primary stacks (Republic Steel in Cleveland, Ohio and U.S. Steel in Lorain, Ohio).[2]

For the two operating Sinter plants the State has already submitted site-specific emissions limitations. EPA approved the Armco emission limitations on March 31, 1981 (46 FR 19468) as part of the Middletown, Ohio TSP plan. The Republic Steel emission limitations were approved on March 8, 1982 (47 FR 9834) and constitutes approval of only one small element of an acceptable overall Part D Plan for Mahoning County.

For the two BOF shop primary stacks which are controlled by a closed hood system the State, in its January 5, 1982, letter committed itself to submit by December 31, 1982 to EPA for review and approval, operating permits of RACT-level stringency for these two sources.

EPA's technical data, which are available for review, indicate that these two Ohio BOF shops which use a closed hood cleaning system are currently capable of producing concentrations of 0.02 gr/dscf or less. Therefore, EPA has concluded that an emission limitation of no greater than 0.02 gr/dscf would be representative of RACT for these two facilities unless additional documentation can substantiate a higher number as RACT for a particular source.

Assessment

1. *Control of coke quenching (Paragraph (B)(4)).*

EPA does not believe that paragraph (B)(4) satisfies the requirement for RACT since: (1) it permits the quenching of coke with dirty process water, (2) it does not contain a definition of what constitutes an acceptable interior baffle system and (3) the standard to which the interior baffle system is to be compared, that of a system to be designed and maintained in accordance with good engineering practices (GEP), is vague and unenforceable.

[2] A third BOF shop, operated by Armco in Middletown, Ohio was the subject of another SIP revision (46 FR 19468) and is not affected by today's proposed notice.

2. *Limits for sinter plants and certain BOF shops.*

EPA's action on the Part D plans for Sinter plants and BOF primary stacks which use "closed hood" control devices should not be interpreted as implying that rule 3745–17–11 established acceptable RACT-level emission limitations for these affected sources.

EPA notes that there may be existing Sinter plants in Ohio which, although not presently operational, are capable of re-commencing operation in the future. Similarly, there may be existing non-operational BOF shops with "closed hood" control systems which will become operational in the future. In the event that any of these sources do re-commence operation, Ohio must ensure that these sources operate in compliance with the requirements of the Clean Air Act and rules and regulations of the Administrator of EPA. Furthermore, Ohio must submit all operating permits issued to such sources to EPA for review and approval.

Action

- Approval of this rule, except for:

(a) The emission limit specified for Basic Oxygen Furnace (BOF) Shop primary stacks which use a "closed hood" control device,

(b) The emission limit specified for Sinter plant windbox and discharge end stacks, and

(c) The provisions in (B)(4) for controlling emissions for coke quenching operations.

- Approval of the Ohio Part D plan for BOF shops which use a closed hood system to control particulate emissions from primary stacks on the condition that the State submits acceptable RACT-level stringency permits to EPA on or before December 31, 1982.
- Approval of the Ohio Part D plan for sinter plan windbox and discharge end stacks which consists of site specific permits for each operating sinter plant in Ohio.
- Approval of paragraph (B)(4), on the condition that the State, prior to final rulemaking , commit itself to revise this paragraph to be consistent with RACT and submit the paragraph to EPA by December 31, 1982.

In its January 5, 1982 letter the State indicated that it would consider revising paragraph (B)(4) if EPA provides technical information to support the recommended RACT definition for coke quench towers.

Technical note on revising paragraph (B)(4). With respect to the baffle and GEP design issues, at a minimum, Ohio must expand upon the concept of an acceptable baffle system by specifying the degree to which the horizontal cross-section of the quench tower would be covered by baffles. U.S. EPA believes that coverage of at least 95% of the horizontal cross-section of the tower is a reasonable definition. In addition a definition of GEP must include a definition of an operating and maintenance program for ensuring the continued effective operation of the baffles.

However, a regulation which requires the use of baffles as the sole control mechanism for coke quenching is insufficient to satisfy the RACT requirement, because it would permit quenching of coke using water containing uncontrolled total dissolved solids (TDS) levels. This practice produces unacceptable quench tower particulate mass emission rates. Information EPA has placed in this docket indicates that baffled towers with "clean" water make-up streams will produce significantly lower air emission rates than those which would be generated if high TDS quenching is allowed. To deal with this problem, Ohio must adopt one of the following two alternatives — in addition to further defining the requirements for an acceptable baffle system.

- *Alternative I:* Ohio may develop a testable mass standard for quench towers which effectively requires clean water quenching. EPA acknowledges that particulate mass testing of coke quench towers to determine compliance with a mass limitation is both difficult and costly to conduct. Nevertheless, a modified U.S. EPA Reference Method 5 (40 CFR Part 60, Appendix A) technique has been developed and is available for review in the rulemaking docket on this notice. This technique would be approvable by EPA were it submitted by Ohio to satisfy this deficiency.
- *Alternative II:* Ohio may develop a water-quality based limit. EPA has established that a linear relationship exists between air emission rates from a coke quench tower (in pounds per ton of coke), and the quality of water used for quenching coke (in milligrams per liter of total dissolved solids). This conclusion derives from studies of quench tower emissions based upon tests conducted at U.S. Steel Corporation plants in Lorain, Ohio and Gary, Indiana, and upon tests at the Dominion Foundry and Steel Company (Dofasco) plant in Hamilton, Ontario, Canada. Reports of these tests are contained in the technical docket on this rulemaking at pages 508889, 509249, 509305, 509337, 509943, and 510243 and in the quenching technical support document.

On a filterable solids basis (EPA Method 5, 40 CFR Part 60, App. A), an increase of 1000 mg/l TDS in quench water results in air emission rates of between 0.15–0.49 lb/ton of coal charged into a coke oven depending on specific design factors. Therefore, EPA believes that controlling the TDS levels in water applied to coke affects air emission rates and that make-up water with a total dissolved solids value of no greater than that available from the nearest water source represents a standard achievable with reasonably available control technology. In the course of its rulemaking on Part D SIP revisions in other states, EPA has found to be acceptable TDS limits of 1500 mg/l in Illinois and Indiana, and 1600 mg/l in New York (State commitment to EPA). Similarly, Allegheny County, Pennsylvania has adopted a standard which requires that water of a TDS level equal to the nearest receiving stream be utilized for coke quenching. The method of analyzing for dissolved solids and the number of samples to be taken over a specified time period must also be denoted if Ohio chooses this alternative.

II. The Adequacy of the Modeling Analysis to Determine the Counties Listed in Appendix A

Synopsis. The State conducted a modeling analysis for each of the EPA designated TSP non-attainment areas in the State, except for Ross County, Ohio. (A list of these areas is in the October 5, 1978 **Federal Register** and 40 CFR 81). The purpose of the modeling analyses was to determine which areas of the State should be subject to rule 3745–17–08. Appendix A of rule 3745–17–08 lists those areas. All or portions of forty of the existing fifty EPA designated nonattainment counties and four designated attainment/unclassified areas are contained in Appendix A.

The list of areas in Appendix A represents those nonattainment counties, or portions thereof, in which the State has determined that the implementation of RACT on stationary sources alone will not be sufficient to attain the primary NAAQS by December 31, 1982. In those areas, therefore, the State is requiring implementation of RACT on fugitive sources. In addition to requiring RACT on the fugitive sources in Appendix A areas, the State has also committed itself to conduct additional studies of the nontraditional sources of particulates in these nonattainment areas.

In most of the areas the modeling analysis addressed the annual and 24-hour averaging periods. A modified version of the Climatological Dispersion Model (MCDM) was used to conduct the annual air quality analysis. Larsen's Transform was used with results of the annual air quality analysis to address the short-term 24-hour standards. The models employed by the State are generally consistent with acceptable EPA models which are referenced in the "Guideline on Air Quality Models," April 1978. (A more detailed description of how the analyses were conducted is presented in the "Rationale for Rulemaking on the Ohio Particulate SIP).

Action

EPA has reviewed the modeling analyses and believes that the State's determination of the areas which should be subject to rule 3745–17–08 is adequate for the following counties: Allen, Ashtabula, Belmont, Champaign, Carroll, Clark, Clermont, Clinton, Columbiana, Cuyahoga, Darke, Defiance, Erie, Franklin, Gallia, Geauga, Greene, Hamilton, Hancock, Henry, Jackson, Jefferson, Lake, Lawrence, Logan, Lorain, Lucas, Medina, Meigs, Miami, Monroe, Montgomery, Muskingum, Portage, Preble, Richland, Sandusky, Seneca, Shelby, Stark, Summit, Tuscarawas, Washington, Wayne, Wood and Wyandot. Therefore, EPA proposes to approve the Appendix A designation for these counties.

For Champaign, Clermont, Erie, Hancock, Lawrence, Miami, Montgomery, Richland, Seneca and Tuscarawas Counties, however, due to constraints in the modeling analysis, there was not an adequate demonstration for the secondary TSP NAAQS. In Mahoning and Trumbull Counties the modeling analysis did not adequately address attainment of the secondary standard NAAQS in the designated secondary nonattainment areas. To ensure that the secondary NAAQS will be achieved in these areas by December 31, 1987, the State of Ohio will continue with ambient air quality monitoring in these areas. If necessary, the State will conduct studies to identify the causes of any exceedances and solutions to any secondary standard exceedance in these counties.

EPA's review of the modeling analyses conducted for Scioto, Mahoning, and Trumbull counties indicated that there are some deficiencies which should be corrected prior to EPA's approval of their designation in Appendix A. EPA's review of the modeling analysis for these counties is presented below.

Mahoning, Trumbull and Scioto Counties

Synopsis. Portions of Mahoning, Trumbull and Scioto are designated at either primary or secondary nonattainment. Based upon the modeling analysis the State has exempted from Appendix A all of Scioto and portions of the primary nonattainment areas contained within Mahoning and Trumbull Counties. EPA's review of the modeling analysis indicated the following deficiencies:

(1) For Mahoning and Trumbull Counties there was no analysis conducted for the short-term primary standard.

(2) For Scioto County the MCDM runs for the base year were not able to accurately predict observed concentrations and the emission reductions associated with the application of RACT on the point sources in these counties resulted in little or no reduction in TSP concentrations between the base year and the 1982 attainment date.

In its September 14, 1981 letter the State indicated that it would remodel the Mahoning, Trumbull and Scioto nonattainment areas and appropriately revise Appendix A.

Action

EPA proposes to approve Appendix A of rule 3745–17–08 as it pertains to the Mahoning, Trumbull and Scioto nonattainment areas provided the State submits to EPA by December 31, 1982 the remedial documentation which it committed itself to submit in the September 14, 1981 letter.

In its September 14, 1981 letter, the State also indicated that Madison Township in Sandusky County was mistakenly omitted from the areas included in Appendix A. The State indicated that it will correct this error in the near future. EPA proposes to approve Appendix A for Sandusky County provided the State submits the appropriate remedial documentation to EPA by December 31, 1982. EPA notes that for the primary nonattainment areas contained within these counties attainment of the primary standard must be achieved by December 31, 1982, including any studies and implementation of any necessary control measures.

III. The Approvability of Revised § 3704.11

Synopsis. Section 11 of Chapter 3704 of Title 32 of the Ohio Revised Code (Section 3704.11) is part of the Ohio SIP. As part of the SIP it presently defines the enforcement and promulgation authority delegated to political subdivisions relative to the prevention, control and abatement of air pollution. Generally, it provides a political subdivision with the authority to

promulgate its own ordinances or regulations provided that "... every such local ordinance or regulation ..." shall include emission standards and regulations which are not less stringent than the emission standards and other regulations adopted pursuant to division (E) of section 3704.3 of the Revised Code (Section 3704.3(E)).

On July 1, 1980, the Governor of Ohio submitted to EPA, as a revision to the Ohio SIP, amended House Bill 101 (H.B. 101) amends Section 3704.11 by adding new subparagraph (C). This subparagraph expands the authority given to a political subdivision in relation to certain open burning activities. In particular, Section 3704.11(C) allows a political subdivision to permit a construction contractor to burn, on the construction site, natural wood, lumber, paper, cardboard and wooden boxes. The contractor is not allowed to burn any product with a rubber or petroleum base. Section 3704.11(C) also provides a political subdivision with authority to promulgate its own rules for the issuance of a construction open burning permit. It specifically prohibits open burning during an air pollution alert, warning or emergency for the area of the construction site.

According to the existing Ohio SIP, open burning of construction materials such as those allowed by Section 3704.11(C) is prohibited by rules 01 through 05 of Chapter 3745–19 of the Ohio Administrative Code (rules 3745–19–01 through 05). These rules were promulgated by the State pursuant to Section 3704.3(E) and, except for rules 3745–19–03(D)(1) and 04(D)(1), were approved by EPA in their entirety in the February 3, 1978 **Federal Register** (43 FR 4611). EPA interprets Section 3704.11(C) as superseding rules 3745–19–01 through 05 in those instances where a political subdivision either: (a) issues an open burning permit to a contractor or (b) adopts permit regulations for such open burning activities.

Action

EPA has reviewed the proposed SIP revision and has determined that it is acceptable. Generally, total suspended particulate matter (TSP) and carbon monoxide are the pollutants which are emitted as a result of open burning activities covered by Section 3704.11(C). At the time of submission of Section 3704.11(C) the State indicated that a technical analysis of the change in air quality was not possible. In his July 1, 1980 letter, the Governor of Ohio indicated that the State, however, would submit to EPA at appropriate intervals a report on the annual number of permits issues pursuant to Section 3704.11(C). Although a specific demonstration has not been submitted, EPA does not believe, given the scope of the exemption (i.e., it only allows the burning of specific wood construction debris), that there will be a significant increase in CO emissions in any area of the State. Furthermore, EPA's review of the attainment plans developed by the State for the CO and TSP nonattainment areas indicates that attainment of the appropriate standard does not rely on prohibiting burning of construction debris allowed by Section 3704.11(C). EPA does not believe that approval of Section 3704.11(C) will interfere with an area's ability to attain and maintain the TSP and CO standard. Therefore, EPA is today proposing to approve § 3704.11(C).

IV. Site Specific Revision for Southerly Wastewater Treatment Plant

On March 16, 1982, Ohio EPA submitted as a SIP revision request, an operating permit for the Southerly Wastewater Treatment Plant in Columbus, Ohio. This revision reduces the allowable emissions as required by rule 3745–17–09, from 2.0 lbs./ton (equivalent to .1 lbs. per hundred pounds of refuse charged) to 1.12 lbs./ton of dry sludge combusted. EPA proposes to approve the revision for the Southerly Wastewater Treatment Plant as part of the Ohio TSP SIP. The offset resulting from this emission reduction will be credited to the City of Columbus Refuse-Coal Fired Municipal Electric Plant. Interested individuals are advised that, as EPA indicated in the December 1, 1980 **Federal Register** (45 FR 79153), a 30 day public comment period is being provided on this notice of proposed rulemaking. Public comments received on or before October 21, 1982 will be considered in EPA's final rulemaking.

A thirty day comment period is being provided to enable publication of final action on this submission as expeditiously as possible. Final action approving this revision would satisfy the requirements for a Part D SIP. Until the State has an approved Part D SIP, it is subject to the new source growth prohibitions for section 110(a)(2)(I) of the Clean Air Act. EPA believes that the thirty days will provide the public with ample time to review and comment on today's proposed rulemaking especially since the public was notified on December 1, 1980 of the availability of the documents and EPA's intent to provide 30 days for comment on today's action. It is requested, that where possible, comments be submitted in triplicate. All comments received will be available for inspection during normal business hours at the Region V EPA Office listed at the front of this notice. Please call the contact person listed at the front of this notice before visiting the Region V Office.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirements of a Regulatory Impact analysis. Today's action does not constitute a major regulation since it primarily approves and conditionally approves provisions which the State adopted and submitted to EPA.

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

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

List of Subjects in 40 CFR Part 52

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

This proposed rulemaking is issued under the authority of sections 110 and 172 of the Clean Air Act.

Dated: April 28, 1982.

Valdas V. Adamkus,

Regional Administrator.

Table A

A. Lime Plants
  (1) Product transfer, conveying and screening
  (2) Packaging and shipping
B. Power Plants
  (1) Coal delivery (Railcar)
  (2) Fly ash handling and disposal
C. Grain Terminals (Other than country grain elevators)
  (1) Truck, railcar and barge unloading
  (2) Truck, railcar, barge and ship loading
D. Gray Iron Foundries
  (1) Cupola, electric arc, electric induction furnace charging and tapping
  (2) Ductile iron innoculation
  (3) Pouring molten metal into molds
  (4) Casting shakeout
  (5) Cooling and cleaning castings
E. Steel Foundries
  (1) Electric arc and electric induction furnace charging and tapping
  (2) Hot metal pouring
  (3) Casting shakeout
F. Secondary Metal Processing Plants
  (1) Rotary chip dryer
  (2) Smelting furnaces, charging and tapping.* (reverberatory, crucible, induction)

* Also applicable to brass/bronze, zinc and lead smelting furnaces.

(3) Fluxing (chlorination)
G. Ferroalloy Production
(1) Furnace charging and smelting
(2) Furnace tapping
H. Galvanizing Plants
(1) Galvanizing Kettle
I. Iron and Steel Industry
(1) Sintering
(2) Blast Furnace Cast Houses
(3) Basic Oxygen Furnaces
(4) Electric Arc Furnaces
(5) Argon-Oxygen Decarbonization Vessels
(6) Hot Metal Desulfurization
(7) Hot Scarfing
(8) Teeming Operations
J. Refractory Manufacturing Plants
K. Primary Metal Production Plants

[FR Doc. 82-25791 Filed 9-20-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A-8-FRL 2174-7]

Approval and Promulgation of State Implementation Plans; Revisions to the Wyoming Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: On April 30, 1981, Wyoming submitted revisions to its Prevention of Significant Deterioration (PSD) regulations, which had previously been approved by EPA on September 6, 1979 (44 CFR 51977). The April 30, 1981, revisions were subsequently revised by Wyoming after reconsideration of fugitive dust provisions and resubmitted on February 8, 1982. The revisions were developed to meet the EPA requirements in 40 CFR 51.24, as published on August 7, 1980. In addition on February 8, 1982, Wyoming submitted a minor correction to its regulation on permit requirements for construction, modification and operation of a source. EPA today is proposing to approve these revisions.

DATE: Comments due October 21, 1982.

ADDRESSES: Written comments should be addressed to: Robert R. DeSpain, Chief, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295.

Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295.

FOR FURTHER INFORMATION CONTACT: Barry Levene, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837-3711.

SUPPLEMENTARY INFORMATION: On August 7, 1980, EPA revised 40 CFR 51.24 which contains requirements states must follow in submitting a plan to prevent significant deterioration of air quality (PSD). States were given nine months to revise their state implementation plans (SIP). On April 30, 1981, Wyoming submitted a revised SIP which responded to the new requirements by revising Section 24 of its Air Quality Standards and Regulations.

One portion of the regulations, § 24.b(1)(d), was stayed by the Wyoming Environmental Quality Council pending the outcome of a rehearing based on a petition from a mining company. The stayed section contained procedures for consideration of fugitive dust in determining potential to emit and consumption of increment. A hearing on this matter was held on July 15, 1981, beore the Wyoming Environmental Quality Council. Because the regulation might change as a result of the hearing, Wyoming requested on October 22, 1982, that EPA not proceed with rulemaking until the revised section had been submitted. That section was submitted February 8, 1982.

Summary of PSD Requirements

Section 110(a)(2)(D) and Part C of the Clean Air Act establish specific requirements for the prevention of significant deterioration of air quality in areas where ambient levels are cleaner than the national standards. The Act defines the amount of deterioration that can be tolerated in an area in terms of maximum allowable increases in ambient air quality concentrations (increments). These increments vary and are a function of the classification of an area. There are three applicable classifications under this program: (a) Class I where the increments are very stringent and practically no deterioration is allowed; (b) Class II where moderate, well-controlled growth is allowed: and (c) Class III where a considerable amount of growth is allowed. While the Act established a number of mandatory Class I areas, most of the nation is now Class II. The Act gives redesignation authority to State Governors and Indian governing bodies.

The principal means of protecting the increments are the review and regulation of major new stationary sources and modifications, the tracking of minor source growth and the periodic review of increment consumption. At present, Wyoming is implementing a program approved by EPA prior to the issuance of the revised requirements of 40 CFR 51.24. In that program, operators of major new sources and minor modifications must obtain a permit before commencing construction. A permit is granted only if, among other things: (a) The increments for the area are protected, and (b) best available control technology will be employed.

Summary of Submittal

The February 8, 1982, submittal, (1) revises section 24 of the Wyoming Air Quality Standards and Regulations to make them consistent with the revised requirements, in 40 CFR 51.24 and (2) corrects an error in the Section 21 regulations submitted on August 26, 1981, concerning permitting of new and modified sources. The Section 24 provisions being revised were approved by EPA on September 6, 1979 (44 CFR 51977); the Section 21 provisions being revised were approved by EPA on February 9, 1982 (47 FR 5892).

The EPA review of the submittals identified only one provision in which the Wyoming regulations might not be approvable. The Wyoming PSD regulation establishes a uniform baseline date of August 7, 1977. Federal regulations require the baseline date to be the earliest date after August 7, 1977 that a PSD source submits a complete application. The Wyoming definition could result in a less stringent, lower baseline concentration if, after August 7, 1977, a decrease in emissions were achieved somewhere in the State. In a July 1, 1981, letter to EPA, Wyoming stated that no such decreases occurred in the State before the baseline data would have been triggered under EPA regulations, and that therefore its definition is at least as stringent as EPA's requirements. EPA agrees with the Wyoming determination.

The change to Section 21 of the Wyoming regulations removes a statement concerning documentation of "Ownership" which was not adopted by the Wyoming Environmental Quality Council and yet was included in an August 26, 1981, submittal. Removal of the statement does not affect the approvability of the regulation.

Proposed Action

EPA is proposing to approve both the revisions to the PSD regulations and the correction to the new and modified source permitting regulations.

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

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

This notice of proposed rulemaking is issued order the authority of Section 110 of the Clean Air Act (42 U.S.C. 7420).

List of Subjects in 40 CFR Part 52

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

Dated: June 15, 1982.

Steven J. Durham,

Regional Administrator.

[FR Doc. 82-25941 Filed 9-20-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 123

[W-3-FRL 2210-2]

Revision of Virginia's NPDES Program Transferring Authority Over Coal Mining and Reclamation Facilities From State Water Control Board to the Department of Conservation and Economic Development, Division of Mined Land Reclamation

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule will approve the transfer of certain water discharge regulatory authorities and responsibilities from one Virginia State Agency to another without any change in the substance of those authorities or responsibilities. Currently the Virginia State Water Control Board ("SWCB") administers the National Pollutant Discharge Elimination System ("NPDES") permitting program for regulating all discharges of pollutants to waters within Virginia. This rule will approve transfer of the NPDES authorities for regulating pollutant discharges from coal mining and reclamation facilities from the SWCB to the Virginia Department of Conservation and Economic Development, Division of Mined Land Reclamation ("DMLR"), which is already charged with other regulatory responsibilities for these facilities.

DATE: Comments must be submitted on or before October 21, 1982.

ADDRESS: All comments regarding the proposed rulemaking submitted on or before 30 days after publication of this notice will be considered and should be directed to: Greene A. Jones (3WM00), Director, Water Management Division, U.S. EPA, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106.

FOR FURTHER INFORMATION CONTACT:

Jed Z. Callen, Esquire (3RC12), Office of Regional Counsel, U.S. EPA, Region III, 6th & Walnut Streets, Philadelphia, PA. Telephone: (215) 597-3441.

SUPPLEMENTARY INFORMATION: On March 31, 1975, the Commonwealth or Virginia was given approval by the Environmental Protection Agency to administer the National Pollutant Discharge Elimination System (NPDES) permit program for regulating discharges of pollutants to waters within its boundaries. On December 15, 1981, the Commonwealth was conditionally approved to implement and administer the Surface Mining Control and Reclamation Act of 1977 ("SMCRA") for coal mining and reclamation operations within the Commonwealth. In Virginia, the NPDES permit program is administered by the State Water Control Board ("SWCB"), and the SMCRA permit prgram is administered by the Department of Conservation and Economic Development, Division of Mined Land Reclamation ("DMLR").

As applied to coal mining and reclamation facilities, the requirements of the NPDES and SMCRA permit programs are over-lapping and duplicative. To minimize confusion and duplication of effort, as well as to provide the coal industry with one-stop permitting, Virginia has requested that EPA approve a modification of its NPDES program to permit DMLR to assume all NPDES responsibilities related to coal mining currently performed by the SWCB. DMLR will then issue to each qualifying coal mining or reclamation facility a single permit incorporating the requirements of both SMCRA and NPDES, and will administer both Acts.

Based on the foregoing, it is the tentative decision of the Administrator of the Environmental Protection Agency to modify the Commonwealth of Virginia's NPDES authorization to permit implementation of the portion of the program described above by the DMLR instead of by the SWCB. No substantive rights or obligations of any person will be affected by this amendment. Notice of this proposed rulemaking is referenced under the Clean Water Act. The Administrator's decision to approve or disapprove the proposed amendment will be based on the comments received, and on a determination of whether the proposed amendment will meet the requirements of the Clean Water Act and 40 CFR Part 123.13.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached proposed rule will not have a significant economic impact on a substantial number of small business entities.

Dated: September 3, 1982.

Stanley Laskowski,

Regional Administrator, EPA Region III.

[FR Doc. 82-25940 Filed 9-20-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 123

[SW-6-FRL 2208-8]

Oklahoma Application for Interim Authorization, Phase II, Components A and B, Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Comment Period and of a Public Hearing.

SUMMARY: Today EPA is announcing the availability for public review of the Oklahoma application for Phase II, Components A and B, Interim Authorization, Hazardous Waste Management Program, inviting public comment, and giving notice of a public hearing to be held on the application.

DATE: A public hearing will be held on October 26, 1982, at 7:00 p.m. Comments on the Oklahoma Interim Authorization application must be received by the close of the public hearing on October 26, 1982.

ADDRESSES: EPA will hold a public hearing on Oklahoma's application for Interim Authorization on October 26, 1982, at 7:00 p.m., at the Sequoyah Underground Auditorium, 2401 Lincoln Blvd., Oklahoma City, Oklahoma.

Written comments should be sent to: Environmental Protection Agency, Region 6, Air and Waste Management Division, Attention: H. J. Parr, Hazardous Materials Branch, 1201 Elm Street, Dallas, Texas 75270, 214/767-2645.

Copies of the Oklahoma Phase II Interim Authorization application are available during normal business hours at the following addresses for inspection and copying:

Environmental Protection Agency, Region 6, Library, 28th Floor, 1201 Elm Street, Dallas, Texas 75270, 214/767-7341

Oklahoma State Department of Health, Waste Management Service, 1000 N.E. 10th Street, Room 803, Oklahoma City, Oklahoma 73105

EPA Headquarters Library, Room 2404, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:
H. J. Parr, Hazardous Materials Branch, U.S. EPA, Region 6, Dallas, Texas 75270, 214/767-2645.

SUPPLEMENTARY INFORMATION: In the May 19, 1980 **Federal Register** (45 FR 33063), the Environmental Protection Agency promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (as amended), to protect human health and the environment from the improper management of hazardous waste. Included in these regulations, which became effective 6 months from the date of promulgation, were provisions for a transitional stage in which states would be granted interim program authorization. The interim authorization program will be implemented in two phases corresponding to the two stages in which an underlying Federal program will take effect.

The State of Oklahoma received Interim Authorization for Phase I on January 16, 1981.

In the January 26, 1981, **Federal Register** (46 FR 7965), the Environmental Protection Agency announced the availability of portions of the second phase of Interim Authorization. EPA's decision to make the second phase of Interim Authorization available in components was based on the desire to proceed with authorizing State programs as expeditiously as possible and because some of the Subparts of the Federal regulations containing standards for hazardous waste treatment, storage and disposal facilities (40 CFR Part 264) are to be promulgated at different times, rather than in one single promulgation as previously anticipated.

As noted in the May 19, 1980 **Federal Register**, copies of state submittals for Interim Authorization are to be available for public inspection and comment. The purpose of this notice is to announce the availability of the Oklahoma submittal for Phase II Interim Authorization, Component A (Permit Program for Containers, Tanks, Surface Impoundments and Waste Piles) and Component B (Permit Program for Incinerators); to invite public comment; and to give notice of a public hearing to be held on Oklahoma's application. A listing and a description of requirements for Interim Authorization are stated in 40 CFR Part 123, Subpart F.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indians—land, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties and Confidential business information.

(Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and the Solid Waste Disposal Act Amendments of 1980. 42 U.S.C. 6901 et seq.)

Dated: September 9, 1982.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 82-25840 Filed 9-20-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 536

[Docket No. 82-36]

Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States; Requirements for Filing Currency Adjustment Factors Reflecting Changes in the Exchange Rate of Tariff Currencies

AGENCY: Federal Maritime Commission.

ACTION: Denial of enlargement of time.

SUMMARY: Request for reconsideration of denial of enlargement of time to comment on proposed rules relating to procedures and requirements for currency adjustment factors is denied. Sufficient time for comment originally provided and inadequate basis for extension offered by requesting parties.

DATE: Comments due on or before September 20, 1982.

ADDRESS: Comments (original and fifteen copies) and inquiries to: Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Counsel for various conferences of shipping lines has requested reconsideration of a denial of enlargement of time to comment on proposed rules published in this proceeding July 20, 1982 (47 FR 31408).

A sixty day period was provided for comment by the Commission's original notice. As stated previously, this is ample time under most circumstances. The grounds offered for extension here while varying from those previously expressed are not persuasive that an exception is warranted. The thrust of the instant request is that this matter has been considered and reconsidered over a period of years evidencing its complexity and need for further analyses. Conversely, the number and length of prior considerations demonstrates that the matter already has been given considerable attention and therefore should not require much time for additional analyses. Accordingly, the instant request for reconsideration is denied.

By the Commission.[1]

Francis C. Hurney,

Secretary.

[FR Doc. 82-25785 Filed 9-20-82; 8:45 am]

BILLING CODE 6730-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1100 and 1122

[Ex Parte No. 428]

Discontinuance or Change of Passenger Train or Ferry Service

Decided: September 9, 1982.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to modify our regulations regarding discontinuance or change of passenger train or ferry service by revising 49 CFR Part 1122 and removing 49 CFR Part 1100.246. These changes are being proposed to eliminate unnecessary and redundant informational requirements and streamline our procedures. Regulations mandated by 49 U.S.C. 10909 are set forth separately. Section 1100.246 is consolidated with regulations at 49 CFR 1122. Additionally, because notice governing intercity passenger train discontinuances pursuant to 45 U.S.C. 561 no longer appears necessary, we request comments from the public on the desirability of eliminating present regulations covering them.

DATES: Comments should be filed on or before October 21, 1982 and should refer to Ex Parte No. 428.

ADDRESSES: An original and 10 copies of comments should be submitted to: Section of Finance, Room 5417, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Louis E. Gitomer (202) 275-7245
or
Gloria E. Blazsik (202) 275-0948

SUPPLEMENTARY INFORMATION:

Introduction. As part of our ongoing review of regulations, we are proposing to modify 49 CFR Part 1122, and

[1] Vice Chairman Thomas F. Moakley opposed and Commissioner Richard J. Daschbach dissenting:

I would grant the instant request for reconsideration and extend the comment period for the involved conferences, and all interested parties to October 15, 1982.

eliminate 49 CFR 1100.246. These regulations implement 45 U.S.C. 561, and 49 U.S.C. 10908 and 10909.

The rail transportation policy of the United States (49 U.S.C. 10101a(2)) states, in part, that in regulating the railroad industry, it is the policy of the United States Government to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required. Mindful of the objective of the rail transportation policy, we propose to revise these regulations to eliminate unnecessary and redundant information requirements, to streamline the procedures, and to separate regulations required by these separate statutory sections to avoid confusion.

We also propose to clarify that these regulations apply only to the discontinuance or change of passenger train or passenger ferry service. Comments on this interpretation are invited.

Subpart A—Procedures Under 49 U.S.C. 10908. Under 49 U.S.C. 10908, when a carrier seeks to discontinue or change passenger train or ferry service between points in *two* or more States, it must notify the Commission "*at least* 30 days" before the discontinuance or change is to be effective. We propose a 45-day notice period in order to process properly the application and ensure that all parties' interests are adequately considered. As the result of a petition, or on our own initiative, the Commission may conduct a proceeding on the proposed discontinuance or change of operations, provided that the proceeding is instituted between the date the carrier files the notice with the Commission and the date on which the change is to be made. The Commission may order the carrier to continue any part of the transportation proposed for change pending completion of the proceeding if the decision is served on the carrier at least 10 days before the date the transportation is due to end or change. In the decision to conduct a proceeding, the Commission cannot order continuance of the service for more than 4 months after the date the carrier intended the discontinuance or change to be effective.

If the Commission finds that the transportation is required or permitted by the present or future public convenience and necessity and will not unreasonably burden interstate or foreign commerce after the proceeding is completed, it may order the carier to continue or restore the transportation for a period not to exceed one year. After the one year period has expired, jurisdiction over the matter reverts to the State unless a carrier again invokes the jurisdiction of the Commission under the section.

Specifically, we have reduced some of the financial information required to be submitted by the carrier with its notice proposing a discontinuance of passenger train or ferry service or change of operations. A carrier need only submit its last calendar year's financial data and the financial data for that part of the current year for which such information is available. The balance of the rules are revised to simplify language and to eliminate redundancies. Pertinent regulations in 49 CFR 1100.246 have been consolidated into 49 CFR 1122.

Subpart B—Procedures Under 49 U.S.C. 10909. This section concerns procedures to be followed when a carrier proposes to discontinue or change train or ferry service operated solely within one State. If a State's law prohibits the discontinuance or change, or the appropriate State authority has denied the carrier's request of has failed to act on the request by the 120th day after the carrier has made the request, the carrier may petition the Commission for relief. When a petition is filed, the chief executive officer of the State involved must notified of the filing of the petition. The Commission *must* give a full hearing on the proposed change *if a request is made* or if it decides on its own initiative to hold a hearing. Notice at least 30 days in advance of the hearing must be given to all interested persons if a hearing is held, and the hearing must occur in the State of the proposed change or discontinuance.

Because the procedures to be followed in 49 U.S.C. 10909 are presently interspersed with procedures to be followed under section 10908, we have set them apart, streamlined them, and eliminated the overlaps. The rules provide that a hearing shall be either oral or under the modified procedure. The information that carriers must file with their petition is similar to that required pursuant to 49 U.S.C. 10908.

Subpart C—Procedures Under 45 U.S.C. 561 (proposed for elimination). This section provides that any rail carrier which enters into a valid contract with the National Railroad Passenger Corporation (NRPC) between March 1, 1973, and January 1, 1975, may be relieved of its common carrier obligation to provide intercity rail passenger service under 49 U.S.C. Subtitle IV provided that any railroad discontinuing a train service gives notice to the Commission in accordance with the notice provisions established in 49 CFR Part 1122.

The procedures to be followed under 45 U.S.C. 561 are presently set forth in 49 CFR 1122.9. We have separated them as Subpart C and modified them to conform to our shortened and revised regulations set forth in Subparts A and B. Nonetheless, we believe the notice provisions under 45 U.S.C. 561 are no longer necessary and *propose to eliminate them.* We invite comments specifically on the proposed elimination.

All the proposed changes are set forth in the appendix.

Environmental and Energy Considerations

We do not believe that the actions we propose here will have any significant impact upon the quality of the human environment or energy consumption.

Regulatory Flexibility Analysis

This proceeding is instituted to provide streamlining of our regulations concerning train or ferry discontinuances or change of operations. We believe the revised rules will allow railroads and ferries to achieve greater flexibility in their operations by enabling them to take advantage of the streamlined procedures. This will impact favorably on all rail and ferry carriers and should have a modest, albeit beneficial economic impact upon an unascertainable number of small entities, as well as the shipping public. The proposed changes will not require the filing of reports or any unnecessary record-keeping by small entities, nor will the changes duplicate, overlap, or conflict with any other existing Federal rules.

Conclusions

We proposes to revise 49 CFR Part 1122, as shown in the appendix below and to eliminate 49 CFR 1100.246.

This notice is issued under the authority of 5 U.S.C. 553, 559, 45 U.S.C. 561, and 49 U.S.C. 10321, 10908 and 10909.

List of Subjects

49 CFR Part 1100

Administrative practice and procedure.

49 CFR Part 1122

Administrative practice and procedure, Railroads.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

Appendix

Title 49, Chapter of the Code of Federal Regulations would be amended as follows:

PART 1100—GENERAL RULES OF PRACTICE

§ 1100.246 [Removed]

(1) 49 CFR 1100.246 would be removed.

(2) 49 CFR Part 1122 would be revised to read as follows:

PART 1122—PASSENGER TRAIN OR FERRY DISCONTINUANCE OR CHANGE OF OPERATION

Subpart A—Procedures Under 49 U.S.C. 10908

Sec.

1122.1 Scope of rules.
1122.2 Notice of change or discontinuance.
1122.3 Information required with notice.
1122.4 Procedures governing the proceeding on the proposed discontinuance or change.

Subpart B—Procedures Under 49 U.S.C. 10909

1122.5 Scope of rules.
1122.6 Procedures on the petition.
1122.7 Procedures pertaining to the hearing.

Subpart C—Procedures Under 45 U.S.C. 561

1122.8 Notice of discontinuance filed pursuant to section 401(a)(1) of the Rail Passenger Service Act of 1970.

Subpart A—Procedures Under 49 U.S.C. 10908

§ 1122.1 Scope of rules.

These rules govern the proposal of a carrier to discontinue or change passenger train or ferry service which operates between two of more States.

§ 1122.2 Notice of change or discontinuance.

A separate notice for each unrelated proposal to discontinue or change passenger train or ferry service shall be filed with the Commission 45 days before the discontinuance or change is to be effective, and concurrently mailed to the chief executive officer and railroad regulatory body of each State in which the train or ferry is operated and posted at each station, depot, or facility served by the train or ferry. This notice shall contain the following information:

(a) Exact corporate name and address of the carrier.

(b) The passenger train or ferry number or other description of the passenger train or ferry which is the subject of a discontinuance or change; the name of each station, depot, or facility affected by the proposal; and the termini between which the passenger train or ferry operates.

(c) The data when the proposal will be effective.

(d) Notice that persons wishing to object to the proposal should notify the Commission at Washington, D.C. of their objections and their reasons for opposition at least 30 days before the effective date of the change.

§ 1122.3 Information required with notice.

A "Statement Regarding Proposed Discontinuance or Change of Passenger Train or Ferry Service" shall be filed at the Commission along with each separate notice. This statement shall contain the following either in the statement itself or in attached exhibits:

(a) Name and address of counsel or officer to whom correspondence should be addressed.

(b) Complete description of the present service and the proposed change including the effect on each train station, depot, or other facility affected.

(c) The reasons for the proposal.

(d) Description of alternative common carrier service available in the area described in the notice, if any.

(e) A brief summary of the traffic transported on the passenger trains or ferries involved for the last calendar year and for the current year to the extent available. If this information is not submitted, an explanation for the omission is required.

(f) The financial results of the operations described in paragraph (e), above.

(g) A copy of the carrier's balance sheet as of the latest available date and of its income statement for the last calendar year and for the part of the current year for which such information is available. If on file with the Commission, this information may be incorporated by reference.

(h) A map showing the geographic area and route involved in the proposal.

(i) Certification that a copy of the notice and "Statement Regarding Proposed Discontinuance or Change of Passenger Train or Ferry Service" have been mailed as required in § 1122.2 and the dates of mailing.

(j) Attestation and verification as required by 49 CFR 1100.15.

§ 1122.4 Procedures governing proceedings on the proposed discontinuance or change.

(a) Protests. Interested persons opposed to a proposed discontinuance or change of operations should file with the Commission an original of their protest by telegram, letter, or other writing. The protest should identify the protestant and the carrier involved, state the interest of the protestant, and the grounds for opposition. The protest should be filed with the Commission no later than 30 days before the proposed change is scheduled to go into effect.

(b) Intervention. Intervention in any proceeding will be allowed in accordance with 49 CFR 1100.45, 1100.70, or without formal petition for intervention if the ends of justice require it or for other good cause shown.

(c) Notice of proceeding. After the period for protests ends, the Commission will give notice to the carriers involved, the chief executive officer of each State in which the train of ferry is operated, and any other interested parties of record as to whether a proceeding investigating the passenger discontinuance or change will be institued. If a proceeding is instituted, the Commission may order continuance of the passenger train or ferry service pending completion of the proceeding.

(d) Reconsideration of decision as to whether to investigate. Petitions for reconsideration of the Commission's decision as to whether to investigate the proposed change or discontinuance must be filed with the Commission within 10 days after the date of service of the Commission's decision. Interested persons may reply thereto within 15 days after the date of service of the Commission's decision. If an order is desired requiring continuance of the service pending the proceeding, the petition must be filed with the Commission 15 days prior to the date the discontinuance is to take affect and shall contain a request for expedited handling.

Subpart B—Procedures Under 49 U.S.C. 10909

§ 1122.5 Scope of rules.

These rules govern the proposal of a carrier to discontinue or change passenger train or ferry service which is operated entirely within one State.

§ 1122.6 Procedures on a Petition.

(a) Contents. Petitions filed under 49 U.S.C. 10909 shall contain the information required in § 1122.2 (a) and (b) 1122.3(a)–(h). Additionally, the following information shall be provided:

(1) The date on which a request to change or discontinue the transportation was filed with the appropriate State authority.

(2) Identification of the State authority with which the petition was filed.

(3) Description of the action, if any, taken by the State authority on the petition including a copy to the record of the State proceeding, if available, or a copy of the State law prohibiting the action.

(b) Notice on the petition. When a petition is filed pursuant to this Subpart, the applicant shall at the same time (1) notify the chief executive officer of the State in which the passenger train or ferry is operated by mailing a copy of the State and (2) post a notice of change or discontinuance as required by § 1122.2.

§ 1122.7 Procedures pertaining to the hearing.

(a) Notice on the hearing. If a hearing is requested by any interested party in opposition, the Commission shall give all interested parties at least 30 days notice of the hearing to be conducted in the State in which the passenger train or ferry is operated.

(b) Intervention. See § 1122.4(b).

Subpart C—Procedures Under 45 U.S.C. 561

§ 1122.8 Notice of discontinuance filed pursuant to Section 401(a)(1) of the Rail Passenger Service Act of 1970.

A notice of an intercity passenger train discontinuance filed under this section shall be submitted as follows:

(a) Contents. The notice shall include: (1) The information required in § 1122.2(a)–(c); (2) a statement advising the public that the trains are intercity and entitled to be discontinued pursuant to section 401(a)(1) of the Rail Passenger Service Act of 1970, 45 U.S.C. 561, and, therefore, the Interstate Commerce Commission cannot entertain protests since the discontinuance is not within its jurisdiction.

(b) Filing of Copies. Three copies of the notice shall be filed with the Secretary of the Interstate Commerce Commission accompanied by three copies of an opinion of counsel that the subject trains are intercity passenger trains subject to the Rail Passenger Service Act ot 1970.

(c) Prior to the effective date of the discontinuance, the carrier shall file three copies of a verified statement, executed by a responsible officer of the carrier, that a valid contract has been entered into with the National Railroad Passenger Corporation.

[FR Doc. 82-25923 Filed 9-20-82; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1244

[Ex Parte No. 385 (Sub-1)]

ICC Waybill Sample—Revisions

AGENCY: Interstate Commerce Commission.

ACTION: Withdrawal of proposed revisions and termination of proceeding.

SUMMARY: On February 10, 1982, the Commission published for public comment in the **Federal Register** (47 FR 6040) proposed amendments to 49 CFR 1244, *Waybill Analysis of Transportation of Property*. Railroads, in response to this notice, argued convincingly the impracticabilty of the proposed revisons and the adverse effects such proposal would have on the adoption of computerized reporting or waybill information. The Commission has considered the railroads' comments and agrees that the proposed revisons are unworkable and might prove counterproductive. As a result, the proposed revisions are withdrawn and this proceeding is termninated.

EFFECTIVE DATE: September 21, 1982

FOR FURTHER INFORMATION CONTACT: Sidney Fine, (202) 275–7220.

SUPPLEMENTARY INFORMATION: By notice in the **Federal Register** on February 10, 1982 (47 FR 6040) the Commission proposed to amend 49 CFR 1244, *Waybill Analysis of Transportation of Property*. That notice proposed to add certain information to the waybill data submitted by the railroads.

The railroads argued that collecting this additional data would be prohibitively expensive, and that those carriers contemplating conversion to a computerized reporting system would be effectively discouraged from doing so. A survey of Class I railroads performed by the Association of American Railroads (AAR) indicated that many carriers cannot report the proposed additional information in computerized form. Further, many of the requested items such as an indicator of contract rates, indentification by type of multiple car service including unit train, type of train service, and detailed information for certain TOFC movements are not part of the revenue waybill, and therefore not retrievable except at great additional effort and expense to the carriers. In addition, the AAR found certain flaws in the proposed data requirement for multiple-car service characteristics that make these data impossible to obtain.

The railroads pointed out that the waybill sample is neither a suitable nor an effective vehicle for developing the proposed additional information. They suggested that the Commission could, where necesssary, better obtain the data directly from the involved parties.

Commission staff met with interested parties in order to solicit alternative definitions for miltiple car service characteristics. Notice of the meeting was published May 25, 1982, in the **Federal Register** at 47 FR 22570, and the meeting was held on June 28, 1982, at the Commission's Washington office. The railroads submitted written comments and recommendations, and other parties were in attendance and made oral presentations. The railroads suggested that the number of carloads, as shown on the waybill, was adequate for developing cost information on multiple car shipments. All participants at the meeting agreed to hold further informal discussions regarding whether to undertake a special study to obtain more accurate information on multiple-car service characteristics.

This proceeding is terminated. Waybill sample data requirements, as prescribed in Ex Parte No. 385, effective July 1, 1981, 364 I.C.C. 928, (46 FR 27684, May 15, 1981, as amended at 46 FR 45141, September 10, 1981) remain unchanged.

The standards and format for the computerized system of reporting as originally specified in statement No. 81–1, *Procedure for Sampling Waybill Records by Computer* have been incorporated into the report, *Documentation of the ICC Waybill Sample*, published by the Commission on November 1981, and will be included in any revisions thereof.

This not a significant action adversely affecting the quality of the human environment, the conservation of energy resources or small businesses.

(49 U.S.C. 10321)

Decided: September 10, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-25918 Filed 9-20-82; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 47, No. 183
Tuesday, September 21, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Coronado National Forest Grazing Advisory Board; Meeting

The Coronado National Forest Grazing Advisory Board; Meeting scheduled for 10:00 a.m., September 21, 1982, at the Federal Building, 301 West Congress, Room 7X, Tucson, Arizona, has been cancelled.

This meeting will be rescheduled at a later date.

R. B. Tippeconnic,
Forest Supervisor.
September 13, 1982.
[FR Doc. 82-25975 Filed 9-20-82; 8:45 am]
BILLING CODE 3410-11-M

Food and Nutrition Service

Child Care Food Program; Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for Payments Made After August 31, 1982

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 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. Therefore, on August 20, 1982, the Department published adjusted rates for the 1981 formula at 47 FR 36462. These rates were effective for the period beginning July 1, 1982, until such time as other rates might be announced.

In the notice announcing the adjustment to the 1981 rates, the Department pointed out that the preliminary injunction was being appealed and that different rates might be announced in the future if the appeal were successful. On August 31, 1982, the appeals court issued a stay of the district court's preliminary injunction. This stay authorizes the Department to resume applying the rates which became effective on January 1, 1982, pending a resolution of the litigation. These rates will be applied for payments made after August 31, 1982.

EFFECTIVE DATE: August 31, 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.

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 shall be in effect *for payments made after August 31, 1982, until further notice by the Department.* July claims for all sponsors will be reimbursed at the temporary rates announced in the August 20, 1982, **Federal Register** notice. August claims (for which reimbursement is due after the August 31, 1982, stay was issued) will be reimbursed according to the rates included in this **Federal Register** notice. 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 Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:

Initial 50 day care homes	$45
Next 150 day care homes	$34
Next 800 day care homes	$27
Additional day care homes	$23

Alaska

Administrative Payment Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:

Initial 50 day care homes	$73
Next 150 day care homes	$55
Next 800 day care homes	$43
Additional day care homes	$38

Hawaii

Administrative Payment Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:

Initial 50 day care homes	$52
Next 150 day care homes	$40
Next 800 day care homes	$31
Additional day care homes	$27

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 August 20, 1982 at 47 FR 36524–36551.

(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: September 16, 1982.

Robert E. Leard,

Associate Administrator, Food and Nutrition Service.

[FR Doc. 82-25999 Filed 9-20-82; 8:45 am]

BILLING CODE 3410-30-M

Packers and Stockyards Administration

Shantz & Rodman Livestock Commission Company, Inc.; Depositing of Stockyards

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

Facility No., name, and location of stockyard	Date of posting
AR-134 Shantz & Rodman Livestock Commission Company, Inc., North Little Rock, Arkansas.	May 1, 1965.
MO-168 Mountain Grove, Auction Co., Inc., Mountain Grove, Missouri.	May 13, 1959.
TN-161 Smithville Stockyards, Smithville, Tennesee.	May 30, 1959.

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

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

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

Done at Washington, D.C., this *15th* day of *September, 1982.*

Jack W. Brinckmeyer,

Chief, Financial Protection Branch, Livestock Marketing Division.

[FR Doc. 82-25986 Filed 9-17-82; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

Cajun Electric Power Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500), and REA Bulletin 20–21:320–21, Environmental Policies and Procedures, has made a Finding of No Significant Impact with respect to proposed additional financing assistance to Cajun Electric Power Cooperative, Inc., (CEPCO) of Baton Rouge, Louisiana, for modifications and increased costs associated with the Big Cajun No. 2 Generating Station Units 1, 2 and 3 in Pointe Coupee Parish, Louisiana. CEPCO has a 100 percent ownership interest in Units 1 and 2 and will have a 58 percent ownership interest in Unit 3. Gulf States Utilities Company has purchased the remaining 42 percent ownership interest in Unit 3.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment and CEPCO's Borrower's Environmental Report (BER) may be reviewed in the office of the Director, Power Supply Division, Room 0230, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, telephone (202) 382–1400, or at the office of Cajun Electric Power Cooperative, Inc., (James R. Smith, Manager) 10719 Airline Highway, Baton Rouge, Louisiana 70816, telephone (504) 291–3060.

SUPPLEMENTARY INFORMATION: REA, in connection with a request for financing assistance from CEPCO, has reviewed the BER submitted by CEPCO and has determined that it represents an accurate assessment of the environmental impact of the project now in various stages of completion and construction. The project consists of three 540 MW coal-fired units and associated facilities. As of August 1, 1982, Units 1 and 2 are substantially in commercial operation with some repair work underway and Unit 3 was approximately 80 percent complete. The onsite transmission facilities required to connect the three units with the statewide grid have been completed. No offsite transmission facilities were required. Based upon information contained in the BER, the Environmental Assessment and FONSI issued by REA in April 1981, and the Final Environmental Impact Statement issued by REA for Units 1 and 2 in January 1976, and Unit 3 in January 1979, concerning the project and its impacts, REA concluded that the proposed additional financing assistance would not be a major Federal action significantly affecting the quality of the human environment.

The four documents listed above adequately consider impacts of the project on resources, including threatened and endangered species, important farmland, cultural resources, wetlands and floodplains.

Alternatives examined include delaying completion of the three units (no action) and completion of the Big Cajun No. 2 project. REA determined that completion of the project is an acceptable alternative because it best meets the needs of CEPCO with a minimum of adverse impacts.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: September 15, 1982.

Jack Van Mark,

Acting Administrator.

[FR Doc. 82-25969 Filed 9-20-82; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Martin County Schools, RC&D Measure, North Carolina; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on

Environmental Quality Guidelines (7 CFR Part 1500); and the Soil Conservation Service Guidelines (40 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Martin County Schools, RC&D Measure, Martin County, North Carolina

FOR FURTHER INFORMATION CONTACT:
Mr. Coy A. Farrett, State Conservationist, Soil Conservation Service, Room 544, Federal Building, 310 New Bern Avenue, Raleigh, North Carolina 27611, telephone (919) 755–4210.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Coy A. Garrett, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for reducing flooding and for improving drainage on three school grounds. The planned works of improvement include installing catch basins, pipes and subsurface drainage tubing. Grading and shaping will be done to improve surface drainage and to eliminate ponding. All disturbed areas will be seeded with adapted permanent vegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Coy A. Garrett.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Ciricular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 24, 1982.

Coy A. Garrett,

State Conservationist.

[FR Doc. 82–25977 Filed 9–20–82, 8:45 am]

BILLING CODE 3410–16–M

River Forks Park RC&D Measure, Ga.; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the River Forks Park RC&D Measure, Hall County, Georgia.

FOR FURTHER INFORMATION CONTACT:
Dwight M. Treadway, State Conservationist, Soil Conservation Service, 355 East Hancock Avenue (P.O. Box 832), Athens, Georgia 30613, telephone 404–546–2273.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Dwight M. Treadway, State Conservationist has determined that the preparation and review of an environmental impact statement are not needed for this project.

The objective of the sponsors is to provide improved facilities for water-based recreation. The planned works of improvement include picnic facilities, campsite development, beach installation, and nature trail location. Conservation practices include preservation of native vegetation and immediate stabilization of exposed areas.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Dwight M. Treadway.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: September 13, 1982.

Dwight M. Treadway,

State Conservationist.

[FR Doc. 82–25706 Filed 9–20–82; 8:45 am]

BILLING CODE 3410–16–M

South Will Neill Subwatershed Project, Will Neill Watershed, MI.; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the South Will Neill Subwatershed, Holmes, Leflore, and Carroll Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT:
Billy C. Griffin, State Conservationist, Soil Conservation Service, Suite 1321, Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone (601) 960–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Billy C. Griffin, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood prevention and drainage. The planned works of improvement include 9.7 miles of channel improvement and floodways and a conservation easement on 237 acres of forest land.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Billy C. Griffin.

No administrative action on implementation of the proposal will be

taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Flood Control Act. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: September 13, 1982.

Billy C. Griffin,

State Conservationist.

[FR Doc. 82-25707 Filed 9-20-82; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Bicycle Tires and Tubes From Taiwan; Postponement of Antidumping Duty Preliminary Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Postponement of antidumping duty preliminary determination.

SUMMARY: The antidumping duty preliminary determination involving bicycle tires and tubes from Taiwan is being postponed upon request of petitioner in this case, the Carlisle Tire and Rubber Company. We intend to issue the antidumping duty preliminary determination no later than November 26, 1982.

EFFECTIVE DATE: September 21, 1982.

FOR FURTHER INFORMATION CONTACT: Paul Nichols, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230, (202) 377-1768.

SUPPLEMENTARY INFORMATION: On May 20, 1982, we announced the initiation of an antidumping investigation to determine whether bicycle tires and tubes from Taiwan are being, or are likely to be, sold in the United States at less than fair value. The notice of initiation stated that if the investigation proceeded normally we would issue a preliminary determination on or before October 7, 1982.

As detailed in the notice of initiation of antidumping investigation, the petition alleges that bicycle tires and tubes from Taiwan are being, or are likely to be, sold in the United States at less than fair value. On September 3, 1982, the petitioner requested, pursuant to section 353.39(b) of the Commerce Regulations that the period for the preliminary determination be extended in this case. The petitioner requests this extension to allow time for its legal counsel to obtain confidential versions of questionnaire responses submitted by the Taiwanese firms under investigation, and to allow counsel to review these responses and prepare comments. Based on this request, in accordance with section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), we are extending the period for our preliminary determination in this case to not later than November 26, 1982.

This notice is published pursuant to section 733(c)(2) of the Act.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

September 15, 1982.

[FR Doc. 82-25981 Filed 9-20-82; 8:45 am]

BILLING CODE 3510-25-M

Litharge, Red Lead and Lead Stabilizers From Mexico; Preliminary Affirmative Countervailing Duty Determinations

AGENCY: International Trade Administration, Commerce.

ACTION: Preliminary Affirmative Countervailing Duty Determinations.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Mexico of litharge, red lead and lead stabilizers as described in the "Scope of the Investigations" section of this notice. The estimated net subsidy is 3.389 percent *ad valorem.* Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of the products subject to these determinations which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on these products in the amount equal to the estimated net subsidy. If these investigations proceed normally, we will make our final determinations by November 29, 1982.

EFFECTIVE DATE: September 21, 1982.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Mary A. Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-1276.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

Based upon our investigations, we preliminarily determine that there is reason to believe or suspect that the government of Mexico provides certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended ("the Act"), to manufacturers, producers, or exporters in Mexico of litharge, red lead and lead stabilizers, as described in the "Scope of the Investigations" section of this notice.

We estimate the net subsidy to be 3.389 percent *ad valorem.*

Case History

On June 22, 1982, we received a petition from counsel for the Committee for Litharge, Red Lead and Lead Stabilizers, on behalf of the U.S. industry producing litharge, red lead and lead stabilizers. The petition alleged that certain benefits which constitute bounties or grants within the meaning of section 303 of the Act are being provided, directly or indirectly, to the manufacturers, producers, or exporters in Mexico of litharge, red lead and lead stabilizers.

Since Mexico is not a "Country Under the Agreement" within the meaning of section 701(b) of the Act, and certain of the merchandise at issue here (litharge and red lead) is dutiable, the domestic industries are not required to allege that, and the U.S. International Trade Commission ("ITC") is not required to determine whether imports of these products cause or threaten material injury to the U.S. industries in question. Similarly, no injury determination is required by the ITC with respect to the merchandise which is nondutiable (lead stabilizers including lead compounds not specifically provided for ("NSPF") and pigments containing lead NSPF) because there are, within the meaning of section 303(a)(2) of the Act, no "international obligations" which require such a determination for nondutiable merchandise from Mexico.

We reviewed the petition, and on July 12, 1982, determined that an investigation should be initiated (47 FR 31717).

We presented a questionnaire concerning the allegations to the government of Mexico at its embassy in Washington, D.C. On August 30, 1982, we received a response to the questionnaire. The response provided information on the operations of three firms which exported litharge and red lead. No information was provided on the production, exportation, or provision of bounties or grants on lead stabilizers. On the basis of the best information available, we are assuming that lead stabilizers received the same benefits as the other products under investigation. We are considering the government of Mexico's request that the response be classified pursuant to Executive Order 12356 (effective August 1, 1982).

Scope of the Investigations

The merchandise covered by these investigations consists of litharge, red lead and lead stabilizers which includes lead compounds not specifically provided for ("NSPF") and pigments containing lead NSPF from Mexico. The imported merchandise is currently classifiable under the following Tariff Schedules of the United States ("TSUS") numbers: litharge under TSUS number 473.52, red lead under TSUS number 473.56, lead compounds NSPF under TSUS number 419.04, and pigments containing lead NSPF under TSUS number 473.90.

Litharge is a lead oxide which is manufactured through the simple process of oxidizing refined lead. It is used primarily in lead storage batteries. The merchandise under investigation is also used in the manufacture of ceramics, plastics as a stabilizer, chemicals, protective coatings, sonar devices, and other special applications.

The period for which we are measuring subsidization is the first half of 1982.

Analysis of Programs

In its response, the government of Mexico provided data for the applicable periods.

Based upon our analysis to date of the petition and the response to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined To Be Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Mexico of litharge, red lead and lead stabilizers under the programs listed below.

A. The CEPROFI Program

In 1979, the government of Mexico introduced a four-year National Industrial Development Plan ("NIDP") which spells out broad economic goals for the country. Tax credits, which are called Certificates of Fiscal Promotion ("CEPROFI"), are used to promote the NIDP goals, which include increased employment, the promotion of regional decentralization, industrial development particularly of small and medium sized firms, and the promotion of exports.

CEPROFI certificates are non-transferable tax certificates of a set value which may be used for a five-year period to pay federal taxes. CEPROFI certificates are granted for carrying out investments in "priority" industrial activities. The amount of the CEPROFI is based upon the location of the activity, the number of jobs generated, the value of the investments in new plants and equipment, or the value of purchases of capital goods produced in Mexico.

Some Mexican producers of the merchandise under investigation received CEPROFI certificates during the review period. The companies allege that the certificates were granted in connection with production of products other than the products under investigation.

Because we are unable to determine from the response whether these benefits also aided the products under investigation, we are assuming for the purpose of these preliminary determinations that the products under investigation received the entire benefit.

The Department has preliminarily determined that the government of Mexico is providing bounties or grants to its manufacturers, producers, and exporters of litharge, red lead and lead stabilizers under the CEPROFI program. We have allocated the countervailable CEPROFI benefits received in the first six months of 1982 over the total production of the merchandise under investigation produced during that period, which results in a net subsidy of .012 percent *ad valorem.*

B. Preferential Financing Programs

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust established by the government of Mexico to promote the manufacture and sale of exported products. The fund is administered by the Mexican Treasury Department, with the Bank of Mexico (Mexico's central bank) acting as the trustee. The Bank of Mexico administers the financing of FOMEX loans through financial institutions. The financial institutions establish contracts for lines of credit with manufacturers and exporters of merchandise.

The response states that FOMEX loans were obtained by producers, manufacturers, and exporters of litharge and red lead for two purposes: pre-export (production) financing and export financing.

In order for a company to be eligible for FOMEX financing for exports, the following requirements must be met: (1) The product to be manufactured must be included on a list made public by FOMEX; (2) the articles to be exported must have a minimum of 30 percent national content in direct production costs; (3) loans granted for pre-export must be in Mexican currency, while loans for export sales are established in U.S. dollars or any other foreign currency acceptable to the Bank of Mexico; and (4) the exporter must carry insurance against commercial risks to the extent of the loans. We found that the maximum annual interest rate that credit institutions may charge borrowers for FOMEX pre-export financing is 8 percent in Mexican pesos. The maximum annual interest rate for FOMEX export financing is 6 percent in the currency of the country of importation.

The government of Mexico's response provided no information on the commercial rate of interest in Mexico for short term peso and dollar denominated loans. The response included information provided by three companies which exported the merchandise under investigation on the rate of interest the companies obtained on non-FOMEX loans. On the basis of the best information available, we have used a national average commercial rate of interest in Mexico for peso loans and the average company rate received for non-FOMEX dollar-denominated loans during the first half of 1982.

We have preliminarily determined that during the first six months of 1982, comparable peso-denominated loans were available at 46.95 percent, and comparable dollar-denominated loans were available at 17.16 percent.

For those FOMEX loans obtained by manufacturers during the period January 1, 1982—June 30, 1982, we computed the difference in interest expense between the FOMEX loans and that which would have been incurred had the loans been made at commercial rates. We allocated this amount over the value of total exports during the same period in the case of pre-export financing loans, and over the value of exports to the U.S. during the same period in the case of export financing loans.

We have preliminarily determined the net amount of the benefit rate for loans granted for pre-exports to be 1.874 percent *ad valorem* and the net amount of the benefit rate for export financing to be 1.503 percent *ad valorem,* for a total subsidy under the two programs of 3.377 percent *ad valorem.*

II. Program Preliminarily Determined Not To Be Utilized

We preliminarily determine that the Certificado de Devolucion de Impuesto ("CEDI") program which was described in the notice of "Initiation of Countervailing Duty Investigation" is not utilized by the manufacturers, producers, or exporters in Mexico of litharge, red lead and lead stabilizers.

Certificado de Devolucion de Impuesto ("CEDI") is a tax certificate issued by the government of Mexico in an amount equal to a percentage of the

f.o.b. value of the exported merchandise or, if national insurance and transportation are utilized, a percentage of the c.i.f. value of the exported product. The Secretary of Commerce of Mexico is responsible for setting the CEDI rate, which is not published. Exporters are required to apply for each CEDI by providing to the Ministry of Commerce ("SECOM") documentation with respect to each individual shipment of qualifying exports. SECOM processes the application and, on approval, instructs the Ministry of Treasury ("TESORERIA") to issue the CEDIs in the amount specified. The CEDIs are non-transferable and may be applied against a wide range of federal tax liabilities (including payroll taxes, value added taxes, federal income taxes, and import duties) over a period of five years from the date of issuance.

The government of Mexico's response states that it discontinued the eligibility of the products under investigation for CEDI tax rebates by an Executive Order published on August 25, 1982 in the *Diario Oficial de la Federacion* (Official Gazette). The order abrogates prior Executive Orders which contained the lists of products eligible to receive CEDI certificates. Discontinuance of the eligibility to apply for the CEDI was effective one day after publication of the Executive Order in the *Diario Oficial.*

Verification

In accordance with section 776(a) of the Act, we will verify all the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703 of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of litharge, red lead and lead stabilizers from Mexico which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond, for each such entry of the merchandise in the amount of 3.389 percent *ad valorem.*

This suspension will remain in effect until further notice.

Public Comment

In accordance with section 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10 a.m. on October 18, 1982, at the U.S. Department of Commerce, Room 3104, 14th Street and Constitution Avenue, NW., Washington, D.C.20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by October 11, 1982. Oral presentations will be limited to issued raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within thirty days of this notice's publication, at the above address and in at least ten copies.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

September 15, 1982.

[FR Doc. 82-25984 Filed 9-20-82; 8:45 am]

BILLING CODE 3510-25-M

Yarns of Polypropylene Fibers From Mexico; Initiation of Countervailing Duty Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of yarns of polypropylene fibers receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will announce a preliminary determination on or before November 19, 1982.

EFFECTIVE DATE: September 21, 1982.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-1273.

SUPPLEMENTARY INFORMATION:

Petition

On August 26, 1982, we received a petition from Quaker Textile Corporation of Fall River, Massachusetts, on behalf of the U.S. industry producing yarns of polypropylene fibers. In compliance with the filing requirements of §355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that the manufacturer, producer, or exporter of yarns of polypropylene fibers in Mexico receives, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended ("the Act").

Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the yarns of polypropylene fibers are dutiable, the domestic industry is not required to allege that, and the U.S. International Trade Commission ("ITC") is not required to determine whether, imports of this product cause or threaten material injury to the U.S. industry in question.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on yarns of polypropylene fibers and we have found that the petition meets these requirements.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of yarns of polypropylene fibers as described in the "Scope of the Investigation" section of this notice receive bounties of grants. If our investigation proceeds normally, we will make our preliminary determination by November 19, 1982.

Scope of the Investigation

The merchandise covered by this investigation is yarns of polypropylene fibers from Mexico. The imported merchandise is currently provided for in items 310.0214, 310.1114, 310.5015, 310.5051, 310.6029, 310.6038 and 310.8000 of the *Tariff Schedules of the United States Annotated.* Yarns of polypropylene fibers are used primarily in the manufacture of fabrics, particularly those for upholstery. The major industrial raw materials for these yarns are man-made fibers of staple, continuous filament and bulked continuous filament made from polypropylene resin.

Allegations of Bounties or Grants

The petitioner alleges that the government of Mexico provides bounties or grants to the exporter of yarns of polypropylene fibers of 15 percent of the f.o.b. value of the exported merchandise through the Certificado de Devolución de Impuesto ("CEDI").

The government of Mexico has notified us that as of August 25, 1982, it discontinued the eligibility of all products from receiving benefits under this program. However, inasmuch as the program has not been eliminated, we have included the CEDI program as part of our investigation to determine whether this product in fact receives benefits under the CEDI program.

Petitioner also alleges that the government of Mexico provides tax credits through the Certificates of Fiscal Promotion ("CEPROFI") program for "priority" industrial activities and through preferential financing by the Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX").

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

September 15, 1982.

[FR Doc. 82-25983 Filed 9-20-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

SUMMARY: The South Atlantic Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265), will meet to review comments from the Snapper-Grouper Fishery Management Plan (FMP) public hearings; discuss the decision process of the Calico Scallop and Swordfish FMP's; update the Billfish, Shrimp and Bluefish FMP's; review the FY 83 budget; discuss annual employee evaluations and other business as necessary.

DATES: The public meetings will convene on Monday, October 25, 1982, at approximately noon and will adjourn on Thursday, October 28, 1982, at approximately 5 p.m.

ADDRESS: The public meetings will take place at the Indies Inn, Mile Marker 61, Duck Key, Florida.

FOR FURTHER INFORMATION CONTACT: South Atlantic Fishery Management Council, One Southpark Circle—Suite 306, Charleston, South Carolina 29407, Telephone: (803) 571-4366.

Dated: September 16, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-25985 Filed 9-20-82; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Notice of Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Abbott Laboratories having a place of business at North Chicago, Illinois 60064 an exclusive right in the United States to manufacture, use and sell product embodied in the invention, "Method for the Identification and Purification of Human Lung Tumor-Associated Antigens (HLTAA) and Clinical Detection and Determination of These Antigens," Patent Application No. 6-351,588 (dated February 23, 1982). The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, P.O. Box 1423, Springfield, Virginia 22151. NTIS will maintain and make available for public inspection a file containing all inquiries, comments and other written materials received in response to this Notice and a record of all decisions made in this matter.

Dated: September 14, 1982.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 82-25973 Filed 9-20-82; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Levels of Restraint for Certain Wool and Man-Made Fiber Apparel Products Exported from the Polish People's Republic

September 15, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing the levels of restraint established for men's and boys' wool suit-type coats in Category 433 to 7,798 dozen and wool and man-made fiber suits in Category 443/643/644 to 17,092 dozen, produced or manufacture in Poland and exported during the agreement year which began on January 1, 1982 by the application of available swing, carryover and/or carryforward and by adjustment for carryforward used in 1981. The sublimit for Category 443/643/644 (except leisure suits in T.S.U.S.A. numbers 379.8351, 379.8352, 379.8920, and 379.9560) is being similarly adjusted for the same agreement period to 13,926 dozen.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654)).

SUMMARY: The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of September 15, 1980 and March 21, 1981, as amended, between the Governments of the United States and the Polish People's Republic provides for the carryover of shortfalls in certain categories from the previous agreement year (carryover), for the borrowing of yardage in certain categories from the succeeding year's level with the amount used being deducted from the level in the following year (carryforward); and for the increase in specific ceilings by designated percentages (swing). Pursuant to the terms of the bilateral agreement, the import restraint levels for Categories 433 and 443/643/644 are being increased for the twelve-month period which began on January 1, 1982.

EFFECTIVE DATE: September 15, 1982.

SUPPLEMENTARY INFORMATION: On December 18, 1981 there was published in the **Federal Register** (46 FR 61691) a letter dated December 14, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements

to the Commissioner of Customs which established levels of restraint for certain cotton, wool, and man-made fiber textile products, including Categories 433 and 443/643/644, produced or manufactured in Poland which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1982 and extends through December 31, 1982.

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to permit entry for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in Categories 433 and 443/643/644, produced or manufactured in Poland, at the designated, increased levels during the agreement year which began on January 1, 1982.

Walter C. Lenahan,

Acting Chairman, Committee for the Implementation of Textile Agreements.

September 15, 1982.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On December 14, 1981, the Chairman, Committee for the Inplementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning on January 1, 1982 and extending through December 31, 1982 of cotton, wool, and man-made fiber textile products in certain specific categories, produced or manufactured in Poland, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of September 15, 1980 and March 21, 1981, as amended, between the Governments of the United States and the Republic of Polish People's; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on September 15, 1982, to increase the twelve-month levels of restraint for Categories 433 and 443/643/644 to the following:

Category	Amended 12-month level of restraint[1]
433	7,798 dozen.
443/643/644	17,092 dozen of which not more than 13,926 dozen shall be applied to all T.S.U.S.A. numbers in these categories except 379.8920, 379.9560, 379.8351, and 379.8352.

[1] The levels of restraint have not been adjusted to reflect any imports after December 31, 1981.

The actions taken with respect to the Government of the Polish People's Republic and with respect to imports of wool and man-made fiber textile products from Poland have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-25982 Filed 9-20-82; 8:45 am]

BILLING CODE 3510-25-M

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of September 15, 1980 and March 21, 1981, as amended, between the Governments of the United States and the Polish People's Republic which provide, in part, that: (1) within the aggregate and applicable group limits of the agreement, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee will meet on October 6 and 7, 1982, at the Naval Weapons Center, China Lake, California, and onboard the U.S.S. *New Jersey*, Long Beach California. Sessions of the meeting will commence at 8:30 a.m. and terminate at 3:00 p.m. on October 7, 1982. All sessions of the meeting will be closed to the public.

The entire agenda for the meeting will consist of discussions relating to electronic warfare and other related research. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed i section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander P. D. Quinton, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, telephone number: (202) 696-4870.

Dated: September 17, 1982.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy Alternate Federal Register Liaison Officer.

[FR Doc. 82-26163 Filed 9-20-82; 8:45 am]

BILLING CODE 3810-AE-M

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, October 5, 1982; Tuesday, October 12, 1982; Tuesday, October 19, 1982; and Tuesday, October 26, 1982 at 10:00 a.m. in Room 3D321, the Pentagon, Washington, D.C.

The Committer's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5) U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to

the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C.552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, the Pentagon, Washington, D.C. 20301.

M. S. Healy,

OSD Federal Register Liaison Office, Department of Defense.

September 15, 1982.

[FR Doc. 82-25990 Filed 9-20-82; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Electronic Warfare (Future Systems Subgroup); Notice of Advisory Committee Meeting

The Defense Science Board Task Force on Electronic Warfare will meet in closed session on October 5–6, 1982 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the preceived needs of the Department of Defense.

At the meeting on October 5–6, 1982 the Task Force will discuss the application of technology to future systems designed to improve U.S. Electronic Warfare capabilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. I, (1976)). It has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly these meetings will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

September 15, 1982.

[FR Doc. 82-25863 Filed 9-20-82; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation: Notice of Advisory Committee Meeting

The Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation will meet in open session on October 18–21, 1982 in Brussels, Belgium.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At its meeting on October 18–21, 1982 the Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation will continue its review of the Defense Department's policies, plans and procedures which impede or might impede international arms cooperation and thereby have the potential for adversely impacting the collective security of the United States, its friends and Allies. In this context, the Task Force will also analyze the effect of current international cooperation policies have on the utility of the US, its friends and Allies to achieve in good order and sustain mobilization capacities. Meeting space is limited. Persons interested in attending should contact Mr. E. D. Greinke, Task Force Executive Secretary, 202–697–4172. Space will be awarded on a first come, first serve basis.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

September 15, 1982.

[FR Doc. 82-25864 Filed 9-20-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

[Docket No. CAS-RM-80-304]

Industrial Energy Conservation Program; Notice of Exempt Corporations and Adequate Reporting Programs

AGENCY: Energy Department.

ACTION: Notice of exempt corporations and adequate reporting programs.

SUMMARY: The Department of Energy (DOE) is exempting certain corporations from the requirement of filing corporate reporting forms with DOE and is determining as adequate certain industrial reporting programs for sponsor reporting pursuant to Section 376(g)(1) of the Energy Policy and Conservation Act (EPCA) and DOE's regulations set forth at 10 CFR Part 445, Subpart D. The exempt corporations and the respective sponsors of adequate programs are listed alphabetically by industry in the appendix to this notice.

This list of exempt corporations is required to be published by EPCA. The program's procedures, which allow identified corporations to be exempted from direct reporting, assist in maintaining the confidentiality of consumption information and reduce the reporting burden for corporations.

FOR FURTHER INFORMATION CONTACT:

Tyler E. Williams, Jr., Office of Industrial Programs, CE–122.1, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–2371

Pamela M. Pelcovits, Office of General Counsel, GC–33, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–9516

SUPPLEMENTARY INFORMATION: DOE issued regulations in 10 CFR Part 445 (45 FR 10194, February 14, 1980) which set forth the requirements of DOE's Industrial Energy Conservation Program, as established by Part D of Title III of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95–619). These regulations, in part, require certain industrial corporations to file reports on energy consumption and conservation and, if appropriate, recovered materials utilization directly with DOE or, if exempted, with sponsors of DOE-approved adequate reporting programs.

On June 21, 1982, DOE issued a "Notice of Proposed Exempt Corporations and Adequate Reporting Programs" (47 FR 28351, June 29, 1982) as required by 10 CFR 445.37. Changes in the list issued today include addition of identified corporations and subsidiaries of identified corporations to sponsor lists as well as removal of non-identified corporations and subsidiaries of identified corporations from sponsor lists. These changes are a result of comments received from affected corporations and sponsors. One approved sponsor has withdrawn from the program.

Parentheses with the word "partial" follow any corporation which will be reporting other than its total energy data in any particular two-digit SIC code through the program sponsor under which it is listed. This signifies that the corporation will be reporting only part of its data for the SIC code through that sponsor and may be reporting the rest of

its efficiency data through another sponsor or sponsors or directly to DOE.

Issued in Washington, D.C., September 13, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

Final Exempt Corporations and Sponsors of Adequate Reporting Programs

SIC 20—Food and Kindred Products

American Bakers Association

Campbell Soup Company (partial)
Campbell Taggart, Inc.
Consolidated Foods Corporation (partial)
Flowers Industries Inc.
G. Heileman Brewing Company, Inc. (partial)
ITT Continental Baking Company Inc. (partial)
Interstate Brands Corporation

American Feed Manufacturers Association

Archer Daniels Midland Company (partial)
Cargill Inc.
Central Soya Company Inc. (partial)
Farmers Union Grain Terminal Association (partial)
Gold Kist Inc.
Land O'Lakes, Inc. (partial)
Moorman Manufacturing Company
Ralston Purina Company (partial)

American Frozen Food Institute

Campbell Soup Company (partial)
Con Agra Inc. (partial)
J. R. Simplot Company
Pillsbury Company (partial)
Twin City Foods Corporation

American Meat Institute

Beatrice Foods Company (partial)
Consolidated Foods Corporation (partial)
Farmland Industries Inc.
Geo. A. Hormel & Company
General Host Corporation (partial)
Greyhound Corporation
ITT Continental Baking Company Inc. (partial)
Oscar Mayer & Company
Rath Packing Company
Swift & Company
United Brands Company
Wilson Foods Corporation

Biscuit & Cracker Manufacturers Association

American Brands Inc. (partial)
Keebler Company
Nabisco Inc. (partial)

Chemical Manufacturers Association

National Distillers Products Company

Corn Refiners Association

A. E. Staley Manufacturing Company (partial)
American Maize-Products Company
Anheuser-Busch Inc. (partial)
CPC International Inc.
Grain Processing Corporation
H. J. Heinz Company (partial)
National Starch & Chemical Corporation

Grocery Manufacturers of America, Inc.

A. E. Staley Manufacturing Company (partial)
American Home Products Corporation
Ampco Foods Inc.
Amstar Corporation
Anderson Clayton & Company
Archer Daniels Midland Company (partial)
Beatrice Foods Company (partial)
Borden Inc. (partial)
Carnation Company

Grocery Manufactures of America, Inc.

Central Soya Company, Inc. (partial)
Coca-Cola Company
Consolidated Foods Corporation (partial)
General Foods Corporation
General Mills Inc.
Great A & P Tea Company Inc.
H. J. Heinz Company (partial)
Hershey Foods Corporation
Heublein Inc.
Kellogg Company
Kraft Inc.
Kroger Company
Lance Inc.
Lever Bros.
Mars Inc.
Nabisco Inc. (partial)
Pepsico Inc.
Pet Incorporated
Pillsbury Company
Procter & Gamble Company
Quaker Oats Company
Ralston Purina Company (partial)
R. T. French Company
Standard Brands Incorporated
Thomas J. Lipton Inc.
Universal Foods Corporation

National Food Processors Association

California Canners and Growers Company
Campbell Soup Company (partial)
Castle & Cooke Inc.
Curtice-Burns Inc.
Gerber Products Company
H. J. Heinz Company (partial)
Norton Simon Inc.
R. J. Reynolds Industries, Inc.
Stokely-Van Camp Inc.
Sunkist Growers Inc.
Tri/Valley Growers Inc.

National Frozen Food Association

ITT Continental Baking Company Inc. (partial)

Pharmaceutical Manufacturers Association

Eli Lilly and Company

U.S. Beet Sugar Association

Amalgamated Sugar Company
American Crystal Sugar Company
Consolidated Foods Corporation (partial)
Holly Sugar Corporation
Michigan Sugar Company
Minn-Dak Farmers Cooperative
Monitor Sugar Company
Southern Minnesota Sugar Cooperative

U.S. Brewers Association

Adolph Coors Company
Anheuser-Busch Inc. (partial)
Archer Daniels Midland Company (partial)
Grain Terminal Association (partial)
Jos. Schlitz Brewing Company
Ladish Malting Company
Olympia Brewing Company
Pabst Brewing Company
Philip Morris, Inc. (partial)
The Stroh Companies Inc.

U.S. Cane Sugar Refiners Association

Archer Daniels Midland Company (partial)
California & Hawaiian Sugar Company
Colonial Sugars Inc.
Imperial Sugar Company
National Sugar Refining Company
Refined Syrups & Sugars Inc.
Revere Sugar Corporation
Savannah Foods & Industries Inc. (partial)

SIC 22—Textile Mill Products

American Textile Manufacturers Institute

American Thread Company
Avondale Mills Inc.
Bibb Company
Burlington Industries Inc.
Clinton Mills Inc.
Coats & Clark Inc.
Colgate-Palmolive Company
Collins & Aikman Corporation
Cone Mills Corporation
Cranston Print Works Company
Crompton Company Inc.
Dan River Inc.
Dixie Yarns Inc.
Fieldcrest Mills Inc.
General Tire & Rubber Company
Goodyear Tire & Rubber Company
Graniteville Company
Greenwood Mills Inc.
J. P. Stevens & Company Inc.
Johnson & Johnson
Kimberly-Clark Corporation
M. Lowenstein & Sons Inc.
Milliken & Company
Northwest Industries Inc.

Reeves Brothers Inc.
Riegel Textile Corporation
Spartan Mills Inc.
Sperry and Hutchinson Company (partial)
Springs Mills Inc.
Standard-Coosa-Thatcher Company
Thomaston Mills Inc.
Ti-Caro Inc.
United Merchants & Manufacturers Inc.
West Point-Pepperell Inc.

Carpet & Rug Institute

Mohasco Corporation
Shaw Industries Inc.
Sperry and Hutchinson Company (partial)
Standard Oil Company (Indiana)
WWG Industries Inc.

SIC 24—Lumber and Wood Products

National Forest Products Association

Abitibi-Price Corporation
Boise Cascade Corporation
Champion International Corporation
Georgia-Pacific Corporation
Koppers Company Inc.
Louisiana-Pacific Corporation
Masonite Corporation
Potlatch Corporation
Weyerhaueser Company
Willamette Industries Inc.

SIC 26—Paper and Allied Products

American Paper Institute

Abitibi-Price Southern Corporation
Alton Box Board Company
American Can Company
Appleton Papers Inc.
Arcata Corporation
Austell Box Board Corporation
Bell Fibre Products Corporation
Blandin Paper Company
Boise Cascade Corporation
Bowater Incorporated
Champion International Corporation
Chesapeake Corporation
Clevepak Corporation
Consolidated Packaging Corporation
Consolidated Papers Inc.
Continental Group Inc.
Crown Zellerbach Corporation
Deerfield Specialty Papers, Inc.
Dennison Manufacturing Company
Dexter Corporation
Diamond International Corporation
Eddy Paper Company Limited
Erving Paper Mills Inc.
Federal Paper Board Company Inc.
Finch Pruyn & Company Inc.
Fort Howard Paper Company
Fraser Paper, Limited
GAF Corporation
Garden State Paper Company Inc.
Georgia-Pacific Corporation
Gilman Paper Company
Great Northern Nekoosa Corporation
Green Bay Packaging Inc.
Gulf States Paper Corporation
Hammermill Paper Company
Hollingsworth & Vose Company
International Paper Company
International Telephone & Telegraph Corporation
James River Corporation of Virginia
Kimberly-Clark Corporation
Litton Industries Inc.
Longview Fibre Company
Macmillan Bloedel Inc.
Marcal Paper Mills Inc.
Mead Corporation
Menasha Corporation
Mobil Oil Corporation (partial)
Mosinee Paper Corporation
National Gypsum Company
Newark Boxboard Company
Newton Falls Paper Mill Inc.
Olin Corporation
Owens-Illinois Inc.
PH Glatfelter Company
Pacific Paperboard Products Inc.
Penntech Papers Inc.
Pentair Industries Inc.
Pope and Talbot Inc.
Port Huron Paper Company
Potlatch Corporation
Procter & Gamble Company
Scott Paper Company
Simpson Paper Company
Sonoco Products Company
Southeast Paper Manufacturing Company
Southwest Forest Industries Inc.
St. Joe Paper Company
St. Regis Paper Company
Sorg Paper Company
Stone Container Corporation
Tenneco Inc.
Time Inc.
Times Mirror Company
Union Camp Corporation
Virginia Fibre Corporation
Wausau Paper Mills Company
Weston Paper & Manufacturing Company
Westvaco Corporation
Weyerhaeuser Company
Willamette Industries Inc.

Chemical Manufacturers Association

Minnesota Mining & Manufacturing Company
Mobil Oil Corporation (partial)

Glass—Pressed & Blown (Battelle Institute)

Owens-Corning Fiberglass Corporation

SIC 28—Chemicals and Allied Products

Aluminum Association

Aluminum Company of America
Reynolds Metals Company

American Feed Manufacturers Association

Cargill Inc.

Chemical Manufacturers Association

Air Products & Chemical Inc.
Airco Inc.
Akzona Inc.
Allied Chemical Corporation
American Can Company
American Cyanamid Company
American Hoechst Corporation
American Petrofina Inc.
Arizona Chemical Company
Ashland Oil Inc.
Atlantic Richfield Company
Avtec Fibers Inc.
B F Goodrich Company
Badische Corporation
BASF Wyandotte Corporation
Big Three Industries Inc.
Borden Inc.
Borg-Warner Corporation
Buffalo Color Corporation
Cabot Corporation
CARUS Chemical Company Inc.
Celanese Corporation
Ciba-Geigy Corporation
Cities Service Company
Commonwealth Oil Refining Company
CONOCO Inc.
CPA International Inc.
Diamond Crystal Salt Company
Diamond Shamrock Corporation
Dow Chemical Company
Dow Corning Corporation
E I du Pont de Nemours & Company
Eastman Kodak Company
El Paso Products Company
Ethyl Corporation
Exxon Corporation
Farmland Industries Inc. (partial)
Firestone Tire & Rubber Company
FMC Corporation
Freeport Minerals Company
GAF Corporation
General Tire & Rubber Company
Georgia-Pacific Corporation
Getty Oil Company
Goodyear Tire & Rubber Company
Great Lakes Chemical Corporation
Greyhound Corporation
Gulf Oil Corporation
Henkel Corporation
Hercules Incorporated
ICI Americas Inc.
International Minerals & Chemicals Corporation (partial)
Inter North Inc.
Kaiser Aluminum & Chemical Corporation
Kerr-McGee Corporation
Koppers Company Inc.
Lever Brothers Company
Lubrizol Corporation
Mallinckrodt Inc.
Merichem Company
Minnesota Mining & Manufacturing Company
Mobay Chemical Corporation
Mobil Oil Corporation

Monsanto Company
Morton Norwich Products Inc.
Nalco Chemical Company
National Distillers & Chemical Corporation
NIPRO Inc.
NL Industries Inc.
Occidental Petroleum Corporation (partial)
Olin Corporation
Pennwalt Corporation
Pfizer Inc.
Phillips Petroleum Company
PPG Industries Inc.
PQ Corporation
Procter & Gamble Company
Reichhold Chemicals Inc. (partial)
Reilly Tar & Chemical Corporation
Rohm and Haas Company
Shell Oil Company
Sherex Chemical Company Inc.
Soltex Polymer Corporation
Standard Oil Company (Indiana)
Standard Oil Company (Ohio)
Standard Oil Company of California
Stauffer Chemical Company
SunOlin Chemical Company
Tenneco Inc.
Texaco Inc.
Texasgulf Inc.
Thiokol Corporation
Union Carbide Corporation
Uniroyal Inc.
United States Borax & Chemical Corporation
United States Steel Corporation (partial)
Upjohn Company (partial)
Velsicol Chemical Corporation
Vertac Inc. (partial)
Virginia Chemicals Inc.
Vulcan Materials Company
W. R. Grace & Company
Westvaco Corporation
Weyerhaeuser Company
Witco Chemical Corporation

Fertilizer Institute

Beker Industries Corporation
C F Industries Inc.
Coastal Corporation (Wycon Chemical Company)
Cominco America Inc.
Estech General Chemicals Corporation
Farmland Industries Inc. (partial)
First Mississippi Corporation
Gardinier Big River Inc.
Getty Oil Company
Green valley Chemical Company
International Minerals & Chemical Corporation (partial)
J. R. Simplot Company
Mississippi Chemical Corporation
Occidental Petroleum Corporation (partial)
Reichhold Chemicals Inc. (partial)
Terra Chemicals International Inc.
Tyler Corporation (Atlas Powder Company)
Union Oil Company of California
United States Steel Corporation (partial)
Vertac Inc. (partial)
The Williams Companies

Pharmaceutical Manufacturers Association

Abbott Laboratories
American Home Products Corporation (partial)
Baxter-Travenol Laboratories
Eli Lilly & Company
Hoffmann-La Roche Inc.
Johnson & Johnson
Merck & Company Inc.
Miles Laboratories Inc.
Richardson Vicks Inc.
Squibb Corporation
Upjohn Company (partial)
Warner-Lambert Company

SIC 29—Petroleum and Coal Products

American Petroleum Institute

Agway Inc.
American Petrofina Inc.
Asamera Oil (US) Inc.
Ashland Oil Inc.
Atlantic Richfield Company
Beacon Oil Company
Champlin Petroleum Company
Charter International Oil Company
Cities Services Company
Clark Oil & Refining Corporation
Coastal Corporation
Commonwealth Oil Refining Company
CONOCO Inc.
Crown Central Petroleum Corporation
Crystal Oil Company
Diamond Shamrock Corporation
Dorchester Gas Corporation
Dow Chemical Company
Earth Resources Company
Energy Cooperative Inc.
Exxon Corporation
Farmers Union Central Exchange Inc.
Farmland Industries Inc.
Fletcher Oil & Refining Company
Getty Oil Company
Gulf Oil Corporation
Hunt Oil Company
Husky Oil Company
Indiana Farm Bureau Cooperative Association
Kerr-McGee Corporation
Koch Industries Inc.
Little America Refining Company
Marathon Oil Company
Mobil Oil Corporation
Murphy Oil Corporation
National Cooperative Refinery Association
OKC Corporation
Pacific Resources Inc.
Pennzoil Company
Phillips Petroleum Company
Placid Refining Company
Powerine Oil Company
Quaker State Oil Refining Corporation
Rock Island Refining Corporation
Shell Oil Company
Southern Union Company
Southland Oil Company
Standard Oil Company (Indiana)
Standard Oil Company (Ohio)
Standard Oil Company of California
Sun Company Inc.
Tenneco Inc.
Tesoro Petroleum Corporation
Texaco Inc.
Texas Eastern Transmission Corporation
Time Oil Company
Tosco Corporation
Total Petroleum Inc.
Union Oil Company of California
USA Petroleum Corporation
Winston Refining Company
Witco Chemical Corporation

Chemical Manufacturers Association

GAF Corporation
Great Lakes Carbon Corporation
Koppers Company Inc.

Glass—Pressed and Blown (Battelle Institute)

Owens-Corning Fiberglas Corporation

SIC 30—Rubber and Miscellaneous Plastic Products

Chemical Manufacturers Association

American Cyanamid Company
Dart Industries Inc.
Ethyl Corporation
Exxon Corporation
Minnesota Mining & Manufacturing Company
Union Carbide Corporation
W. R. Grace & Company

Pharmaceutical Manufacturers Association

Baxter-Travenol Laboratories

Rubber Manufacturers Association

Armstrong Rubber Company
B. F. Goodrich Company
Carlisle Corporation
Cooper Tire & Rubber Company
Dayco Corporation
Dunlop Tire & Rubber Corporation
Firestone Tire & Rubber Company
Gates Rubber Company
General Tire & Rubber Company
Goodyear Tire & Rubber Company
Owens-Illinois Inc.
Uniroyal Inc.

SIC 32—Stone, Clay and Glass Products

Brick Institute of America

Belden Brick Company
Bickerstaff Clay Products Company Inc.
Boren Clay Products Company
Delta Brick & Tile Company
General Dynamics Corporation (partial)
General Shale Products Corporation

Glen-Gery Corporation
Justin Industries Inc.

Chemical Manufacturers Association

Engelhard Corporation
GAF Corporation
Minnesota Mining & Manufacturing Company
Reichhold Chemicals Inc.
Vulcan Materials Company

Expanded Shale Clay and Slate Institute

Lehigh Portland Cement Company (partial)
Solite Corporation

Glass—Flat (Eugene L. Stewart)

AFG Industries Inc.
Ford Motor Company
Guardian Industries Corporation
Libbey-Owens-Ford Company
PPG Industries Inc.

Glass Packaging Institute

Anchor Hocking Corporation (partial)
Ball Corporation
Brockway Glass Company Inc. (partial)
Coors Container Company
Dorsey Corporation
Gallo Glass Company
Glenshaw Glass Company Inc.
Indian Head Inc.
Kerr Glass Manufacturing Corporation
Latchford Glass Company
Liberty Glass Company
Midland Glass Company Inc.
National Bottle Manufacturing Company
National Can Corporation
Norton Simon Inc.
Owens-Illinois Inc. (partial)
Philip Morris Inc.
Thatcher Glass Corporation
Wheaton Industries

Glass—Pressed and Blown (Battelle Institute)

Anchor Hocking Corporation (partial)
Brockway Glass Company Inc. (partial)
Certainteed Corporation
Corning Glass Works (partial)
Owens-Corning Fiberglas Corporation
Owens-Illinois Inc. (partial)

Gypsum Association

Domtar Industries Inc. (partial)
Flintkote Company (partial)
Georgia-Pacific Corporation
Jim Walter Corporation (partial)
National Gypsum Company (partial)
Pacific Coast Building Products Company (partial)
United States Gypsum Company (partial)

National Lime Association

Ash GFrove Cement Company (partial)
Bethlehem Steel Corporation (partial)
Can-Am Corporation
Cutler-Magner Company
Domtar Industries Inc. (partial)
Dravo Corporation
Edw. C. Levy Company
Flintkote Company (partial)
General Dynamics Corporation (partial)
J. E. Baker Company (partial)
Martin Marietta Corporation (partial)
National Gypsum Company (partial)
Pfizer Inc. (partial)
Round Rock Lime Company
St. Clair Lime Company
United States Gypsum Company (partial)
Vulcan Materials Company (partial)
Warner Company

Portland Cement Association

Alamo Cement Company
Alpha Portland Cement Company
Arkansas Louisiana Gas Company
Ash Grove Cement Company (partial)
California Portland Cement Company
Capitol Aggregates Inc.
Centex Corporation
Citadel Cement Corporation
Coplay Cement Manufacturing Company
Crane Company
Cyprus Hawaiian Cement Company
Dundee Cement Company
Filtrol Corporation
Flintkote Company (partial)
Florida Mining & Materials Corporation
General Portland Cement Company
Giant Portland & Masonry Cement Company
Gifford-Hill & Company Inc.
Gulf & Western Industries Inc. (partial)
Ideal Basic Industries Inc.
Independent Cement Corporation
Kaiser Cement & Gypsum Corporation
Keystone Portland Cement Company
Lehigh Portland Cement Company (partial)
Lone Star Industries Inc.
Louisville Cement Company
Martin Marietta Corporation (partial)
McDonough Company
Missouri Portland Cement Company
Monarch Cement Company
Monolith Portland Cement Company
National Cement Company
National Gypsum Company (partial)
Newmont Mining Corporation
Northwestern St. Portland Cement Company
Oregon Portland Cement Company
Penn-Dixie Industries Inc.
Rinker Portland Cement Corporation
River Cement Company
South Dakota Cement Company
Southdown Inc.
Texas Industries Inc. (partial)
Whitehall Cement Manufacturing Company

Refractories Institute

Allied Chemical Corporation (partial)
Combustion Engineering Inc. (partial)
Corning Glass Works (partial)
Dresser Industries Inc. (partial)
Ferro Corporation (partial)
General Refractories Company (partial)
Interpace Corporation (partial)
J. E. Baker Company (partial)
Kaiser Aluminum & Chemical Corporation (partial)
Kennecott Corporation (partial)
Martin Marietta Corporation (partial)
McDermott Inc. (partial)
Norton Company (partial)
Pfizer Inc. (partial)
United States Gypsum Company (partial)

Tile Council of America

National Gypsum Company (partial)

SIC 33—Primary Metal Industries

Aluminum Association

Alcan Aluminum Corporation
Alumax Inc.
Aluminum Company of America
American Can Company
Atlantic Richfield Company (partial)
Cabot Corporation
Consolidated Aluminum Corporation
Ethyl Corporation
Kaiser Aluminum & Chemical Corporation
Martin Marietta Corporation
National Steel Corporation (partial)
Noranda Aluminum Inc.
Pechiney Ugine Kuhlmann Corporation (partial)
Revere Copper and Brass Inc. (partial)
Reynolds Metals Company
Southwire Company

American Die Casting Institute

Hayes-Albion Corporation (partial)

American Foundrymen's Society

American Cast Iron Pipe Company
Clow Corporation
Dayton Malleable Inc.
Grede Foundries Inc.
Jim Walter Corporation (partial)
Mead Corporation
Teledyne Inc. (partial)

American Iron & Steel Institute

A. Finkl & Sons Company
Allegheny Ludlum Steel Corporation
Armco Inc.
Athlone Industries Inc.
Atlantic Steel Company
Bethlehem Steel Corporation
Cargill Inc.
Carpenter Technology Corportation
Ceco Corporation
Colt Industries Inc.
Crane Company
Cyclops Corporation
Eastmet Corporation
Florida Steel Corporation
Ford Motor Company
Guteri Special Steel Corporation

Inland Steel Company
Interlake Inc. (partial)
Kaiser Steel Corporation
Keystone Consolidated Industries Inc.
Korf Industries Inc.
Laclede Steel Company
LTV Corporation
Lukens Steel Corporation
McDermott Inc.
McLouth Steel Corporation
National Steel Corporation (partial)
Northwest Industries Inc. (partial)
Northwest Steel Rolling Mills Inc.
Northwestern Steel & Wire Company
Phoenix Steel Corporation
Republic Steel Corporation
Sharon Steel Corporation
Shenango Inc.
Teledyne Inc. (partial)
Timken Company
United States Steel Corporation
Washington Steel Corporation
Wheeling Pittsburgh Steel Corporation

American Mining Congress

Amax Inc.
Asarco Inc.
Cerro Copper Products Company
Inspiration Consol Copper Company
Kennecott Corporation (partial)
Louisana Land & Exploration Company (partial)
Newmont Mining Corporation (partial)
Phelps Dodge Corporation (partial)
St. Joe Minerals Corporation

Chemical Manufacturers Association

Allied Chemical Corporation
Great Lakes Carbon Corporation

Construction Industry Manafucturers Association

Caterpillar Tractor Company
Tenneco Inc.

Copper and Brass Fabricators Council

Atlantic Richfield Company (partial)
Century Brass Products Inc.
Kennecott Corporation (partial)
Louisiana Land & Exploration Company (partial)
National Distillers & Chemical Corporation
Olin Corporation
Phelps Dodge Corporation (partial)
Revere Copper & Brass Inc. (partial)

Ferroalloys Association

Chromium Mining & Smelting Corporation
Dow Chemical Company
Elkem Metals Company
Hanna Mining Company—Silicon Division
Hanna Nickel Smelting Company
Interlake Inc. (partial)
International Minerals & Chemical Corporation
MacAlloy Corporation
Newmont Mining Corporation (partial)
Ohio Ferroalloys
Roane Electric Furnace Company
Satrolloy Inc.
SKW Alloys
Union Carbide Corporation

SIC 34—Fabricated Metal Products

Aluminum Association

Aluminum Company of America
Kaiser Aluminum & Chemical Corporation
Martin Marietta Corporation
Reynolds Metals Company

American Boiler Manufacturers Association

Combustion Engineering Inc.
McDermott Inc.

Can Manufacturers Institute

American Can Company
Continental Group Inc.
Crown Cork & Seal Company Inc.
Jos Schlitz Brewing Company
National Can Corporation

Chemical Manufacturers Association

Olin Corporation
Remington Arms Company Inc.

SIC 35—Machinery, Except Electrical

Air Conditioning & Refrigeration Institute

Emerson Electric Company
IC Industries
Trane Company

Computer & Business Equipment Manufacturers Association

Control Data Corporation
Digital Equipment Corporation
International Business Machines Corporation
Sperry Rand Corporation
TRW Inc.
Xerox Corporation

Construction Industry Manufacturers Association

Bucyrus-Erie Company
Caterpillar Tractor Company
Clark Equipment Company
Cummins Engine Company Inc.
FMC Corporation
Ford Motor Company
Harnischfeger Corporation
Ingersoll-Rand Company
Tenneco Inc.

SIC 36—Electric, Electronic Equipment

Chemical Manufacturers Association

Great Lakes Carbon Corporation
Minnesota Mining & Manufacturing Company

National Electrical Manufacturers Association

Airco Inc.
Allied Chemical Corporation
Emerson Electric Company
Harvey Hubbell Inc.
Johnson Controls Inc.
McGraw-Edison Company
Reliance Electric Company
Square D Company
Union Carbide Corporation

SIC 37—Transportation Equipment

Aerospace Industries Association of America

Boeing Company
General Dynamics Corporation (partial)
Grumman Corporation
Hughes Aircraft Corporation
Lockheed Corporation
Martin Marietta Corporation
McDonnell Douglas Corporation
Northrop Corporation
Textron Inc. (partial)
Thiokol Corporation
TRW Inc.
Vought Corporation

Chemicals Manufacturers Association

Hercules Incorporated
Tenneco Inc.

Motor Vehicle Manufacturers Association

American Motors Corporation
Chrysler Corporation
Ford Motor Company (SIC Code 33, Recovered Materials)
General Motors Corporation (SIC Code 30, 33, Recovered Materials)

SIC 38—Instruments and Related Products

Chemical Manufacturers Association

Eastman Kodak Company
GAF Corporation
Minnesota Mining & Manufacturing Company

Pharmaceutical Manufacturers Association

Johnson & Johnson
Warner-Lambert Company

[FR Doc. 82-25997 Filed 9-20-82; 8:45 am]
BILLING CODE 6450-01-M

Energy Information Administration

Changes to DOE Reporting and Recordkeeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of changes to the inventory of Department of Energy reporting and recordkeeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department

of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current energy information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

The listing that follows this notice indicates changes made during the quarter from April 1, 1982, to June 30, 1982, to the inventory of current DOE information collections published in the **Federal Register**, 47 FR 12920 (March 25, 1982). Additionally, changes to the inventory for forms retroactively discontinued are provided. The listing includes new information collections approved by the Office of Management and Budget (OMB), collections reinstated, extended, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement reinstated, requirement extended, and requirement discontinued, the current DOE control or form number, the title, and the OMB control number and approval expiration date are listed. If applicable, the appropriate Code of Federal Regulations citation is also listed.

SUPPLEMENTARY INFORMATION: Changes to the inventory of current DOE information collections made during the quarter from January 1, 1982, to March 31, 1982, were previously published in the **Federal Register**, 47 FR 23106, May 26, 1982.

FOR FURTHER INFORMATION CONTACT: Carolyn Sinclair, Energy Information Administration, Mail Stop 1H023, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, 252–2313.

Issued in Washington, D.C., September 14, 1982.

J. Erich Evered,

Administrator, Energy Information Administration.

NEW DOE INFORMATION COLLECTIONS APPROVED BY OMB

DOE No.	Title	OMB No.	Expiration date	CFR citation	Notes
Conservation and Renewable Energy					
CE-478R-A	Residential Conservation Service Reportng Requirements—Initial Plans.	19040040	Apr. 30, 1985	10 CFR 456	
CE-478R-B	Residential Conservation Service Reporting Requirements—Annual Reports.	19040040	....do	10 CFR 456	
CE-745A	Evaluation of Institutional Conservation Program	19010243	Dec. 31, 1982	10 CFR 455.4, 450.45(a), 455.17(d)	*(1)
Energy Information Administration					
EIA-23P	Oil and Gas Well Operator List Update Report	19050134	Apr. 30, 1985	NA	
EIA-119A	Annual Report of Forecasted Loads and Changes in Generating Capacity.	19030050	Nov. 30, 1984	NA	*(1)
EIA-412	Annual Report of Publicly Owned Electric Utilities	19050136	Apr. 30, 1985	NA	
Environmental Protection, Safety and Emergency Preparedness					
EIA-767(2)	Steam Electric Plant Air and Water Quality Control Data	19050137	Nov. 30, 1982	NA	
Fossil Energy					
FE-748	Enhanced Oil Recovery Annual Report	19050135	May 31, 1985	NA	*(2)
Federal Energy Regulatory Commission					
EIA-767(1)	Steam Electric Plant Air and Water Quality Control Data	19020034	Nov. 30, 1982	18 CFR 141.59	*(2)
FERC-50	Alternative Fuel Demand Due to Natural Gas Deficiencies	19020101	Dec. 31, 1984	18 CFR 260.15	*(1)
FERC-314A	Application for Small Producer Exemption	19020006	Mar. 31, 1985	18 CFR 250.10	*(1)
FERC-565	General Interrogatory of Fuel Purchase Practices	19020117	Dec. 31, 1982	NA	
FERC-576	Report on Service Interruptions by Pipeline Systems	19020004	Mar. 31, 1985	18 CFR 260.9	*(1)
General Counsel					
GC-789R	Contractor's Invention Recordkeeping/Reporting Procedures	19020253	June 30, 1982	41 CFR 9.9.1075(a)(e)(1)	*(1)
GC-790R	Invention Disclosure Report	1901251	June 30, 1985	NA	
Energy Information Administration					
EIA-28	Financial Reporting System	19050054	Dec. 31, 1982	NA	*(1)
Federal Energy Regulatory Commission					
FERC-531	Gas Producer Certificate: New Service	19020052	Apr. 30, 1983	18 CFR 157.23-.29, 2.75	
FERC-532	Gas Producer Rate: Rate Filing	19020055	Apr. 31, 1985	18 CFR 250.9, 154.91-.101, 2.56a	
FERC-533	Gas Producer Rate: Special Relief Petition	19020056	Jan. 31, 1983	18 CFR 2.75-2.77	
FERC-534	Applications for Production Related Costs	19020057	....do	18 CFR 271 Sub K	
FERC-538	Gas Pipeline Certificate: Initial Service	19020061	Dec. 31, 1984	18 CFR 156	
FERC-539	Gas Pipeline Certificate: Import/Export Related	19020062	Apr. 30, 1984	18 CFR 153	
Conservation and Renewable Energy					
CE-780R	Reporting Requirements for Energy Conservation	19040036	July 31, 1982	10 CFR 445.12, .14, .34, .35,470	
Environmental Protection, Safety					
EP-781R	Transmission of Electric Energy at an International Boundary	19010245	....do	10.CFR 205 W, 205.308	
Federal Energy Regulatory Commission					
EIA-194	Monthly Alternate Fuel/Incremental Price Monitoring Report	19050083	Apr. 30, 1985	NA	
FERC-73	Service Life Data	19020019	Dec. 31, 1984	NA	
FERC-537	Gas Pipeline Certificate	19020060	June 30, 1985	18 CFR 2.69, 2.79, 157.5-.18, 157.22 157.100, 284.107, 284.127.	
FERC-541	Gas Pipeline Certificate: Curtailment plan	19020066	Mar. 31, 1985	18 CFR 2.78, PT 281	
FERC-542	Gas Pipeline Rate	19020070	May 31, 1983	18 CFR 154.61-.65, .91	*(1)
FERC-547	Gas Pipeline Rates Refund Obligation	19020084	May 31, 1985	18 CFR 273.302	
FERC-549	Gas Pipeline Rates: NGPA Title III Transactions	19020086	June 30, 1985	18 CFR 284 Sub A, D, E, F, H, 284.106	
FPC-423	Monthly Report of Cost and Quality of Fuels for Electric Plants	19020024	Sept. 30, 1982	18 CFR 141.61	
ICC-ACV-1	Statement of Property Changes Other Than Land and Rights-of-Way Pipeline Carriers.	19020011	Dec. 31, 1984	18 CFR 361.100	
ICC-ACV-2	Statement of Land and Rights-of-Way	19020018	Dec. 21, 1984	18 CFR 361.101	
ICC-ACV-3	Summary of Changes in Original Cost and Total Original Cost at End of Period—Pipeline Carriers.	19020010	Dec. 31, 1984	18 CFR 361.102	

NEW DOE INFORMATION COLLECTIONS APPROVED BY OMB—Continued

DOE No.	Title	OMB No.	Expiration date	CFR citation	Notes
ICC-ACV-4	Summary of Cost Reproduction New and Reproduction of New Less Depreciation Pipeline Carriers.	19020009	....do	18 CFR 361.103	
ICC-ACV-5	Inventory of Property Other Than Land and Rights-of-Way	19020015	....do	18 CFR 360.100	
ICC-ACV-6	Inventory of Land and Rights-of-Way	19020016	....do	18 CFR 360.101	
ICC-ACV-7	Summary of Original Cost of Inventory	19020017	....do	18 CFR 360.102	
ICC-ACV-8	Cost Data for Equipment and Tanks	19020014	....do	18 CFR 360.103	
ICC-ACV-9	Cost Data for Pipeline Construction	19020013	....do	18 CFR 360.104	
ICC-P	Annual Report—Carriers by Pipeline	19020022	Sept. 30, 1982	18 CFR 357.2, 351, 352	
Conservation and Renewable Energy					
CE-80	Evaluation Activity Report	19040039	Feb. 18, 1982	NA	*(3)
CE-745	Evaluation of Institutional Conservation Program	19010243	Apr. 30, 1982	NA	*(1)
RA-181R	Data Gathering Provisions of Regs for Hydroelectric Power Projects.	19010225	Mar. 31, 1982	10 CFR 797, 797.60	*(3)
Energy Information Administration					
EIA-68	Wind Energy Conversion System Sales Survey	19050111	Sept. 30, 1981	NA	*(3)
EIA-196A	Pennsylvania Anthracite Production Survey	19050085	....do	NA	*(3)
EIA-196B	Pennsylvania Anthracite Distribution	19050084	....do	NA	*(3)
MA-451	Survey of the Consumption of Selected Hydrocarbon, Coal and Coke Materials by Manufacturers—Refinery and Chemical Plants.	19010104	....do	NA	*(3)
MA-452	Survey of the Consumption of Sel. Hydrocarbon, Coal, and Coke Materials—Blast Furnace Form.	19010104	....do	NA	*(3)
Environmental Protection, Safety					
EP-119A	Annual Report of Forecasted Loads and Changes in Generating Capacity.	19030050	May 19, 1982	NA	*(1)
EP-160	Monthly Electrical Utility and Fuel Planning Report	19030059	June 30, 1982	NA	
Energy Research					
ERDA-601	A Survey of Occupational Employment in Nuclear Energy Activities.	19010022	....do	NA	
Economic Regulatory Administration					
ERA-316	Petition for Temporary Use of Natural Gas	19030063	Jan. 31, 1982	10 CFR 508	*(3)
ERA-316R	Information Requirements for Regulations To Grant Temp Public Interest exemption for Use of Natural Gas.	19030018	....do	10 CFR 508	*(3)
Fossil Energy					
FE-769R	Federal Loan Guarantee for Alternative Fuel Demonstration Facilities.	19010244	June 30, 1982	10 CFR 796.99, 796	
Federal Energy Regulatory Commission					
FERC-122	Report of First Sales of Natural Gas Under Sec. 109, Natural Gas Policy Act, Other categories of Natural Gas.	19020039	Apr. 30, 1982	18 CFR 276.104	
FERC-123	Initial Rept. of 1st Sale of Nat. Gas Under Sec. 105, Nat. Gas Policy Act, Existing Intrastate Contract.	19020041	....do	18 CFR 276.102	
FERC-124	Rept of 1st Sales of Nat. Gas Under Sec. 106(B), Nat. Gas Policy Act, Intrastate Rollover Contracts.	19020040	....do	18 CFR 276.103	
FERC-543	Gas Pipeline Rate: Rate Change (Formal)	19020071	May 31, 1982	18 CFR 154.63-.65, .91	*(1)
FERC-544	Gas Pipeline Rate: Rate Change (Non-Formal)	19020072	....do	18 CFR 154.63-.65, .91	*(1)
FERC-545	Gas Pipeline Rate: Rate Change Tracking (Formal)	19020080	June 2, 1982	18 CFR 154.63-.65, 91	*(1)
FERC-546	Gas Pipeline Rate: Rate Change Tracking (Non-Formal)	19020081	....do	18 CFR 154.63-.65, 91	*(1)
FERC-564	Fuel Purchase Practices—Environmental Constraints	19020108	Apr. 30, 1982	NA	
FPC-R0016	Report on Service Interruptions on Pipeline Systems	19020004	June 2, 1982	18 CFR 260.9	*(1)
FPC-12	Power System Statement	19020035	June 30, 1982	18 CFR 141.51	*(1)
FPC-314A	Application for Small Producer Exemption	19020006	Mar. 31, 1982	18 CFR 250.10	*(1)
General Counsel					
GC-765R	Patent/Invention Reporting/Recordkeeping Requirements	19010246	June 30, 1982	41 CFR 9-9.107-5, .109-6	*(1)
International Affairs					
IA-401	Emergency Report Questionnaire A	19050079	Apr. 5, 1982	18 CFR 209.24	
Power Marketing Administration					
BPA-406-A	Energy Consevation Pilot Program—Energy Conservation Analysis and Heat Loss, Caculation/Recommendation.	19010109	June 30, 1982	NA	
BPA-406-B	Energy Conervation Pilot Program—Recommendations Form	19010109	....do	NA	
BPA-406-C	Energy Conservation Pilot Program—Notice of Work for Bid/Bid Release.	19010109	....do	NA	
BPA-406-D	Energy Conservation Pilot Program—Weatherization Agreement and Notice to Proceed.	19010109	....do	NA	
BPA-406-E	Energy Conservation Pilot Program—Completion, Acknowledgement/Weatherization Improvements.	19010109	....do	NA	
BPA-406-F	Energy Conservation Pilot Program—Monthly Financial Statement.	19010109	....do	NA	

*(1) See changes in continuing DOE information collections at end of listing.
*(2) EIA-767 (1) and (2) are the same form. This form is jointly sponsored by the Federal Energy Regulatory Commission, the Environmental Protection Agency, the Bureau of Economic Analysis of the Department of Commerce, the DOE Office of Environmental Protection, Safety and Emergency Preparedness, The DOE Office of Nuclear Energy and the EIA. These organizations share the data collected on this form.
*(3) Retroactive listing for previous discontinuances.

CHANGES IN CONTINUING DOE INFORMATION COLLECTIONS

DOE No.	Changes
EIA-28	Form revised.
EIA-119A	Replaces EP-119A.

CHANGES IN CONTINUING DOE INFORMATION COLLECTIONS—Continued

DOE No.	Changes
FERC-50	Re;aces EIA-50.
FERC-314A	Replaces FPC-314A.
FERC-542	Consolidates requirements previously listed under FERC-543, 544, 545, and 546.
FERC-576	Replaces FPC-R0016.
GC-789R	Replaces GC-765R.

Economic Regulatory Administration

[Docket No. ERA-FC-82-016; FC Case No. 56372-9107-20-24]

Procter & Gamble Paper Products Co.; Order Granting Exemption

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order Granting to Procter & Gamble Paper Products Company an Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On May 5, 1982 Procter & Gamble Paper Products Company, hereinafter referred to as petitioner, filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for an electric powerplant from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act) that (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rules containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA were published in the Federal Register at 46 FR 59872 (December 7, 1981) and 47 FR 29209 (July 6, 1982). Criteria governing the cogeneration exemption are contained in 10 CFR 503.37.

The petitioner requested a permanent cogeneration exemption for a 19,876 kilowatt gas-fired, with oil backup, combines cycle cogeneration facility producing electricity, process heat, and steam at its plant at Oxnard, California.

Pursuant to section 212(c) of the Act and 10 CFR 503.37, ERA hereby issues this Order granting a permanent cogeneration exemption for the new powerplant. The basis for ERA's Order is provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: In accordance with section 702(a) of FUA, this Order and its provisions shall take effect on November 19, 1982.

The public file containing a copy of this Order and other documents and supporting materials on this proceeding is available for inspection upon request at: Department of Energy Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.–4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-073, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-2201.

Allan Stein, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6B-178, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-2967.

SUPPLEMENTARY INFORMATION: The powerplant for which the petition for exemption has been filed is a 19,876 kilowatt gas-fired combined-cycle cogeneration facility, with oil backup, which (1) generates electrical power for the petitioner's needs, plus an excess for sale, and (2) utilizes the heat exhausted from the turbine for direct-contact drying of its paper products. A heat recovery boiler which utilizes exhaust heat from the turbine, not required in the drying process, has also been installed to meet the petitioner's steam needs. The heat recovery boiler has no supplemental firing capability. Excess electricity is sold to Southern California Edison Company.

The petitioner certified that the gas or oil to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility where the calculation of savings is in accordance with 10 CFR 503.37(b); that the use of mixtures is not feasible, as required under 10 CFR 503.9; and that the criteria in 10 CFR 503.37(a)(1) are, therefore, satisfied by the powerplant.

Documentary evidence submitted by the petitioner in support of its petition under 10 CFR 503.37(a)(1) include: (1) The duly executed certifications required under that subparagraph; (2) exhibits containing the basis for the certifications, including the supporting factual and analytical materials; and (3) an environmental impact analysis, as required under 10 CFR 503.13(a) of the final rule.

After review of the petitioner's environmenal impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act.

In accordance with the procedural requirements of FUA and 10 CFR § 501.3(b), ERA published its Notice of its Acceptance of Petition for Exemption and Availability of Certification relating to the powerplant in the **Federal Register** on June 15, 1982 (47 FR 25762), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of the petition to the Environmental Protection Agency for comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed on July 30, 1982. No comments were received and no hearing was requested.

Decision and Order: Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied all the eligibility requirements for the requested exemption as set forth in 10 CFR 503.37(a)(1) and, pursuant to section 212(c) of FUA, ERA hereby grants the petitioner a permanent cogeneration exemption for the new powerplant to be located at its plant at Oxnard, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this Order may petition for judicial review thereof at any time before the 60th day following the publication of this Order in the **Federal Register.**

Issued In Washington, D.C., on September 8, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-25867 Filed 9-20-82; 8:45 am]

BILLING CODE 6450-01-M

Benton Pruet d.b.a., P&R Trading Co.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Benton Pruet d/b/a P&R Trading Company of Clyde, Texas. This Proposed Remedial Order charges P&R with pricing violations in the amount of $5,160,948.59 connected with the sale of crude oil at prices in excess of those permitted by 10 CFR Part 212, Subpart L during the time period September 1979 through November 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Ernest D. Moore, Deputy Director, Crude Reseller Audit & Litigation Support Group, Economic Regulatory Administration, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 767-7436. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 12th & Pennsylvania Ave., NW., Washington, D.C. 20461, in accordance with 10 CFR §206.193.

Issued in Dallas, Texas, on the 10th day of September 1982.

Ben L. Lemos,

Director, Dallas Office Economic Regulatory Administration.

[FR Doc. 82-25868 Filed 9-20-82; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket Nos. G-3966-000, et al.]

Sun Exploration and Production Co. (formerly Sun Oil Co.) et al.; Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates[1]

September 13, 1982.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 28, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Assistant Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft [3]	Pressure base
G-3966-000, D, Sept. 2, 1982	Sun Exploration and Production Company (formerly Sun Oil Company), P.O. Box 20, Dallas, Texas 75221.	Texas Gas Pipe Line Corporation, Nome Field, Jefferson County, Texas.	(1)	
CI72-393-001, C, Sept. 2, 1982	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	Sea Robin Pipeline Company, Eugene Island Block 295, Offshore Louisiana.	(2)	14.73
CI72-440-009, D, Sept. 7, 1982	Amoco Production Company, 1670 Broadway, Room 1754, Denver, Colorado 80202.	Panhandle Eastern Pipeline Company, Wattenberg Field, Adams and Weld Counties, Colorado.	(3)	
CI82-391-000, A, Aug. 25, 1982	Houston Oil & Minerals Corporation, P.O. Box 2511, Houston, Texas 77001.	Texas Eastern Transmission Corporation, Vermilion Block 72, Offshore Louisiana.	(4)	14.73
CI82-393-000, A, Aug. 25, 1982	Phillips Petroleum Company, 336 HS&L Building, Bartlesville, Oklahoma 74004.	Transcontinental Gas Pipe Line Corporation, Section 29-13S-17E, Lafourche Parish, Louisiana.	(5)	14.73
CI82-394-000, A, Aug. 26, 1982	Case-Pomeroy Oil Corporation, P.O. Box 1511, Midland, Texas 79702.	Tennessee Gas Pipeline Company, Block 24, Eugene Island Area, Offshore Louisiana.	(4)	14.73
CI82-395-000, A, Aug. 26, 1982	Felmont Oil Corporation, P.O. Box 2266, Midland, Texas 79702.	Tennessee Gas Pipeline Company, Block 24, Eugene Island Area, Offshore Louisana.	(4)	14.73
CI82-396-000, A, Aug. 27, 1982	Pacific Lighting Exploration Company, 720 West Eighth Street Los Angeles, California 90017.	Trunkline Gas Company, OCS-G-2702, High Island SA Block A-542, Offshore Texas.	(6)	14.73
CI82-397-000, B, Aug. 26, 1982	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, Post Office Box 2819, Dallas Texas 75221.	Warren Petroleum Company, et al., Golden Trend Area, McClain County, Oklahoma.	(7)	
CI82-398-000, B, Aug. 26, 1982	....do....	Warren Petroleum Company, et al., Golden Trend Area, McClain County, Oklahoma.	(7)	
CI82-399-000, B, Aug. 26, 1982	....do....	Warren Petroleum Company, et al., Golden Trend Area, Garvin County, Oklahoma.	(7)	
CI82-400-000, B, Aug. 26, 1982	....do....	Warren Petroleum Company, et al., Golden Trend Area, Garvin County, Oklahoma.	(7)	
CI82-401-000, A, Aug. 30, 1982	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Oklahoma 73125.	Transcontinental Gas Pipe Line Corporation, Ship Shoal Block 237, Offshore Louisiana.	(8)	15.025
CI82-402-000, A, Aug. 30, 1982	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Texas Eastern Transmission Corporation, Chandeleur Area Blocks 17 and 25, Offshore Louisiana.	(9)	14.73

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft [3]	Pressure base
CI82-403-000, A, Aug. 30, 1982	Anadarko Production Company, P.O. Box 1330, Houston, Texas 77001.	Trunkline Gas Company, Brazos Block A-7, Offshore Texas.	([4])	14.73
CI82-404-000, A, Aug. 30, 1982	NT. Corporation, 1990 Post Oak Boulevard, Suite 1400, Houston, Texas 77056.	Texas Eastern Transmission Corporation, East Cameron Block 336 Area, Offshore Louisiana.	([10])	15.025
CI82-405-000, A, Aug. 31, 1982	General American Oil Company of Texas, Meadows Building, Dallas, Texas 75206.	Tennessee Gas Pipeline Company, Eugene Island Block 24, Offshore Louisiana.	([10])	15.025
CI82-406-000, (CI74-172), B, Sept. 1, 1982.	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Transwestern Pipeline Company, Atoka (Morrow Field), Eddy County, New Mexico.	([11])	
CI82-407-000, , Sept. 1, 1982	McMoRan-Freeport Oil Company, P.O. Box 6800, Metairie, Louisiana 70009.	Texas Eastern Transmission Corporation, East Cameron Block 336, Offshore Louisiana.	([12])	15.025
CI82-408-000, B, Sept. 1, 1982	Estate of Mrs. James R. Dougherty, et al., 2300 Austin National Bank Tower, Post Office Box 98, Austin, Texas 78767.	Val Gas Company, Hidalgo (El Texas Upper) Field, Hiadalgo County, Texas.	([13])	
CI82-409-000, A, Sept. 2, 1982	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Tennessee Gas Pipeline Company, Vermilion Area Block 28, Offshore Louisiana.	([14])	14.73
CI82-410-000	Transco Exploration Company, P.O. Box 1396, Houston, Texas 77251.	Texas Eastern Transmission Corporation, West Cameron Block 336, Offshore Louisiana.	([15])	14.73
CI82-411-000	J. M. Huber Corporation, 2000 West Loop South, Houston, Texas 77027.	Diamond Shamrock Corporation, SW/4 of Section 3, Block R-2, D&P R.R. Company, Hutchinson County, Texas.	([16])	
CI82-412-000	Pioneer Production Corporation, P.O. Box 2542, Amarillo, Texas 79189.	Texas Eastern Transmission Corporation, Block 336, East Cameron Area, Offshore Louisiana.	([17])	15.025
CI82-413-000	Syndex, 1297 N. Lewis Street, Glenville, West Virginia 26351.	Equitable Gas Company, Leading Creek Field, Gilmer County, West Virginia.	([18])	

[1] Sun released rights to these leases because all economically recoverable reserves had been depleted.
[2] Applicant agrees to accept a permanent certificate of public convenience and necessity covering the subject sale conditioned in accordance with the Natural Gas Policy Act of 1978 and the Commission's Regulations under said Act.
[3] Non-productive.
[4] Applicant is filing under Gas Purchase and Sales Agreement dated July 29, 1982.
[5] Applicant is filing under Gas Purchase Contract dated January 7, 1958, amended November 19, 1976.
[6] Applicant is filing under Gas Purchase Contract dated May 13, 1982.
[7] Buyer cannot economically justify the connection of the Well. ARCO is therefore requesting abandonment of this gas so it may seek another purchaser.
[8] Applicant is filing under Gas Purchase Contract dated August 20, 1982.
[9] Applicant is filing under Gas Purchase Contract dated August 15, 1982.
[10] Applicant is filing under Gas Purchase Contract dated August 11, 1982.
[11] Last well plugged and abandoned in October, 1980.
[12] Applicant is filing under Gas Purchase Contract dated August 24, 1982.
[13] Depletion of gas reserves.
[14] Applicant is filing under Gas Purchase and Sale Agreement dated August 16, 1982.
[15] Applicant is filing under Gas Purchase Contract dated July 29, 1982.
[16] Prior contract expired with J. M. Huber and Diamond Shamrock unable to reach an agreement on terms for a new contract. Colorado Interstate Gas Company has agreed to purchase the gas at the full maximum lawful price applicable under the NGPA.
[17] Applicant is filing under Gas Purchase Contract dated July 28, 1982.
[18] These wells were released by Equitable as part of a court settlement and Syndex wishes to sell the gas to another purchaser.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 82-25812 Filed 9-20-82; 8:45 am]
BILLING CODE 6717-01-M

Western Area Power Administration

Floodplain/Wetlands Involvement Determination for the Tucson-Apache 115-Kilovolt Transmission Line Rebuild Proposal in Pima and Cochise Counties, Arizona

AGENCY: Western Area Power Administration, DOE.

ACTION: Floodplain/Wetlands involvement and opportunity for comment.

SUMMARY: The Western Area Power Administration (Western) proposes to rehabilitate 80 miles of existing 115-kV transmission line from the Tucson Substation (Pima County, Arizona) east to the Apache Power Plant (Cochise County, Arizona). The proposed action includes replacement of deteriorated poles, replacement of conductor with larger diameter conductor, and replacement of damaged insultors. All actions would take place on Western's existing right-of-way. The action is needed to improve the reliability of this line and increase transmission capability in the Tucson area.

Pursuant to the requirements of the Department of Energy's "Compliance with Floodplain/Wetlands Environmental Review Requirements" (10 CFR 1022), Western has determined that this project would involve activities within floodplain/wetlands areas.

The existing line spans eight floodplains designated on Flood Hazard Boundary Maps prepared by the Federal Insurance Administration of the Department of Housing and Urban Development. Locations of these spans are as follows: Santa Cruz River, NE¼, Sec. 3, T. 14 S., R. 13 E.; Santa Cruz River, SW¼, Sec. 2, T. 15 S., R. 13 E.; West Branch Santa Cruz River, NW¼, Sec. 3 T. 15 S., R. 13 E.; unnamed wash, NE¼, Sec. 5, T. 16 S., R. 14 E.; Davidson Creek, S½, Sec. 6, T. 17 S., R. 17 E.; Cienega Creek, NW¼, Sec. 17, T. 17 S., R. 18 E.; Cienega Creek, S½, Sec. 7, T. 17 S., R. 18 E.; San Pedro River, SW¼, Sec. 2, T. 17 S., R. 20 E. Maps and further information are available from Western at the addresses provided below.

Public comments or suggestions on Western's activities in these floodplain/wetlands areas are invited.

DATE: Any comments are due October 6, 1982.

ADDRESS: Send written comments or suggestions to: Mr. Robert A. Olson, Area Manager, Boulder City Area Office, Western Area Power Administration, Department of Energy, P.O. Box 200, Boulder City, NV 89005.

FOR FURTHER INFORMATION CONTACT: Mr. James G. Hartman, Environmental Specialist, Western Area Power Administration, Department of Energy, P.O. Box 200, Boulder City, NV 89005 (702) 293-8844.

Issued at Golden, Colorado September 13, 1982.

Robert L. McPhail,
Administrator.

[FR Doc. 25869 Filed 9-20-82; 8:45 am]
BILLING CODE 6450-01-M

Floodplain/Wetlands Involvement Determination for the Coolidge-Saguaro 115-Kilovolt Transmission Line Rehabilitation Proposal in Pinal County, Arizona

AGENCY: Western Area Power Administration, DOE.

ACTION: Floodplain/Wetlands Involvement and Opportunity for Comment.

SUMMARY: The Western Area Power Administration (Western) proposes to rehabilitate 29.6 miles of existing 115-kV transmission line from the Electrical District No. 2 Substation to Baumgartner Road in Pinal County, Arizona. This section of line is a part of the 47.1 miles of 115-kV line running from the Coolidge Substation to the Saguaro Steam Plant. The proposed action includes replacement of deteriorated poles, replacement of conductor with larger diameter conductor, and replacement of damaged insulators. All actions would take place within Western's existing right-of-way. The action is needed to improve the safety and reliability of this line.

Pursuant to the requirements of the Department of Energy's "Compliance with Floodplain/Wetlands Environmental Review Requirements," (10 CFR 1022), Western has determined that this project would involve some activities within a floodplain/wetlands area.

The existing line spans the floodplain of the Santa Cruz River at Sec. 26, T. 10 S., R. 8 E. A map and further information are available from the address listed below. Public comments or suggestions on Western's activities in this floodplain/wetlands area are invited.

DATE: Comments are due on or before October 6, 1982.

SEND WRITTEN COMMENTS TO: Mr. R. A. Olson, Area Manager, Boulder City Area Office, Western Area Power Administration, Department of Energy, P.O. Box 200, Boulder City, NV 89005.

FOR FURTHER INFORMATION CONTACT: Mr. James G. Hartman, Environmental Specialist, Boulder City Area Office, Western Area Power Administration, Department of Energy, P.O. Box 200, Boulder City, NV 89005, Telephone (702) 293-8844.

Issued at Golden, Colorado, September 13, 1982.

Robert L. McPhail,

Administrator.

[FR Doc. 82-25866 Filed 9-20-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SAB-FRL 2209-2]

Science Advisory Board, Environmental Health Committee; Amended Notice of Meeting

Under Pub. L. 92-463, notice is hereby given of a change in the agenda for the meeting of the Environmental Health Committee of the Science Advisory Board scheduled for September 28-29, 1982 in Washington, D.C. notice of which was published in the September 8, 1982 issue of the **Federal Register** (47 FR 39609).

The Committee will not review and comment on the scientific adequacy of a Draft Health Advisory of Aldicarb as previously announced. Copies of this document are not yet available.

The remainder of the agenda will be as previously announced.

Any members of the public wishing further information regarding this amended notice of meeting or regarding other aspects of the meeting should contact the Executive Secretary of the Environmental Health Committee, Science Advisory Board, U.S. Environmental Protection Agency, A101M, Washington, D.C. 20460. Please ask for Mrs. Patti Howard or Mr. Ernst Linde. The telephone number is (202) 382-2552.

Dated: September 8, 1982.

Terry F. Yosie,

Acting Staff Director, Science Advisory Board.

[FR Doc. 82-25960 Filed 9-20-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket No. 82-626; File No. BP-781030AJ]

Butte Broadcasting Co., Inc.; Designating Application for Hearing on Stated Issues

Adopted: August 16, 1982.

Released: September 10, 1982.

In re application of Butte Broadcasting Co., Inc., KEWQ, Paradise, California, Has: 930 kHz 0.5 kW, D, Req: 930 kHz, 1 kW, 0.5 kW-LS, DA, N, U; for construction permit.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, now considers (i) the above-captioned application of Butte Broadcasting Company, Inc. for nighttime authority for its station KEWQ; (ii) a petition to deny the application filed by KSEI Broadcasters, Inc., licensee of co-channel station KSEI, Pocatello, Idaho, and; (iii) related pleadings.[1]

2. KSEI contends that, based on its clipping study, the KEWQ nighttime proposal would not afford adequate protection to KSEI's nighttime operation. Further, petitioner submitted a computerized stability study which it says shows that KEWQ's proposed array would be highly unstable, in that radiation would exceed standard-pattern values with only minor operating parameter deviations, resulting in objectionable interference to KSEI.[2] Additionally, petitioner argues, other factors (such as the poor design of the array and a rocky site terrain, suject to heavy rains which, in turn, expose the ground radials) indicate instability of the proposed array.[3] KEWQ opposes the petition, arguing that KSEI's contentions are based on opinion, assumptions and misinterpretations of the Commission's Rules and that even if the proposed array is unstable, no interference to KSEI would result.

3. Interference studies conducted by the Commission on the proposed KEWQ nighttime operation reveal that it is in compliance with applicable Commisssion Rules. No prohibited interference will result either site to site or to the peripheral "clipping" contour of KSEI. However, our own computer studies show that the proposed nighttime array is inherently sensitive to minor parameter variations. For example, we find that with variations as small as 0.5 percent current ratio deviation and 0.5° phase deviation, radiation in the direction of KSEI would exceed the specified standard radiation values. (Our benchmarks are 1%/1° for generally stable arrays and 0.1%/0.1° for highly unstable arrays between these extremes we consider arrays on a case-by-case basis. See *Home Service*

[1] The related pleadings include KEWQ's opposition to the petition, KSEI's reply, and both paties' requests for extension of time to file pleadings. The requests are hereby granted and the pleadings accepted.

[2] As petitioner alleges that KEWQ's proposal would cause objectionable interference to KSEI's service area, we find that petitioner has standing as a party in interest within the meaning of Section 309(d) of the Communications Act of 1934, as amended. *FCC* v. *National Broadcasting Co., Inc.*, 319 U.S. 239 (1943).

[3] KSEI additionally contends that the multitude of errors and deficiencies in the applicant's engineering exhibits render them useless. KEWQ's amendments of August 21, 1979, January 24, 1980 and June 2, 1981 corrected these errors and provided the necessary information to the extent that KSEI's contention is moot.

Broadcasting Corp., 68 FCC 2d 1135 (1978).)

4. However, a determination of stability involves consideration of factors both internal and external to an array. Other indications of instability here include a RSS/RMS ratio of 2.03 and the rocky terrain of the site, which does, in heavy rains, cause the ground radials to be exposed (KSEI has documented this condition with photographs.) We are therefore unable to determine that the proposed array can be adjusted and maintained within the proposed standard pattern. Consequently, exploration of the proposed operation at hearing is required.

5. Except as indicated by the issues specified below, Butte Broadcasting Company, Inc. is qualified to construct and operate as proposed. [4] However, in view of the foregoing, the Commission is unable to determine that grant of this application would serve the public interest, convenience, and necessity, and is of the opinion that it must be designated for hearing.

6. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the application is designated for hearing, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine whether the antenna system proposed by Butte Broadcasting Company, Inc. can be adjusted and maintained within the proposed limits of radiation.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, whether a grant of the application would serve the public interest, convenience, and necessity.

7. It is further ordered, That the petition to deny KSEI Broadcasters, Inc. filed against the application IS GRANTED to the extent indicated above, and IS DENIED in all other respects, and that KSEI Broadcasters, Inc. IS MADE A PARTY to this proceeding.

8. It is further ordered, That in the event of a grant of the application, the construction permit shall contain the following conditions:

An antenna monitor of sufficient accuracy and repeatability, and having a minimum resolution of 0.1 degree phase deviation and 0.1 percent sample-current deviation, shall be installed and continuously available to indicate the relative phase and magnitude of the sample current of each element in the array, to insure maintenance of the radiated fields within the authorized values of radiation.

Upon receipt of operating specifications and before issuance of a license, permittee shall submit the results of observations made daily of the base currents and their ratios, relative phases, sample currents and their ratios, and sample-current deviations for each element of the array, along with the final amplifier plate voltage and current, the common-point current, and field strengths of each monitoring point for both nondirectional and directional operations for a period of at least 30 days, to demonstrate that the array will be maintained within the specified tolerances.

9. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221 (c) and (e) of the Commission's Rules, the parties shall within 20 days of the mailing of this order, in person or by attorney, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence, on the issues specified in this order.

10. It is further ordered, That pursuant to section 311(a) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicant shall give notice of the hearing as prescribed in the rule, and shall advise the Commission of the publication of its notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division.

[FR Doc. 82-25878 Filed 9-20-82; 8:45 am]

BILLING CODE 6712-01-M

[4] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

[BC Docket No. 82-633, File No. BPH-810605AF; and BC Docket No. 82-634, File No. BPH-811026AL]

Chudy Broadcasting Corp., and Riceland Communications, Inc.; Designating Applications for Consolidated Hearing on Stated Issues.

Adopted: September 7, 1982.

Released: September 13, 1982.

In re Applications of Chudy Broadcasting Corp., Stuttgart, Arkansas, Req: 105.5 MHz, Channel 288, 3.0 kW (H&V), 288 feet, BC Docket No. 82-633 File No. BPH-810605AF; and Riceland Communications, Inc., Stuttgart, Arkansas, BC Docket No. 82-634 File No. BPH-811026AL. Req: 105.5 MHz, Channel 288, 3 kW (H&V), 300 feet; For Construction permit for new FM Station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Chudy Broadcasting Corporation and Riceland Communications, Inc.

2. Data submitted by the applicants indicate that there would be a significant difference in the size of the populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive FM service of 1 mV/m or greater intensity together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. The applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

6. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the rules, jointly) within the time and in the manner prescribed in

such Rule, and shall advice the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-25877 Filed 9-20-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 82-608, File No. BPCT-820208KE, et al.]

Commanche Broadcasting, Inc.; Designating Applications for Consolidated Hearing on Stated Issues

Adopted: August 20, 1982.

Released: September 3, 1982.

In re applications of Commanche Broadcasting, Inc., Kerrville, Texas, BC docket No. 82-608, file No. BPCT-820208KE; Tierra Del Sol Broadcasting Corp., Kerrville, Texas, BC docket No. 82-609, file No. BPCT-820413KE; Hispanic American Broadcasting of Texas, Inc., Kerrville, Texas, BC docket No. 82-610, file No. BPCT-820416KE; for construction permit.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Commanche Broadcasting, Inc. (Commanche), Tierra Del Sol Broadcasting Corporation (Tierra), and Hispanic American Broadcasting Corporation of Texas, Inc. (Hispanic) for authority to construct a new commercial television broadcast station on Channel 35, Kerrville, Texas.[1]

2. The material submitted in Commanche's and Tierra's applications does not demonstrate the applicants' financial qualifications. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, Commanche and Tierra will be given 30 days from the date of mailing of this Order to review their financial proposals in light of Commission requirements, to make any changes that may be necessary and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to their financial qualifications. If the applicants cannot make the required certification, they shall so advise the Administrative Law Judge who shall then specify appropriate issues. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82-378. (released July 15, 1982).

Commanche Broadcasting, Inc.

3. Commanche's proposed antenna is to be mounted on the existing AM station KERV tower. Therefore in order to insure that the AM pattern will not be adversely affected, a grant of this application will be appropriately conditioned.

Hispanic American Broadcasting of Texas, Inc.

4. No determination has been reached that the tower height and location proposed by Hispanic would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Hispanic, whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, That Commanche Broadcasting, Inc. and Tierra Del Sol Broadcasting Corporation shall each submit a financial certification in the form required by Section III, F.C.C. Form 301, or advise the Administrative Law Judge that such certification cannot be made, as may be appropriate.

8. It is further ordered, That any grant of a construction permit to Commanche Broadcasting, Inc. will be subject to the following condition:

During installation of the TV antenna, AM station KERV shall determine operating power by the indirect method. Upon completion of the installation, antenna impedance measurements of the AM antenna shall be made. The results shall be submitted to the Commission, along with a tower sketch of the installation, in an application for the AM station to return to the direct method of power determination. Thereafter, the station may commence *Limited Program Tests.*

9. It is further ordered, That the Federal Aviation Administration is MADE A PARTY RESPONDENT with respect to Issue 1.

10. It is further ordered, That the petition to deny filed by Commanche Broadcasting, Inc. against Hispanic American Broadcasting of Texas, Inc. is dismissed.

11. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. It is further ordered, That the applicants herein shall, pursuant to section 311 (a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the commission of the publication of such notice as requred by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-25875 Filed 9-20-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 82-627, File No. BPH-810316AP]

Jan-Di Broadcasting, Inc. and Fruita Broadcasting Co.; Designating Applications for Consolidated Hearing on Stated Issues

Adopted: August 27, 1982.

Released: September 9, 1982.

In re applications of Jan-Di Broadcasting, Inc., Fruita, Colorado, Req: 99.9 MHz, Channel 260C, 100 kW (H&V), 1384.8 feet, BC Docket No. 82-627, File No. BPH-810316AP; John G. Gayer, d.b.a. Fruita Broadcasting Co., Furita, Colorado, Req: 99.9 MHz, Channel 260C, 28.5 kW (H&V), 9952 feet, BC Docket No. 82-628, File No. BPH-

[1] Commanche filed a petition to deny against Hispanic. The petition is in essence, a pre-designation petition to specify issues. Since such petitions are no longer permitted, it will be dismissed. *Processing of Contested Broadcasting Applications*, 72 F.C.C. 2d 202 (1979).

810819BB; for construction permits for a new FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Jan-Di Broadcasting, Inc. and John G. Gayer, d.b.a. Fruita Broadcasting Co. (Gayer).

2. *Gayer.* Applicants for new broadcast stations are required by Section 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. We have no evidence that Gayer published the required notice. To remedy this deficiency, Gayer must publish local notice of his application, if he has not already done so, and so inform the presiding Administrative Law Judge.

3. Analysis of the financial data submitted by Gayer reveals that $156,937 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment	$95,437
Land	22,000
Building	6,000
Miscellaneous	9,000
Operating costs (3 months)	24,500
Total	156,937

Gayer plans to finance construction and operation with $60,000 in revenues generated by the station's first three months of operation. However, such funds may not be relied upon to establish an applicant's financial qualifications. *Financial Qualifications Standards,* 72 FCC 2d 784 (1979). Also, while Gayer reports a net worth of $625,625, only $29,000 of this amount is reported as liquid assets.[1]

4. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, the applicant will be given 30 days from the date of mailing of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.,* BC Docket No. 82–378.

[1] Gayer's balance sheet also shows a $5,900 liability to Ford Motor Credit. Since there is no indication of when this liability is due, it may further reduce his liquid assets.

5. Gayer is President, Director and 50% stockholder of Summit Radio, Inc., applicant for a permit to construct a new AM station in Dillon-Frisco-Silverthorne, Colorado. This application was mutually exclusive with two others and was designated for comparative hearing in *Alan K. Levin,* FCC 80–657, December 1, 1980. In that proceeding, an issue was designated to determine whether the principals of Summit Radio, including Gayer, filed false affidavits with the Commission, and, if so, the effect such conduct would have on Summit's basic and comparative qualifications. *Alan K. Levin,* Docket No. BC 80–713, FCC 82M–0860, March 17, 1982. Because of Gayer's interest in Summit, a finding on this qualifications issue could effect his status in the present proceedings. Therefore, an issue will be specified to determine what effect the resolution of the issue specified in Docket No. BC 80–713 may have on Gayer's basic or comparative qualifications. The evidence adduced in that proceeding will be *res judicata* in the hearing ordered above.

6. Data submitted by the applicants indicate that there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive they must be designated for hearing in a consolidated proceeding.

8. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine with respect to Gayer, the effect of the resolution of the issues specified in *Alan K. Levin,* Docket No. BC 80–713, FCC 82M–0860, released March 17, 1982, upon the applicant's basic or comparative qualifications.

(2) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(3) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

10. It is further ordered, That the applicant Gayer shall submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate, within 30 days of the mailing of this Order.

11. It is further ordered, That, Gayer shall file a statement with the presiding Administrative Law Judge showing compliance with the public notice requirements of Section 73.3580(f) of the Commission's Rules.

12. It is further ordered, That, the evidence adduced in BC Docket No. 80–713 with regard to Gayer shall be *res judicata* in this proceeding.

13. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

14. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82–25882 Filed 9–20–82; 8:45 am]

BILLING CODE 6712–01–M

[BC Docket No. 82–599, File No. BP–810129AB]

Minority Broadcasting Co. of the Midwest; Hearing Designation Order

Adopted: August 19, 1982.

Released: September 2, 1982.

In re applications of Minority Broadcasting Company of the Midwest, Memphis, Tennessee, Req: 1030 kHz, 1 kW, 50 kW (10kW–CH), DA–N, U, BC Docket No. 82–599, File No. BP–810129AB; Eastern Jackson County Broadcasting Corp., Blue Springs, Missouri, Req: 1030 kHz, 500 W, 1 kW–

LS, DA–2, U, BC Docket No. 82–600, File No. BP–810310AB; Contemporary Broadcasting, Inc., Hallsville, Missouri, Req: 1030 kHz, 1 kW, 5 kW–LS, DA–2, U, BC Docket No. 82–601, File No. BP–810410AI; Gilliam Communications, Inc., WLOK, Memphis, Tennessee, Has: 1340 kHz, 250 W, 1 kW–LS, U, Req: 1030 kHz, 1 kW, 50 kW–LS, U, BC Docket No. 82–602, File No. BP–810410AY; Bowman and Caselman Enterprises, KHOG, Farmington, Arkansas, Has: 1440 kHz, 1 kW, D, Req: 1030 kHz, 1 kW, 10 kW–LS, DA–N, U, BC Docket No. 82–603, File No. BP–810410AZ; for construction permit.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to the delegated authority, has under consideration (1) the above-captioned mutually exclusive applications for AM broadcast stations; (2) conditional objections to grant filed by Westinghouse Broadcasting Company, Inc., licensee of WBZ, Boston, Massachusetts, against the applications of Minority Broadcasting Company of the Midwest (Minority) Contemporary Broadcasting, Inc. (CBI), Gilliam Communications, Inc., (Gilliam) and Bowman and Caselman Enterprises (Bowman); (3) a petition to deny Gilliam's application filed by Minority; (4) a request for waiver of § 73.24(j) of the Commission's Rules filed by Minority; (5) request for waivers of § 73.24(g) and (j) of the Commission's Rules filed by Gilliam; and (6) related pleadings.[1]

2. WBZ's conditional objections. With its objections, WBZ submits computerized stability studies which it contends show that the proposed arrays of Minority, CBI, Gilliam and Bowman would be highly unstable, in that radiation would exceed standard-pattern values with only minor operating-parameters deviations, resulting in objectionable interference to WBZ.[2,3] As a result, WBZ requests that grant of a construction permit to any of the four applicants be stringently conditioned. Minority, Bowman and CBI oppose imposition of WBZ's requested conditions by stating that under normal operating conditions their proposed nighttime arrays are stable.[4]

3. It has been our policy to consider as being generally stable directional arrays which do not exceed their radiation limits with 1.0 percent current ratio and 1.0 degree phase deviation. We consider those arrays which exceed their radiation limits with parameter variations of 0.1 percent and 0.1 degree highly unstable. Where arrays exceed their radiation limits within these parameter variations, we will condition a grant accordingly.[5] Our computerized studies here indicate that CBI's proposed operation would exceed specified standard radiation values with variations as small as 0.5 percent current ratio deviation and 0.5 degree phase deviation. With respect to the Minority, Eastern and Gilliam proposals, the comparable figures are 1.0 percent and 1.0 degree. All four proposals thus fall into the category where stability conditions are called for.

4. *Minority.* Minority requests a waiver of § 73.24(j) of the Rules, as its nighttime normally protected (10 mV/m) contour would not completely encompass all residential areas of the city of Memphis as required by the provision.[6] In support, Minority states that the area outside of the contour consists of an industrial park and wetlands with a total unserved area of 4.9% of Memphis' total area and .26% of Memphis' total population. So slight an omission constitutes substantial compliance with § 73.24(j) and a waiver is thus unnecessary. *Broadcast Station Assignment Standards,* 39 FCC 2d 645, 650 (1973).

5. Review of applicant's proposal reveals that the population within Minority's proposed 1.0 V/m contour is 12,741 persons, which exceeds the limit set by § 73.24(g) of our rules; namely of 300 persons or 1 percent of the population (in this case 722,429) within the proposed daytime 25 mV/m contour. However, in light of the small deviation from our standard, 1.76 instead of 1 percent, waiver is appropriate.[7]

6. *Gilliam.* The petition to deny Gilliam's application, filed by Minority, raises, not threshold questions of the acceptability of Gilliam's application, but rather, because it is filed by a competing applicant, issues of a nature which constitute a petition to specify hearing issues. In the "Paglin Report" we found that competing applicants have ample opportunity to raise objections to other applications after designation for hearing, and that considering their petitions beforehand only delays Commission proceedings. *Processing of Contested Broadcast Applications,* 72 FCC 2d 202, 212–215 (1979). Therefore, Minority's petition is dismissed without prejudice to its refiling at the appropriate time.

7. Gilliam requests waiver of the Commission's blanketing and city coverage rules, § 73.24(g) and (j) respectively. The population within Gilliam's proposed 1 V/m "blanket" contour is 12,536, greater that 300 and equal to 1.6% of the population within Gilliam's proposed 25 mV/m contour daytime. Therefore a waiver is required. In support, Gilliam states that attempts to locate on alternative transmitter site which would reduce the population within the 1 V/m contour while still providing maximum nighttime coverage to Memphis have been unsuccessful. In light of this circumstance, and in view of the fact that waivers of similar blanketing coverage have been granted in the past, grant of Gilliam's request for waiver is appropriate.

8. Acknowledging that its proposed nighttime normally protected (10 mV/m) contour [8] will cover only approximately 82% of the area of Memphis, Gilliam also requests a waiver of § 73.24(j). In support of its request, Gilliam contends that its proposed 10 mV/m coverage would include the most densely populated residential areas and that portions of Memphis outside the 10 mV/m contour include largely unpopulated industrialized or undeveloped area in the far southwest part of the city. Gilliam further argues that no alternative transmitter site or frequency could be located to provide better nighttime coverage nor could changes in the proposed pattern be made without causing skywave interference to other stations operating on the frequency.

9. Gilliam has not submitted sufficient information on which we can make an

[1] An informal objection against CBI will not be considered due to the anonymity of its author and the lack of any substantiation of its allegations. Further the motion for leave to file additional response filed by Minority is granted and its response to reply is accepted.

[2] As WBZ alleges that the applicants would cause objectionable interference to its service area, we find that WBZ has standing as a party in interest within the meaning of Section 309(d) of the Communications Act of 1934, as amended. *FCC* v. *National Broadcasting Co., Inc.,* 319 U.S. 239 (1943).

[3] WBZ also claims that the proximity of high voltage power line and other towers to Minority's proposed site will contribute a potential for reradiation. While Minority opposes this contention, it has not supplied sufficient site photographs, as required by FCC Form 301, Section V–A, paragraph 11, to permit a determination. Therefore, Minority is required to amend its application with the proper showing.

[4] We have no evidence that Gilliam has filed any pleading opposing WBZ.

[5] Where other factors, internal and/or external to the array, warrant it, a hearing issue may be specified. Such circumstances have not been established here, however.

[6] Section 73.27(j) speaks of residential service with the 5 mV/m or nighttime interference-free contour, whichever is higher. Most class II–B stations will have a normally protected contour of 10 mV/m, and thus may well receive interference to that contour from latter-authorized stations. For them, we must disregard service beyond the 10 mV/m contour in determining compliance with § 73.24(j).

[7] See *In re Application of WHOO Radio, Inc.,* 4 FCC 2d 439 (1966).

[8] Gilliam's nighttime coverage map actually shows its proposed nighttime interfrence-free (10.63 mV/m) contour, but *see* Footnote 5.

informed decision. While it has stated that 82% of the city's area will be covered by its proposed 10 mV/m contour, Gilliam has made no showing as to what percentage of Memphis' population resides in this area except to state that it includes the most densely populated residental areas. Further, a review of Gilliam's map depicting its nighttime coverage reveals that a substantial portion of northeast Memphis would fall outside its proposed 10 mV/m contour, yet we have no information concerning the nature of the area, the population within it, or future plans for development, if any, of the area. As a result, we do not have a sufficient basis on which to make a reasoned determination and an appropriate issue will be specified for hearing.

10. *Suburban community issues.* Eastern Jackson County Broadcasting Corporation (Eastern) proposes to serve the city of Blue Springs, Missouri, population 25,927. Its proposed 5 mV/m contour substantially covers the city of Independence, Missouri however, a city of more than 50,000 whose population of 111,806 is over twice that of Blue Springs.[9] Similarily, CBI proposes service to Hallsville, Missouri, which has a population of 457, but its proposed 5 mV/m contour would completely encompass the city of Columbia, population 62,061. Under these circumstances, a presumption arises that the applicants intend to serve the larger community rather than the smaller specified community. See *Policy Statement on 307(b) Considerations*, 2 FCC 2nd 190, *reconsid. denied*, 2 FCC 2d 866 (1965); *AM Station Assignment Standards*, 54 FCC 2d 1, 21–22 (1975). Appropriate issues will therefore be specified.[10]

11. *Other matters.* Minority's local notice of the filing of its application did not include names of officers and directors, the class of its proposed station or the proposed location of its studio as required by # 73.3580 of the Rules. Eastern's local notice did not include the class of station or its proposed antenna height. We have no evidence that Gilliam gave any local notice of its application. Bowman's local notice did not include its proposed antenna height. Accordingly, we will require (1) Minority, Eastern and Bowman to republish local notice; (2) Gilliam to demonstrate that it has published or broadcast; and (3) all four to certify to the presiding Administrative Law Judge that compliance with the rule has been accomplished.

12. Except as indicated by the issues specified below, all five applicants are qualified to construct and operate as proposed.[11] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. Although for different communities, the Eastern and CBI proposals would serve substantial areas in common. Therefore, in addition to an issue to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service, a contingent comparative issue will be specified.

13. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine whether the proposal of Eastern Jackson County Broadcasting Corporation would realistically provide a local transmission service for Blue Springs, Missouri, or for Independence, Missouri.

2. To determine, in the event it be concluded pursuant to Issue 1 that the Eastern proposal would not realistically provide a local transmission service for Blue Springs, Missouri, whether the proposal meets the technical provisions of the Rules for AM broadcast stations assigned to Independence, Missouri.

3. To determine whether the proposal of Contemporary Broadcasting, Inc. would realistically provide a local transmission service for Hallsville, Missouri, or for Columbia, Missouri.

4. To determine, in the event it be concluded pursuant to Issue 3 that the CBI proposal would not realistically provide a local transmission service for Hallsville, Missouri, whether the proposal meets the technical provisions of the Rules for AM broadcast stations assigned to Columbia, Missouri.

5. To determine whether the nighttime proposal of Gilliam Communications, Inc. would provide Memphis, Tennessee with a 10 mV/m nighttime signal as required by Section 73.24(j) of the Commission's Rules, and if not, whether circumstances exist which warrant waiver of that rule.

6. To determine the areas and populations which would receive primary service from each proposal, and the availability of other primary aural service to such areas and populations.

7. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service.

8. To determine, in the event it be concluded that a choice among the applications should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

9. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

14. It is further ordered, That the conditional objections to grant of Minority Broadcasting Company of the Midwest, Gilliam Communications, Inc., Contemporary Broadcasting, Inc., and Bowman and Caselman Enterprises filed by Westinghouse Broadcasting Company, Inc. are granted to the extent indicated above, and are denied in all other respects.

15. It is further ordered, That the petition to deny filed by Minority Broadcasting Company of the Midwest is dismissed.

16. It is further ordered, That Gilliam Communications Inc's request for waiver of § 73.24(g) of our rules is granted.

17. It is further ordered, That Minority Broadcasting Company of the Midwest and Eastern Jackson County Broadcasting Corporation shall file the amendments indicated in footnotes 3 and 9 above, respectively, within 40 days after this order is published in the **Federal Register.**

18. It is further ordered, That Minority Broadcasting Company of the Midwest and Eastern Jackson County Broadcasting Corporation should republish, and that Bowman and Caselman Enterprises should rebroadcast, a corrected local notice of their applications, and that Gilliam Communications, Inc. should broadcast a local notice of its application, as

[9] Eastern's technical proposal is deficient in that it has not submitted a map depicting its proposed 5 mV/m contour as required by Form 301, Section V–A, paragraph 12. Therefore, we cannot determined whether Eastern's proposed 5 mV/m contour also covers Kansas City, Missouri (population 448,159). Eastern is required to amend its application with the proper showing and the issue would be enlarged if appropriate.

[10] The suburban community policy is currently under review in BC Docket No. 82–320. The disposition of the issues specified here, will, of course, be governed by the policies then in effect as a result of our review.

[11] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

required by Section 73.3580 of the Rules, and shall file a statement of publication or broadcast with the presiding Administrative Law Judge within 30 days after this order is published in the Federal Register.

19. It is further ordered, That in the event of a grant of the application of either Minority Broadcasting Company of the Midwest, Contemporary Broadcasting, Inc., Gilliam Communications, Inc., or Bowman and Caselman Enterprises, the construction permit shall contain the following conditions:

An antenna monitor of sufficient accuracy and repeatability, and having a minimum resolution of 0.1 degree phase deviation and 0.1 percent sample-current deviation, shall be installed and continuously available to indicate the relative phase and magnitude of the sample current of each element in the array, to insure maintenance of the radiated fields within the authorized values of radiation.

Upon receipt of operating specifications and before issuance of a license, permittee shall submit the results of observations made daily of the base currents and their ratios, relative phases, sample currents and their ratios, and sample-current deviations for each element of the array, along with the final and field strengths of each monitoring point for both nondirectional and directional operations for a period of at least 30 days, to demonstrate that the array will be maintained within the specified tolerances.

20. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221 (c) and (e) of the Commission's Rules, the parties shall within 20 days of the mailing of this order, in person or by attorney, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence, on the issues specified in this order.

21. It is further ordered, That pursuant to section 311(a) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicant shall give notice of the hearing as prescribed in the rule, and shall advise the Commission of the publication of its notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-25881 Filed 9-20-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 82-615, File No. BP-21,127; and BC Docket No. 82-616, File No. BP-790418AD]

Perry Broadcasting Co. and Alum Springs Vision and Outreach Corp.; Designating Applications for Consolidated Hearing on Stated Issues

Adopted: August 16, 1982.

Released: September 3, 1982.

In re applications of Perry Broadcasting Co., Hazard, Kentucky, Req: 1170 kHz, 250 W, Day, BC Docket No. 82-615, File No. BP-21,127; Alum Springs Vision and Outreach Corp., Junction City, Kentucky, Req: 1170 kHz, 500 W, DA, Day, BC Docket No. 82-616, File No. BP-790418AD; for construction permit.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it for consideration (a) the above-captioned applications for new AM broadcast stations at Hazard and Junction City, Kentucky; (b) a petition to deny the application of Perry Broadcasting Company (Perry), filed by Mountain Broadcasting Service, Inc. (Mountain); and (c) related pleadings. As licensee of stations WKIC and WSGS-FM, both located in Hazard, Mountain would compete with Perry's proposed station for audience and revenue. Hence the licensee has standing as a petitioner to deny. *Sanders Bros. Radio Station* v. *FCC*, 309 U.S. 470 (1940).

2. *Concentration of control issue.* Our AM multiple ownership rule (Section 73.35) prohibits, *inter alia*, common ownership, operation, or control of two AM stations with overlapping 1 mV/m contours, and of AM and television stations where the proposed 2 mV/m AM contour would overlap the entire community of license of the television station. William D. Gorman, Sr.—father of Perry principal William D Gorman, Jr.—is the 89.65-percent owner of Hazard television station WKYH-TV and holds an interest in the Hazard TV Cable Co. as well. Gorman, Jr.'s uncle—L. D. Gorman—is a minority owner of Mountain.[1]

3. It is well established, as Mountain acknowledges, that family relationship alone does not create a presumption of common control for multiple ownership purposes. *KTRB Broadcasting Co., Inc.*, 46 FCC 2d 605 (Rev. Bd., 1974) [2] Mountain's allegations to the contrary notwithstanding, we find no independent basis for such a presumption here either. Turning first to William D. Gorman, Sr., the fact that Gorman, Jr. once worked at his television station does not itself indicate common purpose, especially since the relationship ended over three years ago. In any event, both men have submitted sworn statements denying any assistance by Gorman, Sr. in the Perry application and any contemplated connection between themselves or their operations in the future.[3]

4. As for L. D. Gorman, his share of Mountain is a minority one which, as Mountain's vigorous prosecution of this claim confirms, does not carry with it control of the licensee's activities. While L. D. Gorman, it is true, is also president of the bank committing funds to Perry's operation, he has stated by affidavit that the bank's line of credit was issued in the normal course of business in reliance primarily upon the assets of Perry principal Jack M. Fitz. Fitz, for his part, has submitted an affidavit acknowledging significant personal deposits at the bank and substantial interests in several companies maintaining significant deposits as well. Finally, L. D. Gorman has sworn that he does not play an active role in the insurance agency which he partially owns and which employs his nephew, and that he lacks authority to hire and fire there.

5. As the above paragraphs indicate, members of the Gorman family hold positions of some influence in Hazard, both within the broadcast community and outside of it. This fact alone does not establish common action, though. William D. Gorman, Jr., William D. Gorman, Sr., and L. D. Gorman have all attested to their independence, and nothing in the relationship between the elder Gormans and Gorman Jr. renders this claim inherently suspect.[4] We conclude therefore that the interests of William D. Gorman, Sr. and L. D. Gorman cannot be attributed to William D. Gorman, Jr., for purposes of our multiple ownership rule, and that a concentration of control issue is unjustified as a result.

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[1] L. D. Gorman owns 47.5 percent of the W.G. Coal Company, which company in turn owns 50 percent of Mountain.

[2] Husband-wife interests are an exception to this rule. See *e.g. Lexington County Broadcasters, Inc.*, 42 FCC 2d 581 (Rev. Bd., 1973).

[3] The suggestion that Gorman, Jr. might misuse his facility to further the political goals of his father, who is mayor of Hazard, is totally without factual support.

[4] Mountain's complaint that the various Gorman family affidavits are self-serving is well founded, but ultimately beside the point. Where thoughts and intentions are at issue, personal statements may be the only availble evidence. Certainly we have no basis for questioning the candor and truthfulness of either elder Gorman.

6. *Misrepresentation issues.* To establish that Perry did not actually interview individuals listed in its community leader survey, Mountain initially submitted 24 unsworn statements and the hearsay affidavit of its president reporting 6 additional conversations. Thirteen of these statements were subsequently supplemented by sworn acknowledgments. Clearly prepared in advance by Mountain, the statements denied interviews with William D. Gorman, Jr., or any other Perry representative, for a new radio station.

7. Perry, for its part, submitted 24 affidavits, again prepared by someone other than the affiant, confirming an interview with Gorman but denying knowledge of the interview's purpose. According to these affidavits, Mountain's reference to a new radio station had confused the issue, causing the affiant to sign a statement he now realized to be untrue. At the end of the Mountain-Perry exchange of statements, five individuals still declined to acknowledge being interviewed, two citing lack of memory and three making absolute claims of no contact. Two of the latter three signed statements alleged improper conduct as well, both claiming that William D. Gorman, Jr., sought to pressure them into signing affidavits on his behalf. These statements were called into question, but not effectively rebutted, in later pleadings.[5]

8. We find in all of these submissions cause for concern. Clearly, the affiants here did not fully understand what they were signing. Whether their misunderstanding was a result of Mountain's information gathering,[6] Perry's original interviewing techniques,[7] or subsequent actions on the part of one or both parties we cannot say. It is, of course, possible that all errors were innocent, or at worst the result of excess zeal on the parties' parts. So many unresolved questions remain, however, including allegations of misconduct which cannot be dismissed as insubstantial, that an evidentiary hearing seems to us required.[8]

9. *Other matters.* Except as indicated below, both applicants are qualified to construct and operate as proposed. However, the proposals are mutually exclusive and must be set for hearing in a consolidated proceeding. Because the proposals are for different communities, an issue must be specified to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of them would provide a fair, efficient, and equitable distribution of radio service.

10. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the facts and circumstances surrounding the survey of community leaders conducted by Perry Broadcasting Company and the investigation thereof conducted by Mountain Broadcasting Service, Inc., and in light of the evidence adduced, whether Perry Broadcasting Company is qualified to be a Commission licensee.

2. To determine the areas and populations which would receive primary service from each proposal, and the availability of other primary aural service to such areas and populations.

3. To determine in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient, and equitable distribution of radio service.

4. To determine in light of the evidence adduced pursuant to the foregoing issues, which application should be granted.

11. It is further ordered, That the petition to deny filed by Mountain Broadcasting Service, Inc. is granted to the extent indicated herein and is denied in all other respects, and that Mountain Broadcasting Service, Inc., is made a party to this proceeding.

12. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the parties shall within 20 days of the mailing of this order, in person or by attorney, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this order.

13. It is further ordered, That pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rule, and shall advise the Commission of the publication of their notices as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division.

[FR Doc. 82-25879 Filed 9-20-82; 8:45 am]

BILLING CODE 6712-01-M

[5] As we propose to specify an issue concerning the matter, we do not believe that Mountain is prejudiced by consideration of Perry's supplemental opposition.

[6] While Mountain's license is not at issue here, we cannot as a practical matter evaluate Perry's conduct without evaluating that of the licensee as well. Should the evidence adduced at hearing call into question Mountain's ability to operate in the public interest, this evidence can be considered at another time in the appropriate context.

[7] At the time Perry's interviews were conducted, William D. Gorman, Jr., was associated with WKYH-TV, in Hazard. A number of affiants apparently believed the interviews to have been connected with the television operation.

[8] Petitioner's objection to the adequacy of Perry's ascertainment is moot in light of our elimination of formal ascertainment requirements. *Deregulation of Radio,* 84 FCC 2d 968, 998 (1981).

[BC Docket No. 82-629, File No. BPH-810408 AC; and BC Docket No. 82-630, File No. BPH-811-027AL]

White Mountain FM, Inc. and Profile Broadcasting, Co. Inc.; Designating Applications for Consolidated Hearing on Stated Issues

Adopted: August 25, 1982.

Released: September 9, 1982.

In re applications of White Mountain FM, Inc., Littleton, New Hampshire, Req: 106.3 MHz, Channel No. 292A, 0.115 kW (H&V), 1,256 feet, BC Docket No. 82-629, File No. BPH-810408 AC; Profile Broadcasting Company, Inc., Littleton, New Hampshire, Req: 106.3 MHz, Channel No. 292A, 0.375 kW (H&V), 730 feet, BC Docket No. 82-630, File No. BPH-811027AL; for construction permit for a New FM station.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications file by White Mountain FM, Inc. (White Mountain) and Profile Broadcasting Company, Inc. (Profile).

2. *Profile.* The material submitted in Profile's application does not demonstrate the applicant's financial qualifications. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, Profile will be given 30 days from the date of mailing of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the presiding Administrative Law Judge in the manner called for in revised

Section III, form 301, as to its financial qualifications. If Profile cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82–378.

3. Profile has not submitted a description in narrative form of the programming service relating to the issues of public concern facing its proposed service area. See *Deregulation of Radio*, 84 FCC 2d 968, 999 (1981). Accordingly, it will be necessary for the applicant to file an amendment with the presiding Administrative Law Judge.

4. *White Mountain.* The material submitted in White Mountain's application does not demonstrate the applicant's financial qualifications. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly White Mountain will be given 30 days from the date of mailing of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the presiding Administrative Law Judge in the manner called for in revised Section III, Form 301, as to its financial qualifications. If white Mountain cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82–378.

5. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

6. The applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issue, which of the applications, if either, should be granted.

8. It is further ordered, That Profile and White Mountain shall submit financial certifications in the form required by Section III, FCC Form 301, or advise the presiding Administrative Law Judge that the certification cannot be made, as may be appropriate.

9. It is further ordered, That Profile shall file an amendment with the presiding Administrative Law Judge outlining its proposed programming service relating to the issues of public concern facing its proposed service area.

10. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

11. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescibed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82–25880 Filed 9–20–82; 8:45 am]

BILLING CODE 6712–01–M

[BC Docket No. 82–631, File No. BPH–810417AD; and BC Docket No. 82–632, File No. BPH–810818AH]

Wolfe Communications, Inc. and Chester County Broadcasting Co. Inc. et al.; Designating Applications for Conslidated Hearing on Stated Issues

Adopted: August 25, 1982.

Released: September 10, 1982.

In re applications of Wolfe Communications, Inc., Henderson, Tennessee, Req: 95.9 MHz, Channel 240A, 3 kW (H&V), 300 feet (H&V); BC Docket No. 82–631, File No. BPH–810417AD; Chester County Broadcasting Co. Inc., Henderson, Tennessee, Req: 95.9 MHz, Channel 240A, 3 kW (H&V), 95 Feet (H&V); BC Docket No. 82–632, File No. BPH–810818AH; for construction permit for a new FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Wolfe Communications, Inc. (Wolfe) and Chester County Broadcasting Co. Inc. (Chester).

2. *Wolfe.* In Table II, Section II of FCC Form 301, Steve Williams, a principal of Wolfe, indicates that he is presently the sales manager of station WJHR(FM), Jackson, Tennessee, which is approximately 12 miles from Henderson. He has stipulated that he will resign this sales manager position prior to the commencement of operations of this new FM station at Henderson should the Wolfe application be granted. An appropriate condition will be added.

3. Analysis of the financial data submitted by Wolfe reveals that $109,025 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment	$64,125
Building (remodeling)	5,000
Miscellaneous	7,500
Operating costs	32,400
Total	109,025

Wolfe plans to finance construction and operation with a $125,000 line of credit from First Tennessee Bank of Jackson. It has not, however, submitted a bank commitment letter or specified any repayment terms.

4. *Chester.* Staff review of Section II of FCC Form 301 reveals that no Table II information was submitted with regard to Wanda Smith, one of the directors listed on Table I. As a result, the staff is unable to determine whether Ms. Smith has any other relevant media interests. Accordingly, Chester will be required to file an amendment with the presiding Administrative Law Judge listing any interest in a broadcast station, daily newspaper or cable television system attributable to Ms. Smith.

5. Analysis of the financial data submitted by Chester reveals that $47,925 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment	$28,500
Building (remodeling)	1,000
Miscellaneous items	2,500
Operating costs	15,925
Total	47,925

Chester plans to finance construction and operation with a $125,000 line of credit from Chester County Bank. The commitment letter it has submitted from the bank, however, does not contain any repayment terms.

6. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, the applicants will be given 30 days from the date of mailing of this Order to review their financial proposals in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit certifications to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to their financial qualifications. If the applicants cannot make the required certifications, they shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82–378.

7. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to either of the applicants.

8. Since the grant of either application is dependent upon the change in frequency of station KHLS(FM), Blytheville, Arkansas, from Channel 241 to 242–C, an appropriate condition will be added.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive they must be designated for hearing in a consolidated proceeding.

10. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications Are Designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(2) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

11. It is further ordered, That the applicants shall submit financial certifications in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certifications cannot be made, as may be appropriate, within 30 days of the mailing of this Order.

12. It is further ordered, That, in the event of a grant of the application of Wolfe, the construction permit shall contain a condition that program test shall not commence until the permittee has shown that Steve Williams has severed all connections with station WJNR(FM), Jackson, Tennessee.

13. It is further ordered, That, Chester file an amendment listing any interest in a broadcast station, daily newspaper or cable television system attributable to Wanda Smith.

14. It is further ordered, That, the construction permit will not be granted until station KHLS(FM) is granted a construction permit on Channel 242–C, and, program test shall not commence until station KHLS commences program test on Channel 242–C.

15. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

16. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as requried by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

Appendix

17. The Commission has not yet received Federal Aviation Administration clearance for the antenna tower proposed by the below listed applicant. Accordingly, it is further ordered, That the following issue is specified:

3. To determine whether there is a reasonable possibility that a hazard to air navigation would occur as a result of the tower height and location proposed by Wolfe Communications, Inc.

18. It is further ordered, That the Federal Aviation Administration is made a party to the proceeding.

[FR Doc. 82–25876 Filed 9–20–82; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Emergency Training Center; Board of Visitors for the National Fire Academy; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Fire Academy
Dates of meeting: October 4–5, 1982
Place: National Fire Academy, Emmitsburg, MD
Time: 9:00 a.m. to 5:00 p.m.
Proposed agenda: October 4–5: Approval of Minutes; Old Business (Report of Committees); New Business; Course Title Changes; FY83 Operating Plan; Annual Report (Discuss)

The meeting will be open to the public with approximately 20 seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact Mr. Joseph Donovan, Superintendent, National Fire Academy, 16825 South Seton Avenue, Emmitsburg, MD 21727 (telephone number 301–447–6771) on or before September 27, 1982.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Associate Director's Office, Building N, National Emergency Training Center, Emmitsburg, MD. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: September 14, 1982

Fred J. Villella,

Associate Director for Training and Education, National Emergency Training Center.

[FR Doc. 82-25964 Filed 9-20-82; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-666-DR]

Tennessee; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA-666-DR), dated August 24, 1982, and related determinations.

DATED: August 31, 1982.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

NOTICE: The notice of a major disaster for the State of Tennessee dated August 24, 1982, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 24, 1982:

Jackson and Macon Counties for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718-02.)

Lee M. Thomas,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 82-25962 Filed 9-20-82; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

[Docket No. 82-43]

Port of New Orleans; Notice of Filing of Petition for Declaratory Order

In the Matter of Board of Commissioners of the Port of New Orleans, Dock Department Tariff FMC T-No. 1, Item 145-0

Notice is given that a petition for declaratory order has been filed by the Board of Commissioners of the Port of New Orleans. Petitioner seeks an order declaring that in pertinent part, Item 145-0 of its Tariff FMC T-No. 1 (1) Holds a vessel berthing agent liable for collection and payment of inbound cargo demurrage charges, and (2) is lawful under the Shipping Act, 1916, in particular Sections 16 and 17 thereof, 46 U.S.C. §§ 816 and 817.

Interested persons may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 11101, or may inspect the petition at the Commission's Field Offices located at New York, New York; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Participation in this proceeding by persons not named in the petition will be permitted only upon grant of intervention pursuant to Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72).

Petitions to intervene shall be accompanied by intervenors complete reply in the matter. Such petitions and any replies to the petition for declaratory order shall be filed with the Secretary on or before October 20, 1982. An original and fifteen copies shall be submitted and a copy served on all parties. Replies shall contain the complete factual and legal presentation of the replying party as to the desired resolution of the petition for declaratory order.

Francis C. Hurney,

Secretary.

[FR Doc. 82-25939 Filed 9-20-82; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 82-44]

Ingersoll Rand Co. v. Waterman Steamship Corp.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Ingersoll Rand Company against Waterman Steamship Corporation was served September 13, 1982. Complainant alleges that respondent has subjected it to an overcharge of rates for ocean transportation in violation of section 18(b)(3) of the Shipping Act.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 82-25944 Filed 9-20-82; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Regency Cruise Lines, Regency Cruise Lines Ltd., and March Shipping Corporation, c/o March Shipping Corporation, 1001 Franklin Ave., Garden City, New York 11530.

Dated: September 16, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-25945 Filed 9-20-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Notice of Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their view on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing,

identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated for each application.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mellon National Corporation,* Pittsburgh, Pennsylvania (data processing activities; United States and overseas): To engage, through its subsidiary, Mellon Financial Services Corporation in data processing activities, including: providing bookkeeping or data processing services for the internal operations of the holding company and its subsidiaries and storing and processing other banking, financial, or related economic data, such as performing payroll, accounts receivable or payable, or billing services. These activities would be conducted from an office in Chicago, Illinois, serving clients throughout the United States and possible clients overseas as well. Comments on this application must be received not later than October 13, 1982.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Security Pacific Corporation,* Los Angeles, California (mortgage banking and credit-related life, accident and health insurance activities; Florida): To engage through its subsidiary, Security Pacific Mortgage Corporation, in the origination and acquisition of mortgage loans, including development and construction loans on multi-family and commercial properties for Security Pacific Mortgage Corporation's own account or for sale to others; the servicing of such loans for others; and acting as broker or agent for the sale of credit-related life, accident and health insurance. These activities would be conducted from an office of Security Pacific Mortgage Corporation in Tampa, Florida, serving the State of Florida. Comments on this application must be received not later than October 15, 1982.

Board of Governors of the Federal Reserve System, September 15, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-25938 Filed 9-20-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Gastroenterology-Urology Device Section of the General Medical Devices Panel

Date, time, and place. October 7, 8, and 9 a.m., Rm. 1207, 8757 Georgia Ave., Silver Spring, MD.

Type of meeting and panel section leader. Open public hearing, October 7, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 11:30 a.m. closed presentation of data, 11:30 a.m. to 12 m.; open committee discussion, 1 p.m. to 2:30 p.m.; closed presentation of data, 2:30 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 4 p.m.; open committee discussion, October 8, 9 a.m. to 11:30 a.m.; closed presentation of data, 11:30 a.m. to 12: m.; open committee discussion, 1 p.m. to 4 p.m.; Norman T. Welford, Bureau of Medical Devices (HFK-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

General function of the committee. The committee reviews and evaluates available data on the safety and effectivenes of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify Norman T. Welford before September 27 and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for plasmapheresis filters and control systems for therapeutic and donor purposes.

Closed presentation of data. The committee will discuss trade secret or confidential commercial information presented by sponsors of premarket approval applications for plasmapheresis filters and control systems for therapeutic and donor purposes. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 55b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. October 14 and 15, 8:30 a.m., Rm. 121, Bldg. 29, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, October 14, 8:30 to 9:30 a.m.; open committee discussion, 9:30 a.m. to 10 a.m.; closed committee deliberations, 10 a.m to 3 p.m.; open committee discussion, 3 p.m. to 4:30 p.m.; closed committee deliberations, October 15, 8:30 a.m. to 12 m.; Jack Gertzog, National Center for Drug and Biologics (HFB-5), Food and Drug Administration, Bldg. 29, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-5455.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing on issues pending before the committee.

Open committee discussion. The committee will discuss pneumococcal vaccine formulation and synthetic conjugate vaccines.

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information concerning two pending investigational new drugs and one license application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552(c)(4)).

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. October 28 and 29, 9 a.m., Auditorium, Lister Hill Center, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and executive secretary. Open public hearing, October 28, 9 a.m. to 10 a.m.; open committee discussion, October 28, 10 a.m. to 5 p.m., October 29, 9 a.m. to 12:30 p.m.; closed committee deliberations, October 29, 1:30 p.m. to 5 p.m.; Joan Standaert, National Center for Drugs and Biologics (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in gastrointestinal disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss amrinone; Inocor tablet and injection (NDA 18–699, 18–700, Sterling-Winthrop Laboratories) for use in congestive heart failure; Phenytoin Sodium Injectable; Dilantin (NDA 10–151, Parke, Davis-Warner Lambert Co.) for use as an anti-arrhythmic agent; Labetalol; Normodyne tablets and injection (NDA 18–686, 18–687, Schering Corp.; NDA 18–716, Glaxo Inc.) for use in hypertension.

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information regarding metoprolol; Lopressor injection (NDA 18–704, Ciba-Geigy Pharmaceuticals) for use after myocardial infarction. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed here the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedure for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: September 14, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 25721 Filed 9–20–82; 8:45 am]

BILLING CODE 4160–01–M

Cardiovascular and Renal Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Cardiovascular and Renal Drugs Advisory Committee by the Secretary, Department of Health and Human Services.

DATE: Authority for this committee will expire on August 27, 1984, unless the

Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: September 14, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–25719 Filed 9–20–82; 8:45 am]

BILLING CODE 4160–01–M

Endocrinologic and Metabolic Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Endocrinologic and Metabolic Drugs Advisory Committee by the Secretary, Department of Health and Human Services.

DATE: Authority for this committee will expire on August 27, 1984, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: September 14, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–25718 Filed 9–20–82; 8:45 am]

BILLING CODE 4160–01–M

Oncologic Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Oncologic Drugs Advisory Committee by the Secretary, Department of Health and Human Services.

DATE: Authority for this committee will expire on September 1, 1984, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: September 14, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–25720 Filed 9–20–82; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 82D–0276]

Penicillinase-Resistant Penicillins, Local Anesthetics, Diagnostic Enteral Cholecystographic Radiopaque Agents, Diagnostic Enteral Gastrointestinal Radiopaque Agents, and Diagnostic IV Radiopaque Agents; Class Labeling Guidelines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of class labeling guidelines for the professional labeling of five classes of drug products: penicillinase-resistant penicillins, local anesthetics, diagnostic enteral cholecystographic radiopaque agents, diagnostic enteral gastrointestinal radiopaque agents, and diagnostic IV radiopaque agents. Class labeling is appropriate for these classes of drug products because the drug products in each class are closely realted in chemical structure, pharmacology, therapeutic activity, and adverse reactions. The guidelines are intended to promote the use of identical professional labeling for each drug product in each class.

DATE: Effective September 21, 1982, a person may adopt the class labeling guidelines for these five classes of drug products and rely on them to meet FDA's professional labeling requirements for prescription drugs.

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:

For information concerning penicillinase-resistant penicillins and diagnostic IV radiopaque agents class labeling guidelines or copies contact: Thomas H. Perez, National Center for Drugs and Biologics (HFD–177), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6004.

For information concerning local anesthetics, diagnostic enteral cholecystographic radiopaque agents, and diagnostic enteral gastrointestinal radiopaque agents class labeling guidelines or copies contact: Misoon Y. Chun, National Center for Drugs and Biologics (HFD–177), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6004.

SUPPLEMENTARY INFORMATION: FDA has prepared guidelines for the professional labeling of five classes of drug products: Penicillinase-resistant penicillins, local anesthetics, diagnostic enteral cholecystographic radiopaque agents, diagnostic enteral gastrointestinal radiopaque agents, and diagnostic IV radiopaque agents. These labeling guidelines can be used for each product within that drug class because all drugs in the class are closely related in chemical structure, pharmacology, therapeutic activity, and adverse reactions. Use of the guidelines constitutes compliance with §§ 201.56, 201.57, and 201.100 (21 CFR 201.56, 201.57, and 201.100) of the agency's regulations for the content and format of professional labeling for human prescription drugs.

The professional labeling of prescription drugs is required to contain the information and be in the format specified by §§ 201.56 and 201.57. The application of these regulations to drug products is proceeding under the schedule established in § 201.59 (21 CFR 201.59, published in the **Federal Register** of May 16, 1980; 45 FR 32550). As described more fully in § 201.59, the regulations apply to these five classes of drug products as follows: (1) As of April 10, 1981, for any drugs in each of the five classes that are not subject to section 505 or 507 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355); (2) on October 1, 1983, to penicillinase-resistant penicillins that on December 26, 1979, were subject to an antibiotic Form 5 application under section 507 of the act, and duplicates of those products; (3) on May 1, 1983, to local anesthetics, diagnostic enteral cholecystographic radiopaque agents, diagnostic enteral gastrointestinal radiopaque agents, and diagnostic IV radiopaque agents that on December 26, 1979, were subject to an approved new drug application under section 505 of the act, and duplicates of those products; (4) as of December 26, 1979, to other drugs in each of these five classes for which marketing approval under section 505 or 507 of the act is sought from FDA. The agency recognizes that some manufacturers and distributors of drugs in the first category may have already revised their drug labeling to comply with the regulations. The agency

nonetheless encourages those persons to adopt the agency's class labeling guidelines when practicable.

Class labeling guidelines should enhance the agency's regulatory program for prescription drugs. The guidelines will promote consistency in labeling among various drugs of the same class and help the agency review proposed labeling for new drugs and antibiotics. They will also help drug manufacturers prepare labeling for drugs they propose to market that is in compliance with legal requirements. Finally, class labeling will be most helpful to health care professionals who prescribe and dispense prescription drug products. Prescribers and dispensers must now compare the labeling for members of a drug class to determine the similarities and differences among the products in the class. Class labeling, which contains information about each member of the drug class, will facilitate the ability of health professionals to make such comparisons.

The penicillinase-resistant penicillins class labeling guideline is appropriate as the basis for labeling for the following drugs in the route of administration identified:

Cloxacillin Sodium, oral
Dicloxacillin Sodium, oral
Methicillin Sodium, IM, IV, and IV infusion
Nafcillin Sodium, oral, IM, IV, and IV infusion
Oxacillin Sodium, oral, IM, IV, and IV infusion

The local anesthetics class labeling guideline is appropriate as the basis for labeling for the following drugs in the route of administration identified:

Bupivacaine HC1, injectable
Chloroprocaine HC1, injectable
Dibucaine HC1, injectable
Etidocaine HC1, injectable
Lidocaine, HC1, injectable, solution, ointment, jelly, viscous solution
Mepivacaine HC1, injectable
Piperocaine HC1, injectable
Prilocaine HC1, injectable
Procaine HC1, injectable
Tetracaine HC1, injectable, solution

The diagnostic enteral cholecystographic radiopaque agents class labeling guideline is appropriate as the basis for labeling for the following drugs in the route of administration identified:

Iocetamic Acid, oral
Iopanoic Acid, oral
Ipodate Calcium, oral
Ipodate Sodium, oral
Tyropanoate Sodium, oral

The diagnostic enteral gastrointestinal radiopaque agents class labeling guideline is appropriate as the basis for labeling for the following drugs in the route of administration identified:

Diatrizoate Meglumine and Diatrizoate Sodium, oral, rectal
Diatrizoate Sodium, oral, rectal

The diagnostic IV radiopaque agents class labeling guideline is appropriate as the basis for labeling for the following drugs in the route of administration identified:

Diatrizoate Meglumine, injection
Diatrizoate Sodium, injection
Iodamide Meglumine, injection
Iodipamide Meglumine, injection
Iothalamate Meglumine, injection
Iothalamate Sodium, injection
Metrizoate Calicium, injection
Metrizoate Meglumine, injection
Metrizoate Magnesium, injection
Metrizoate Sodium, injection

With this notice FDA has made available nine guidelines as part of an effort to develop guideline professional labeling for 32 classes of prescription drug products. The first guideline published as part of this effort was the class labeling guideline for single-entity barbiturates, which appeared in the **Federal Register** of November 18, 1980 (45 FR 76356). That guidelined was followed by the guideline for androgen drug products, for which a notice of availability was published in the **Federal Register** of July 10, 1981 (46 FR 35787), followed by the guideline for topical corticosteroid drug products (46 FR 49205; October 6, 1981). The most recent guideline published was that for thyroid hormone drug products (47 FR 29878; July 9, 1982). The agency's justification and rationale for developing class labeling guidelines as well as a description of the procedures followed in developing the text of the labeling was described in the November 18, 1980 notice. In the future, FDA intends to develop and make available a class labeling guideline for the following drug classes:

Aminoglycosides
Anorexiants—excluding amphetamines
Anticoagulants—oral
Anticholinergics—centrally active
Anticholinergics—synthetic
Antidepressants
Antihistamines
Antipsychotics
Benzodiazepines
Cardiac glycosides
Cephalosporins
Erythromycins
Glucocorticoids
Insulins
Narcotic analgesics
Neuromuscular blocking drugs
Penicillins—G & V
Potassium preparations
Quinidine salts
Rauwolfia alkaloids
Sulfonamides
Tetracyclines
Thiazides

This notice is issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to establish procedures of general applicability that are not legal requirements, but are acceptable to the agency. A person who follows these guidelines is assured that his or her conduct is acceptable to the agency. The agency advises that these five class labeling guidelines comply with the prescription drug labeling regulations in §§ 201.56, 201.57, and 201.100 and can be relied upon by any person to meet these requirements. Under the provisions of § 314.8 (21 CFR 314.8) manufacturers are required to submit supplemental new drug applications advising the agency that the labeling is being revised. However, under § 314.8(d) the guideline labeling may be used before approval of a supplement to a new drug application. A person may choose to use alternative labeling statements that are not provided for in the guideline. If a person chooses to depart from the guideline, he or she may discuss the matter further with the agency to prevent expenditure of money and effort for labeling that the agency may later determine to be unacceptable.

Effective September 21, 1982, a person may adopt any of these five class labeling guidelines. Interested persons may submit written comments on the guidelines to the Dockets Management Branch (address above). Comments will be considered in determining whether future amendments to revisions of the guidelines are warranted. Comments should be in two copies except that individuals may submit single copies, identified with the docket number found in brackets in the heading of this document. The guidelines and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 13, 1982.

William F. Randolph

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-25715 Filed 9-20-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81P-0287]

Defect Action Level for Adulteration of Sauerkraut by Thrips; Availability of Guide; Revised Procedure for Establishing and Evaluating New FDA Defect Action Levels

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) annouces the availability of revised FDA Compliance Policy Guide 7114.23 which establishes a new defect action level for thrips in sauerkraut of 50 thrips per 100 grams of sauerkraut. The agency also announces a revised agency procedure for establishing and evaluating all new defect action levels.

DATE: Comments, data, and information may be submitted for 1 year following publication of this notice in the **Federal Register** or until September 21, 1983.

ADDRESS: Written comments, data, and information on this defect action level and requests for single copies of FDA Compliance Policy Guide 7114.23 may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Raymond W. Gill, Bureau of Foods (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–3092.

SUPPLEMENTARY INFORMATION: FDA is establishing this defect action level in response to and based on data contained in a petition submitted by the National Kraut Packers Association. In support of the petition, the petitioner asserts that because there is at present no defect action level for thrips, sauerkraut processors are refusing to accept from growers cabbage infested with thrips.

The petitioner states that thrips are minute insects, almost microsopic, and are not considered a hazard to health in the numbers usually found in cabbage. Thrips attack numerous field and vegetable crops, but have not been considered a serious pest of cabbage until recently. In New York during the last 6 years, thrips have become more abundant. For example, in 1980, processors rejected a large amount of cabbage that contained thrips but that was wholesome in all other respects. As of August 1981, over 80 percent of a sample of 47 commercial fields in upstate New York were infested with thrips. Once thrips have entered the cabbage head, they cannot be controlled by insecticides, and hence it is expected that all harvested cabbage in New York will have some level of thrip infestation.

With the exception of information submitted by the petitioner, FDA is not aware of other analytical or statisical data on which to base a defect action level for thrips in sauerkraut. The agency is therefore requesting other interested persons to submit information and data about other geographical areas that are affected by thrip infestation, the extent of that infestation, any pesticides that are effective in controlling thrips, data showing a correlation between thrip population and pesticide uses, and any other information that may be pertinent to the evaluation of this defect action level.

A copy of the guide and the petition are on file in the Dockets Management Branch. Requests for single copies of FDA Compliance Policy Guide 7114.23 should refer to the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch (address above).

FDA is revising the procedure it uses to establish new defect action levels. The agency believes that this revised procedure will provide interested persons more opportunity to participate in the evaluation and establishment of such action levels. A new defect action level will be effective for an interim period upon publication in the **Federal Register** or notification to the field. During the year following publication of this notice in the **Federal Register** FDA invites interested persons to submit relevant data and information showing why the level should be revised. FDA emphasizes that defect action levels will be revised only on the basis of data and information that adequately support such changes. The defect action level will remain in effect until FDA has evaluated all the available data and has published its decision in the **Federal Register.**

Interested persons may submit to the Docket Management Branch (address above) written comments, data, and information regarding this defect action level. 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: September 13, 1982.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–25874 Filed 9–20–82; 8:45 am]

BILLING CODE 4160–01–M

Health Professional Organization Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming meeting with health professional organizations to be chaired by Arthur Hull Hayes, Jr., M.D., Commissioner of Food and Drugs.

DATE: The meeting will be held at 3:30 p.m., Monday, October 4, 1982.

ADDRESS: The meeting will be held at the Hubert H. Humphrey Bldg., Rm. 503A, 200 Independence Ave. SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth Flieger, Office of Health Affairs (HFY–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6143.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs meets periodically with executives of the health professional organizations to discuss mutual concerns and facilitate dissemination of information on FDA plans and decisions affecting the country's health care.

Dated: September 15, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–25873 Filed 9–20–82; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 82D–0256]

Investigation of General and Local Anesthetics in Humans; Availability of Revised Clinical Guidelines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two revised clinical guidelines entitled "Guidelines for the Clinical Evaluation of General Anesthetics" and "Guidelines for the Clinical Evaluation of Local Anesthetics," under identification numbers HHS (FDA) 82–3052 and 82–3053, respectively. These guidelines were prepared by the National Center for Drugs and Biologics and are revisions of the guidelines bearing the same titles and issued in 1978 under identification numbers HEW (FDA) 78–3052 and 78–3053, respectively. These guidelines describe acceptable procedures and standards for conducting clinical investigations for these classes of drugs.

DATE: Comments by December 20, 1982.

ADDRESS: The guidelines are available for public examination at, and written comments may be submitted to, the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm.

4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles W. Prettyman, National Center for Drugs and Biologics (HFD–102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4330.

SUPPLEMENTARY INFORMATION: FDA is making available two revised guidelines on the investigation of general anesthetics and local anesthetics in humans. These revisions represent an update of the guidelines originally issued in 1978 under identification numbers HEW (FDA) 78–3052 and 78–3053. This effort is consistent with the agency's commitment to periodic review of the clinical guidelines every 18 to 24 months. The revisions contained in these guidelines are organizational and editorial in nature. No substantive changes have been made. The original guidelines, HEW (FDA) 78–3052 and 78–3053 are hereby revoked. Because no substantive changes have been made in the revisions of the original guidelines, studies conducted in accordance with those guidelines remain acceptable to FDA.

This notice of availability of the guidelines is issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to outline procedures or standards of general applicability that are acceptable to FDA for a subject matter that falls within the laws administered by FDA. Although these guidelines are not legal requirements, a person may be assured that in following an agency guideline the procedures and standards will be acceptable to FDA. A person may also choose to use alternative procedures or standards for which there is scientific rational even though they are not provided for in the guideline. A person who chooses to use procedures or standards not in a guideline may discuss the matter further with the agency to prevent an expenditure of money and effort on work that FDA may later determine to be unacceptable.

The guideline documents subject to this notice are as follows:

HHS (FDA) No.	Guideline title	GPO stock No.	Cost
82–3052	Guidelines for the Clinical Evaluation of General Anesthetics	(017–012–00303–6)	$2.75
82–3053	Guidelines for the Clinical Evaluation of Local Anesthetics	(017–012–00304–4)	2.75

Copies of these guidelines can be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402, at the cost listed above. Orders for copies must include the GPO stock number which is also listed.

Interested persons may, on or before December 20, 1982, submit written comments on the guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Such comments will be considered in determining whether further amendments to, revisions of, the guidelines are warranted. Comments should be in two copies (except that individuals may submit single copies), identified with the docket number found in brackets on the heading of this document. The guidelines and received comments may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 15, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–25872 Filed 9–20–82; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 82M–0252]

Syntex Ophthalmics, Inc., Premarket Approval of Polycon® II (Silafocon A) Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its approval of the supplemental application for premarket approval under the Medical Device Amendments of 1976 of the tinted POLYCON® II (silafocon A) Contact Lens, sponsored by Syntex Ophthalmics, Inc. Phoenix, AZ. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by October 21, 1982.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Bureau of Medical Devices (HFK–402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7445.

SUPPLEMENTARY INFORMATION: On May 28, 1981, Syntex Ophthalmics, Inc., Phoenix, AZ, submitted to FDA a supplemental application for premarket approval of the POLYCON® II (silafocon A) Contact Lens tinted with D&C Green No. 6. FDA approved an application for premarket approval of the clear (untinted) POLYCON® (silafocon A) Contact Lens on January 19, 1979, following a determination that the lenses were safe and effective for use as recommended in the submitted labeling. The supplemental application for the tinted lens was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On July 15, 1982, FDA approved the supplemental application by a letter to the sponsor from the Acting Associate Director for Device Evalution of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), soft contact lenses and solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), soft contact lenses and solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of Part 310 (21 CFR Part 310), Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Bureau of Medical Devices. Contact Charles Kyper, address above. Requests should be identified with the name of the device and the

docket number found in brackets in the heading of this document.

The labeling of an approved contact lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses. However, the restrictive labeling needs to be updated periodically to refer to new lens solutions that FDA approves for use with approved contact lenses. A sponsor that fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens, under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at any other time FDA prescribes by letter to the sponsor.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). a petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 21, 1982, file with the Dockets Management Branch (address above), four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 14, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-25871 Filed 9-20-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit; Notice of Receipt of Application

Applicant: Mr. Ray Berwick, Studio City, CA.

The applicant requests a permit to import two male captive-bred orangutans (*Pongo pygmaeus*) from the Baby-Zoo Wingst, West Germany for enhancement of propagation and survival under the definition of conservation exhibition.

Humane care and treatement during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2–9530. Interested persons may comment on this application within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: September 15, 1982.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 82-25970 Filed 9-20-82; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[A-17881]

Federal Minerals Exchange, Coconino County, Arizona; Realty Action

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action—Exchange, Federal Minerals in Coconino County, Arizona.

SUMMARY: The following described Federal mineral estate has been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona.

T. 26 N., R. 4 E.,
Sec. 14, NW¼, S½.
T. 26 N., R. 5 E.,
Sec. 8, All;
Sec. 20, All.
T. 27 N., R. 4 E.,
Sec. 14, All;
Sec. 30, Lots 1 through 4, E½W½, E½.
Comprising 3,040.28 acres, more or less.

In exchange for this Federal mineral estate, the United States will acquire the following State-owned minerals:

Gila and Salt River Meridian, Arizona.

T. 25 N., R. 8 E.,
Sec. 3, Lots 1 through 4, S½N½, S½;
Sec. 10, All;
Sec. 11, All;
Sec. 14, All;
Sec. 15, N½, N½SW¼, S½SE¼.
Comprising 3,040.80 acres, more or less.

The above described mineral estates are unencumbered and have been determined to be of equal value.

The purpose of the exchange is to acquire State-owned minerals within the Wupatki National Monument, underlying lands administered by the National Park Service, Southwest Region. This action would avoid potential surface impacts that may occur as the result of State approved mineral leasing activities. This action will also provide for the consolidation of split estates which resulted from an earlier surface exchange between the United States and the State of Arizona.

The publication of this notice in the **Federal Register** will segregate the Federal mineral estate described herein to the extent that it will not be subject to appropriation under the mining laws. As set forth in 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. This segregative effect shall terminate upon

issuance of patent to such minerals, upon publication in the **Federal Register** of the segregation, or 2 years from date of this publication, whichever occurs first.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including the environmental analysis and the mineral reports, is available for review at the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

For a period of 45 days interested parties may submit commitments to the District Manager, Phoenix District Office, 2929 West Claredon Avenue, Phoenix, Arizona 85017. Any adverse comments may be evaluated by the Arizona State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State director, this realty action will become the final determination of the Department of the Interior.

Dated: September 10, 1982.

William K. Barker,

District Manager.

[FR Doc. 82-25978 Filed 9-20-82; 8:45 am]

BILLING CODE 4310-84-M

Notice of Segregation; Public Land in Carbon County, Utah

September 13, 1982.

Notice is hereby given that pursuant to the act of May, 24, 1928 (49 U.S.C. 211-214) Carbon County, Utah has applied for an Airport Lease (U-51314) for the following described land:

Salt Lake Base and Meridian, Utah

T. 14 S., R. 10 E.,
Sec. 12, SW¼NE¼;
Sec. 24, NW¼NW¼.
Comprising 80 acres.

The purpose of this notice is to inform the public that the filing of this application segregates the described land from all other forms of use or disposal under the public land laws, including the mining laws but not the mineral leasing laws. Interested parties may submit comments or inquiries to the Moab District Manager, P.O. Box 970, Moab, Utah 84532.

Kenneth V. Rhea,

Associate District Manager.

[FR Doc. 82-25974 Filed 9-20-82; 8:45 am]

BILLING CODE 4310-84-M

[OR 2777(WASH)]

Washington; Realty Action Lease/Sale; Public Land in Pend Oreille County

The following described land has been examined and identified as suitable for public recreation and is hereby classified for lease and/or sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.):

Willamette Meridian, Washington

T. 39 N., R. 43 E.,
Sec. 28, Lots 7, 8, and 9 of Block 5 of Metaline Townsite.
Containing .25 acres.

The land is chiefly valuable for public recreation purposes by virtue of its suitability for incorporation into the adjacent waterfront park operated by the Town of Metaline. The land will be leased to the Town of Metaline with an option to purchase, without monetary consideration. Lease will serve the important public objective of providing additional land for expansion of the town's recreational and public purpose projects. The land is isolated and is not essential to any Bureau of Land Management program. The land is not of national significance and this action will have no significant impact on the environment. The action is consistent with existing land use plan and with State and local planning and zoning.

Classification of the land under the provisions of the Recreation and Public Purposes Act segregates them from all appropriation, including locations under the mining laws, except as to applications under the mineral leasing laws and applications under the Recreation and Public Purposes Act.

For a period of 30 days, interested parties may submit comments to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: September 14, 1982.

Robert E. Mallohan,

Chief, Lands Operations Section.

[FR Doc. 82-25965 Filed 9-20-82; 8:45 am]

BILLING CODE 4310-84-M

[INT FEIS 82-34]

Lower Gila North Final Grazing Environmental Impact Statement; Notice of Availability

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement (final EIS).

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, BLM has prepared a final EIS on the Proposed Grazing Management Program for the Lower Gila North Planning Area, Mohave, Yavapai, Maricopa, and Yuma Counties, Arizona.

SUPPLEMENTARY INFORMATION: The FEIS is to be used in conjunction with the DEIS. The final statement is made up of the oral and written comments received and our responses to those comments.

Comments on the final statement can be submitted within 30 days of this notice to the District Manager, Bureau of Land Management, Projects Office, 2933 W. Indian School Road, Phoenix, Arizona 85017.

A limited number of final EIS copies may be obtained upon request to the District Manager at the above address.

Public reading copies may be reviewed at the following locations:

Office of Public Affairs, Bureau of Land Management, Interior Building, 18th & C Streets NW., Washington, D.C. 20240; Telephone (202) 343-5717

Arizona State Office, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073; Telephone (602) 261-3706

Phoenix District Office, Bureau of Land Management, 2929 W. Clarendon Avenue, Phoenix, Arizona 85017; Telephone (602) 241-2501

Dated: September 15, 1982.

D. Dean Bibles,

State Director.

[FR Doc. 82-25928 Filed 9-20-82; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 10, 1982. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243.

Written comments should be submitted by October 6, 1982.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Mobile County

Mobile, *Cavellero House*, 7 N. Jackson St.
Mobile, *Coley Building*, 56 St. Francis St.
Mobile, *Weems House*, 1155 Springhill Ave.

ARKANSAS

Craighead County

Jonesboro, *West Washington Avenue Historic District*, 500–626 W. Washington Ave.

Hot Springs County

Rockport vicinity, *Old Rockport Bridge*, W of Rockport across Ouachita River

Independence County

Batesville, *Batesville Commercial Historic District*, Main and Central Sts.

CALIFORNIA

Marin County

Larkspur, *Larkspur Downtown Historic District*, 234–552 ½ Magnolia Ave.

IDAHO

Canyon County

Givens Springs vicinity, *Map Rock Petroglyphs Historic District*, E of Givens Springs Wilder vicinity, *Peckham Barn*, N of Wilder on US 95

IOWA

Des Moines County

Burlington, *Hedge Block*, 401–407 Jefferson St.

Jasper County

Newton, *Arthur, Thomas, House*, 322 N. 8th Ave. E.

Linn County

Cedar Raids, *Wolff, Phillip A., House and Carriage House*, 1420 Seminole Ave., NW

Scott County

Davenport, *Davenport Crematorium*, 3902 Rockingham Rd.

Woodbury County

Sioux City, *Charles City College Hall*, 1501 Morningside Ave.

LOUISIANA

Natchitoches Parish

Natchitoches, *Site 16NA37*,

Tangipahoa Parish

Amite, *Elliott House*, 745 Duncan Ave.

MISSISSIPPI

Harrison County

Gulfport, *Hewes Building*, 2505 14th St.

NEBRASKA

Cherry County

Valentine, *Walcott, F. M., House*, 431 N. Hall St.

Douglas County

Omaha, *Brandeis, J. L., and Sons Store Building*, 200 S. 16th St.
Omaha, *Garneau-Kilpatrick House*, 3100 Chicago St.
Omaha, *Havens-Page House*, 101 N. 39th St.
Omaha, *Poppleton Block*, 1001 Farnam St.

Lancaster County

Lincoln, *Gold and Company Store Building*, 1033 O St.

NORTH CAROLINA

Forsyth County

Vienna vicinity, *Schaub, John Jacob, House*, NE of Vienna off SR 1455

OHIO

Athens County

Athens, *Beasley Building*, 93 W. Union St.

Erie County

Sandusky, *Barker School (Sandusky MRA)*, 1925 Barker St.
Sandusky, *Barney, Freeland T., House (Sandusky MRA)*, 215–213 Fulton St.
Sandusky, *Bates-Cockrem House (Sandusky MRA)*, 325 Lawrence St.
Sandusky, *Bavarian Brewery (Sandusky MRA)*, 1816–1820 W. Jefferson St.
Sandusky, *Bing's Hotel (Sandusky MRA)*, 302 E. Water St.
Sandusky, *Boalt, John, House (Sandusky MRA)*, 631 Wayne St.
Sandusky, *Boeckling Building (Sandusky MRA)*, 103–105 W. Shoreline Dr.
Sandusky, *Boeckling, G. A., House (Sandusky MRA)*, 614 Columbus Ave.
Sandusky, *Boy with the Boot Fountain (Sandusky MRA)*, W. Washington St. Park
Sandusky, *Cable, Frank, House (Sandusky MRA)*, 809 W. Washington St.
Sandusky, *Cable, Laurence, House (Sandusky MRA)*, 910 W. Monroe St.
Sandusky, *Campbell School (Sandusky MRA)*, 1215 Campbell St.
Sandusky, *Coliseum (Sandusky MRA)*, Midway at Cedar Point
Sandusky, *Columbus Avenue Historic District (Sandusky MRA)*, 102–162 Columbus Ave.
Sandusky, *Commercial Banking & Trust Co. (Sandusky MRA)*, 115 E. Washington Row.
Sandusky, *Converse-Mertz Apartments (Sandusky MRA)*, 301–303 E. Washington St.
Sandusky, *Cooke-Robertson House (Sandusky MRA)*, 412 Columbus Ave.
Sandusky, *Cooke, Eleutheros, House (Sandusky MRA)*, 1415 Columbus Ave.
Sandusky, *Cooke, Eleutheros, House (Sandusky MRA)*, 410 Columbus Ave.
Sandusky, *Curtis, William D., House (Sandusky MRA)*, 1411 Hayes Ave.
Sandusky, *Emmanuel Church (Sandusky MRA)*, 334 Columbus Ave.
Sandusky, *Engels, Herman, House (Sandusky MRA)*, 117 Hancock St.
Sandusky, *Engine House #1 (Sandusky MRA)*, 901 W. Market St.
Sandusky, *Erie County Jail (Sandusky MRA)*, 204 W. Adams St.
Sandusky, *Erie County Oil Products Co. (Sandusky MRA)*, 649 Tiffin Ave.
Sandusky, *Facer's Store (Sandusky MRA)*, 279 E. Market St.
Sandusky, *First Church of Christ Scientist (Sandusky MRA)*, 128 E. Adams St.
Sandusky, *First Congregational Church (Sandusky MRA)*, 431 Columbus Ave.
Sandusky, *Fox's Brewery-Diamond Wine Co. (Sandusky MRA)*, 334 Harrison St.
Sandusky, *Godfrey-Johnson House (Sandusky MRA)*, 417 Columbus Ave.
Sandusky, *Grace Episcopal Church (Sandusky MRA)*, 315 Wayne St.
Sandusky, *Graefe, Henry, House (Sandusky MRA)*, 1429 Columbus Ave.
Sandusky, *Harper, Rice, House (Sandusky MRA)*, 403 E. Washington St.
Sandusky, *Hemminger Saloon (Sandusky MRA)*, 333 W. Market St.
Sandusky, *Hinde & Dauch Paper Co. (Sandusky MRA)*, 409 W. Water St.
Sandusky, *Hinde & Dauch Paper Co. (Sandusky MRA)*, 401 W. Shoreline Dr.
Sandusky, *Hinde & Dauch Paper Co. (Sandusky MRA)*, 407 Decatur St.
Sandusky, *Hinde, James J., House (Sandusky MRA)*, 317 Fulton St.
Sandusky, *Holy Angels Church (Sandusky MRA)*, W. Jefferson St. at Tiffin Ave. and Clinton St.
Sandusky, *Hubbard, Lester, House (Sandusky MRA)*, 134 E. Adams St.
Sandusky, *Hubbard, S. B., House (Sandusky MRA)*, 1205 Columbus Ave.
Sandusky, *Jackson Jr. High School (Sandusky MRA)*, 414 W. Madison St.
Sandusky, *Kerber's Marine Grocery (Sandusky MRA)*, 1006 Tiffin Ave.
Sandusky, *Kuebeler-Stang Block (Sandusky MRA)*, 634 Hancock St.
Sandusky, *Kuebeler, August, House (Sandusky MRA)*, 1319 Tiffin Ave.
Sandusky, *Lane, Ebenezer, House (Sandusky MRA)*, 318 Huron Ave.
Sandusky, *Lea Block (Sandusky MRA)*, 174–186 E. Market St.
Sandusky, *Lotz, Henry, Store (Sandusky MRA)*, 1119 W. Washington St.
Sandusky, *Mallroy, Ogden, House (Sandusky MRA)*, 410 Warren St.
Sandusky, *March, George, House (Sandusky MRA)*, 532 Wayne St.
Sandusky, *Marshall, James E., House (Sandusky MRA)*, 514 Wayne St.
Sandusky, *McKenster-Groff House (Sandusky MRA)*, 334 E. Washington St.
Sandusky, *Monroe School (Sandusky MRA)*, 328 E. Monroe St.
Sandusky, *Moss-Foster House (Sandusky MRA)*, 621 Wayne St.
Sandusky, *Muller, Daniel C., Carousel (Sandusky MRA)*, Midway at Cedar Point
Sandusky, *Murschel House (Sandusky MRA)*, 1221 N. Depot St.
Sandusky, *No. 5 Fire Station (Sandusky MRA)*, W. Madison and Tiffin Ave.
Sandusky, *Ohio Theatre (Sandusky MRA)*, 205–211 W. Market St.
Sandusky, *Old First Church (Sandusky MRA)*, 265 Jackson St.
Sandusky, *Osborne School (Sandusky MRA)*, 922 W. Osborne St.
Sandusky, *Red Popcorn Wagon (Sandusky MRA)*, 102 W. Washington Row
Sandusky, *Root, Joseph, House (Sandusky MRA)*, 231 E. Adams St.

Sandusky, *Ross Hardware (Sandusky MRA)*, 708 Hancock St.
Sandusky, *Schine State Theatre (Sandusky MRA)*, 101–109 Columbus Ave.
Sandusky, *Simpson, Walter, House (Sandusky MRA)*, 521 Hancock St.
Sandusky, *Simpson, William A., House (Sandusky MRA)*, 230 E. Washington St.
Sandusky, *St. Mary's Girls Grade School (Sandusky MRA)*, 514 Decatur St.
Sandusky, *St. Mary's Rectory (Sandusky MRA)*, 429 Central Ave.
Sandusky, *St. Mary's School (Sandusky MRA)*, 410 W. Jefferson St.
Sandusky, *St. Stephens's AME Church (Sandusky MRA)*, 312 Neil St.
Sandusky, *Stang, John, House (Sandusky MRA)*, 629 Columbus Ave.
Sandusky, *Stoffel, Henry, Blacksmith Shop (Sandusky MRA)*, 321 E. Market St. (Rear)
Sandusky, *Stoll, Adam J., House (Sandusky MRA)*, 531 Wayne St.
Sandusky, *Stone's Block (Sandusky MRA)*, 202 Columbus Ave.
Sandusky, *Sts. Peter & Paul Church (Sandusky MRA)*, Columbus Ave. at E. Jefferson St.
Sandusky, *Sts. Peter & Paul Rectory (Sandusky MRA)*, 510 Columbus Ave.
Sandusky, *Taylor-Frohman House (Sandusky MRA)*, 1315 Columbus Ave.
Sandusky, *Third National Bank (Sandusky MRA)*, 220 W. Market St.
Sandusky, *Townsend, William T., House (Sandusky MRA)*, 515 W. Washington St.
Sandusky, *U.S. Coast Guard Building (Sandusky MRA)*, Cedar Point, off Perimeter Rd.
Sandusky, *U.S. Post Office (Sandusky MRA)*, W. Washington & Jackson Sts.
Sandusky, *Von Schulenburg, Ernst, House (Sandusky MRA)*, 922 W. Adams St.
Sandusky, *Wadsworth, James, House (Sandusky MRA)*, 519 Huron Ave.
Sandusky, *Wagner Palace (Sandusky MRA)*, 804–806 Hayes Ave.
Sandusky, *West Market School (Sandusky MRA)*, 211 Fulton St.
Sandusky, *Wichman's Grocery (Sandusky MRA)*, 1118 W. Washington St.
Sandusky, *Zion Lutheran Church (Sandusky MRA)*, 501–503 Columbus Ave.

OREGON

Lane County

Eugene, *Eugene Hotel*, 222 E. Broadway

Linn County

Albany, *Albany Downtown Commercial Historic District*, Roughly bounded by Willamette River, Montgomery, Washington, and 5th Sts.

Multnomah County

Portland, *Grand Stable Building and Adjacent Commercial Building*, 415–421 SW 2nd Ave.
Portland, *Spalding Building*, 319 SW Washington St.
Portland, *Swedish Evangelical Mission Covenant Church*, 1624 NW Glisan St.

TENNESSEE

Hamilton County

Chattanooga, *Audubon Acres Site (40 HA 84)*

UTAH

Millard County

Scipio, *Thuesen-Petersen House (Scandinavian-American Pair-houses TR)*, 260 W. Center St.

Salt Lake County

Salt Lake, *Hintze, Anders, House (Scandinavian-American Pair-houses TR)*, 4249 S. 2300 East

Sanpete County

Ephraim, *Andersen, Claus P., House (Scandinavian-American Pair-houses TR)*, 2nd South St.
Ephraim, *Andersen, Lars S., House (Scandinavian-American Pair-houses TR)*, 213 N. 200 East
Ephraim, *Jacobsen-Jensen House (Scandinavian-American Pair-houses TR)*, 207 S. 100 West
Ephraim, *Jensen, Hans C., House (Scandinavian-American Pair-houses TR)*, 263 E. 100 South
Ephraim, *Jensen, Rasmus, House (Scandinavian-American Pair-houses TR)*, 97 E. 100 South
Ephraim, *Larsen, Oluf, House (Scandinavian-American Pair-houses TR)*, 75 S. 100 West
Ephraim, *Mortensen, Niels, House (Scandinavian-American Pair-houses TR)*, 149 N. 100 East
Ephraim, *Nielsen, Jens, House (Scandinavian-American Pair-houses TR)*, 192 W. 200 South
Ephraim, *Sorensen, Dykes, House (Scandinavian-American Pair-houses TR)*, 2nd East St.
Fountain Green, *Barentsen, Andrew, House (Scandinavian-American Pair-houses TR)*, UT 30
Manti, *Hansen, Peter, House (Scandinavian-American Pair-houses TR)*, 247 S. 200 East

Sevier County

Glenwood, *Johnson, Martin, House (Scandinavian-American Pair-houses TR)*, 45 W. 400 South
Monroe, *Simonsen, Soren, House (Scandinavian-American Pair-houses TR)*, 55 W. 200 North
Richfield, *Petersen, Andrew, House (Scandinavian-American Pair-houses TR)*, 92 E. 200 South

VIRGINIA

Charlottesville (Independent City), *Anderson Brothers Building (Charlottesville MRA)*, 1417–1427 University Ave.
Charlottesville (Independent City), *Armstrong Knitting Factory (Charlottesville MRA)*, 700 Harris St.
Charlottesville (Independent City), *Balz, Henry, Building (Charlottesville MRA)*, 811–817 W. Main St.
Charlottesville (Independent City), *Barringer Mansion (Charlottesville MRA)*, 1404 Jefferson Park Ave.
Charlottesville (Independent City), *Belmont (Charlottesville MRA)*, 759 Belmont Ave.
Charlottesville (Independent City), *Bethel Baptist Institutional Church (Charlottesville MRA)*, 501 Commerce St.
Charlottesville (Independent City), *C&A Ry Co.-Va. Public Service Co. Building (Charlottesville MRA)*, 300 W. Main St.
Charlottesville (Independent City), *Carey House (Charlottesville MRA)*, 766 Ridge St.
Charlottesville (Independent City), *Carter, A. G., Building (Charlottesville MRA)*, 701–709 W. Main St.
Charlottesville (Independent City), *Carter-Gilmer House (Charlottesville MRA)*, 802 E. Jefferson St.
Charlottesville (Independent City), *Chancellor Building (Charlottesville MRA)*, 1411–1415 University Ave.
Charlottesville (Independent City), *Cocke Building (Charlottesville MRA)*, 1100 Gordon Ave.
Charlottesville (Independent City), *Dabney-Thompson House (Charlottesville MRA)*, 1602 Gordon Ave.
Charlottesville (Independent City), *Delevan Baptist Church (Charlottesville MRA)*, 632 W. Main St.
Charlottesville (Independent City), *Doswell-Mayo House (Charlottesville MRA)*, 125 Chancellor St.
Charlottesville (Independent City), *Ebenezer Baptist Church (Charlottesville MRA)*, 113 6th St., NW
Charlottesville (Independent City), *Eddins-Tilden House (Charlottesville MRA)*, 734 Locust Ave.
Charlottesville (Independent City), *Enderly (Charlottesville MRA)*, 603 Watson Ave.
Charlottesville (Independent City), *Enderly Servants' Quarters (Charlottesville MRA)*, 605 Watson Ave.
Charlottesville (Independent City), *Ficklin-Crawford Cottage (Charlottesville MRA)*, 1200 Carlton Ave.
Charlottesville (Independent City), *Four Acres (Charlottesville MRA)*, 1314 Rugby Rd.
Charlottesville (Independent City), *Gardner-Mays Cottage (Charlottesville MRA)*, 1022 Grove St.
Charlottesville (Independent City), *Hard Bargain (Charlottesville MRA)*, 1105 Park St.
Charlottesville (Independent City), *Harmon House (Charlottesville MRA)*, 2005 Jefferson Park Ave.
Charlottesville (Independent City), *Hawkins-Wondree House (Charlottesville MRA)*, 418 5th St., SW
Charlottesville (Independent City), *Hill-Holladay House (Charlottesville MRA)*, 864 Locust Ave.
Charlottesville (Independent City), *Hillcrest Apartments Cottage (Charlottesville MRA)*, 200 15th St., NW
Charlottesville (Independent City), *Holly Hill (Martin-Wilder House) (Charlottesville MRA)*, 631 Culter Lane
Charlottesville (Independent City), *Holsinger-Thomas Building (Charlottesville MRA)*, 620–624 W. Main St.
Charlottesville (Independent City), *Hotel Gleason/Albemarle Hotel, Imperial Cafe (Charlottesville MRA)*, 617–619 W. Main St.
Charlottesville (Independent City), *House at 1025 Locust Ave. (Charlottesville MRA)*, 1025 Locust Ave.

Charlottesville (Independent City), *House at 867 Locust Ave. (Charlottesville MRA)*, 1867 Locust Ave.
Charlottesville (Independent City), *House at Pireus (Charlottesville MRA)*, 302 Riverside Ave.
Charlottesville (Independent City), *Jeffries, William, House (Charlottesville MRA)*, 909 W. Main St.
Charlottesville (Independent City), *Jordan-Morgan-Haden House (Charlottesville MRA)*, 901 E. Jefferson St.
Charlottesville (Independent City), *Keith House (Charlottesville MRA)*, 1615 Keith Valley Rd.
Charlottesville (Independent City), *King Lumber Company Warehouse (Charlottesville MRA)*, 608 Preston Ave.
Charlottesville (Independent City), *King-Runkle House (Charlottesville MRA)*, 201 14th St., NW
Charlottesville (Independent City), *Landrum-Irving House (Charlottesville MRA)*, 940 Locust Ave.
Charlottesville (Independent City), *Lewis Farm (Charlottesville MRA)*, 1201 Jefferson St.
Charlottesville (Independent City), *Lewis, Nicholas, House (Charlottesville MRA)*, 309 12th St.
Charlottesville (Independent City), *Locust Grove (Charlottesville MRA)*, 810 Locust Ave.
Charlottesville (Independent City), *Maury-McCue House (Charlottesville MRA)*, 192 Stribling Ave.
Charlottesville (Independent City), *McConnell-Neve House (Charlottesville MRA)*, 228 14th St., NW
Charlottesville (Independent City), *McKennie-Cook Building (Charlottesville MRA)*, 1403–1409 University Ave.
Charlottesville (Independent City), *Minor Court Building (Charlottesville MRA)*, 1515 University Ave.
Charlottesville (Independent City), *Mt. Zion Baptist Church (Charlottesville MRA)*, 105 Ridge St.
Charlottesville (Independent City), *Nimmo House (Charlottesville MRA)*, 106 Hartmans Mill Rd.
Charlottesville (Independent City), *Page-Payne House (Charlottesville MRA)*, 136 Chancellor St.
Charlottesville (Independent City), *Patton Manison (Charlottesville MRA)*, 1018 W. Main St.
Charlottesville (Independent City), *Paxton Place (Charlottesville MRA)*, 503 W. Main St.
Charlottesville (Independent City), *Peters-Hartmen House (Charlottesville MRA)*, 123 Chancellor St.
Charlottesville (Independent City), *Peyton House—Hillcrest Apartments (Charlottesville MRA)*, 205 14th St., NW
Charlottesville (Independent City), *Peyton-Ellington Building (Charlottesville MRA)*, 711 W. Main St.
Charlottesville (Independent City), *Phi Kappa Sigma House (Charlottesville MRA)*, 160 Madison Lane
Charlottesville (Independent City), *Pireus Store (Charlottesville MRA)*, 1901 E. Market St.
Charlottesville (Independent City), *Pitts-Inge (Charlottesville MRA)*, 331–333 W. Main St.
Charlottesville (Independent City), *Purvis-Seay House (Charlottesville MRA)*, 809 Anderson St.
Charlottesville (Independent City), *Ridge Street Historic District (Charlottesville MRA)*, 200–700 Ridge St.
Charlottesville (Independent City), *Rose Cottage/Peyton House (Charlottesville MRA)*, 800 Delevan, St.
Charlottesville (Independent City), *Rosser Cottage #1 (Charlottesville MRA)*, 907 Cottage Lane
Charlottesville (Independent City), *Rosser Cottage #2 (Charlottesville MRA)*, 909 Cottage Lane
Charlottesville (Independent City), *Rugby (Charlottesville MRA)*, 908 Cottage Lane
Charlottesville (Independent City), *Shapero-Moss Building (Charlottesville MRA)*, 731 W. Main St.
Charlottesville (Independent City), *Smith, John A., House (Charlottesville MRA)*, 1100 Locust Ave.
Charlottesville (Independent City), *Smith-Marshall House (Charlottesville MRA)*, 714 Rugby Rd.
Charlottesville (Independent City), *Sparks-Garrett House (Charlottesville MRA)*, 320 W. Main St.
Charlottesville (Independent City), *St. Anthony Hall (Charlottesville MRA)*, 133 Chancellor St.
Charlottesville (Independent City), *Stonefield (Charlottesville MRA)*, 1204 Rugby Rd.
Charlottesville (Independent City), *Timberlake-Branham House (Charlottesville MRA)*, 1512 E. Market St.
Charlottesville (Independent City), *Turner-LaRowe House (Charlottesville MRA)*, #1 University Court
Charlottesville (Independent City), *Updike, Robert L., House (Charlottesville MRA)*, 620 Prospect Ave.
Charlottesville (Independent City), *Vowles House Kitchen (Charlottesville MRA)*, 104 12th St., NW
Charlottesville (Independent City), *Vowles, John, House (Charlottesville MRA)*, 1111–1113 W. Main St.
Charlottesville (Independent City), *Wertland Street Historic District (Charlottesville MRA)*, Wertland St. between 10th and 14th Sts.
Charlottesville (Independent City), *Wheeler House (Charlottesville MRA)*, 425 W. Main St.
Charlottesville (Independent City), *Wheeler-Dyer House (Charlottesville MRA)*, 501 W. Main St.
Charlottesville (Independent City), *White Cross-Huntley Hall (Charlottesville MRA)*, 152 Stribling Ave.
Charlottesville (Independent City), *White, John S., House (Charlottesville MRA)*, 854 Locust Ave.
Charlottesville (Independent City), *Wood House (Charlottesville MRA)*, 129 Chancellor St.
Charlottesville (Independent City), *Wollen Mills Chapel (Charlottesville MRA)*, 1819 E. Market St.
Charlottesville (Independent City), *Wyndhurst (Charlottesville MRA)*, 605 Preston Pl.
Charlottesville (Independent City), *Wyndhurst (Charlottesville MRA)*, 611 Preston Pl.
Charlottesville (Independent City), *Young Building (Charlottesville MRA)*, 1102 Carlton Ave.

WEST VIRGINIA

Wood County

Parkersburg, *Van Winkle, Peter G., House (Downtown Parkersburg MRA)*, 600 Juliana St.

[FR Doc. 82-25737 Filed 9-20-82; 8:45 am]
BILLING CODE 4310-70-M

Availability of Plan of Operations and Environmental Assessment for the Purpose of Construction and Operation of a 30-Inch Pipeline, Natural Gas Pipeline Company of America, Lake Meredith Recreation Area, Texas

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Natural Gas Pipeline Company of American a Plan of Operations for the purpose of construction and operation of a 30-inch pipeline in Lake Meredith Recreation Area, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Lake Meredith Recreation Area, 419 East Broadway, Post Office Box 1438, Fritch, Texas 79036; and the Southwest Regional Office, National Park Service, 1100 Old Santa Fe Trail, Santa Fe, New Mexico. Copies of the document are available from the Superintendent, Lake Meredith Recreation Area, at the address provided above, and will be sent upon request.

Dated: September 15, 1982.

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 82-25971 Filed 9-20-82; 8:45 am]
BILLING CODE 4310-70-M

San Antonio Missions Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the San Antonio Missions Advisory Commission will be held at 7:00 p.m., Tuesday, October 12, 1982, at Mission Concepcion, San Antonio, Texas.

The San Antonio Missions Advisory Commission was established pursuant to Public Law 95–629, Title II, November 10, 1978. The purpose of the commission is to advise the Secretary of the Interior

or his designee on matters relating to the park and with respect to carrying out the provisions of the statute establishing the San Antonio Missions National Historical Park.

Matters to be discussed at this meeting include:

—Park Operations Update
—Land Acquisition Report
—Archdiocesan Agreement Status
—General Management Plan/ Development Concept Plan
—Interpretive Prospectus

The meeting will be open to the public, however, facilities and space for accommodating members of the public will be limited and persons will be accommodated on a first-come, first-serve basis.

Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, San Antonio Missions National Historical Park.

Persons wishing further information regarding this meeting or who wish to submit a written statement may contact Jose A. Cisneros, Superintendent, 727 E. Durango, Room A612, San Antonio, Texas 78206, telephone (512) 229–6000.

Minutes of the meeting will be available for public review four weeks after the meeting at the office of the San Antonio Missions National Historical Park.

Dated: September 13, 1982.

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 82–25972 Filed 9–20–82; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Abandoned Mine Lands Reclamation Program; Indiana

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of availability of Findings of No Significant Impact (FONSI) addressing Environmental Assessments (EAs) (for development of 10 abandoned mine land projects, consisting of 56 sites, under the state of Indiana reclamation plan.

SUMMARY: OSM has prepared EAs on projects submitted in the Federal Grant Application from the State of Indiana to the Office of Surface Mining.

A FONSI has been made on the 10 reclamation projects indicated below and included in the grant application developed under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1231–1234.

ADDRESS: Copies of the EAs and FONSI are available for inspection or may be obtained at the following location between the hours of 8:00 a.m. and 4:00 p.m.: Office of Surface Mining Reclamation and Enforcement, Indiana Field Office, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 524, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Richard D. McNabb, Director, Indiana Field Office, (317) 269–2600. Same address as above.

Reclamation projects included in FONSI, location and description:

1.. Project Area No. 1. Wright Township, Greene County, Indiana (Sites #18 Filbert Mine, #19 Salem Church Mine, #22 Calora #2/Northwest Mine, #136 Midland West Mine, #137 Midland South Mine, #155 and #156) Highwalls, barren spoil, subsidence, mine shafts.

2. Project Area No. 2. Nevins Township, Vigo County, Indiana (Sites #58 Burnett Mine, #60 Gibson Mine, #63 Domestic Block Mine, #7 Menshall Mine, and #59 Burnett #1), Vertical shafts, mine entries, gob pile.

3. Project Area No. 3. Clinton Township, Vermillion County, Indiana (Sites #6 West Clinton, #24 Keller No. 1, #68 Interstate, #69 Crown Hill No. 4, #70 Dering No. 7, and #67 Shirkie). Vertical shafts, collapsed shafts, mine entries, barren spoil, slurry.

4. Project Area No. 4. Stockton Township, Greene County, Indiana (Sites #83 Linton No. 5, #173 Summit, and #23 Jewell No. 2). Mine openings, collapsed shafts, subsidence.

5. Project Area No. 5. Boon Township, Warrick County, Indiana (sites #12 Walton, #87 Name Unknown, #89 Chandler, #91 Degonia Springs, #98 Boonville, #99 Baker, #100 Name Unknown, #139 Baker, #140 Mitchum, #170 Big Four). Barren spoil, abandoned equipment and structures, mine shafts, highwalls, water-filled pits, subsidence.

6. Project Area No. 6. Sugar Creek Township, Vigo County, Indiana (Sites #IN–037 Walnut, #38 Dresser, #40 National, #46 Green Valley, #47 Sugar Creek, #127 W. Terre Haute). Vertical shafts, gob piles, abandoned structures, highwall.

7. Project Area No. 7. Posey Township, Clay County, Indiana (Sites #65 Boyce, #132 Turner, #128 Name Unknown). Mine openings and portals, barren spoil, gob, highwall, acid mine drainage.

8. Project Area No. 8. Troy Township, Perry County, Indiana (Sites #117 Paulin, #114 Name Unknown, #115 Sulphur Springs No. 7, #135 Paulin). Vertical openings, portal entry, collapsed drift mine, subsidence.

9. Project Area No. 9. Patoka Township, Pike County, Indiana (Sites #11 Name Unknown, #14 Augusta, #142 Name Unknown, #143 Name Unknown, #144 Name Unknown, #145 Name Unknown, and #IN–024 Winslow). Highwalls, vertical openings, open entry, abandoned structures and equipment.

10. Project Area No. 10. Jackson Township, Sullivan County, Indiana (Sites #31 Penna, #151 Name Unknown, #159 Cummins, #168 Hymera, #153 Name Unknown). Open shafts and portal, highwall.

List of Subjects in 30 CFR

Part 886

Coal mining, Grant program natural resources, Reporting requirements, Surface mining, Underground mining.

Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 15, 1982.

J. Steven Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82–25852 Filed 9–20–82; 8:45 am]

BILLING CODE 4310–05–M

Abandoned Mine Lands Reclamation Program; Montana

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of availability of Findings of No Significant Impact (FONSI) addressing Environmental Assessments (EAs) for development of 13 abandoned mine land projects under the State of Montana Reclamation Plan.

SUMMARY: OSM has prepared EAs on projects submitted in the Federal Grant Application from the State of Montana to the Office of Surface Mining.

A FONSI has been made on the thirteen reclamation projects indicated below and included in the grant application developed under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1231–1234.

ADDRESS: Copies of the EAs and FONSI are available for inspection or may be obtained at the following location between the hours of 8:00 a.m. and 4:00 p.m.: Office of Surface Mining, Wyoming Field Office, Box 1420, Mills, Wyoming 82644.

FOR FURTHER INFORMATION CONTACT: William Thomas, Director, Wyoming Field Office, (307) 261–5550, Ext. 5776.

Reclamation Projects included in FONSI and location:

Title: Lewis Coulee. Location: Cascade County. Summary Description of Activities: Unobstructed mine openings, acid mine pollution and flood dangers.

Title: Black Diamond Mine Subsidence. Location: Wibaux County. Summary Description of Activities: Mine subsidence.

Title: Brown Mine. Location: Cascade County. Summary Description of Activities: Unobstructed mine opening, unstable mine related structures, and unsightly toxic coal waste material.

Title: Centerville D. Location: Cascade County. Summary Description of Activities: Unobstructed mine opening and unsightly toxic coal waste.

Title: East Belt Mines. Location: Cascade County. Summary Description of Activities: Two mine openings, unstable mine related structures and unsightly toxic coal waste material.

Title: North Belt Mine. Location: Cascade County. Summary Description of Activities: Open mine void and toxic coal waste material.

Title: North Culbertson Mine. Location: Roosevelt County. Summary Description of Activities: Surface subsidence.

Title: Lekvold-Shaw Property. Location: Daniels County. Summary Description of Activities: Surface subsidence.

Title: North Star Mine. Location: Powder River. Summary Description of Activities: Surface subsidence.

Title: N.W. Centerville Subsidence. Location: Cascade County. Summary Description of Activities: Open mine adit, surface subsidence and toxic coal waste material.

Title: N. 5 Coulee Mouth. Location: Cascade County. Summary Description of Activities: Unobstructed mine opening and unsightly coal waste material.

Title: Royan Property. Location: Roosevelt County. Summary Description of Activities: Surface subsidence.

Title: Storm King Mine. Location: Custer County. Summary Description of Activities: Surface subsidence.

Dated: September 15, 1982.

J. Steven Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82-25854 Filed 9-20-82, 8:45 am]

BILLING CODE 4310-05-M

Abandoned Mine Lands Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of availability of Findings of No Significant Impact (FONSI) addressing Environmental Assessments (EAs) for development of 11 of the 51 abandoned mine land projects under the State of Ohio Reclamation Plan.

SUMMARY: OSM has prepared EAs on projects submitted in the Federal Grant Application from the State of Ohio to the Office of Surface Mining.

A FONSI has been made on the 11 reclamation projects indicated below and include in the grant application developed under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1231–1234.

ADDRESS: Copies of the EAs and FONSI are available for inspection or may be obtained at the following location between the hours of 8:00 a.m. and 4:00 p.m.: Office of Surface Mining Reclamation and Enforcement, Ohio Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43227.

FOR FURTHER INFORMATION CONTACT: Nina Rose Hatfield, Director, Ohio Field Office, (614) 459–2500. Same address as above.

The eleven reclamation projects included in FONSI, location and description:

1. Belmont County Road 10, Belmont County, Ohio. Abandoned deep mine, mine seep, slide.

2. Blaine School Subsidence, Belmont County, Ohio. Abandoned deep mine, subsidence.

3. Coe, Belmont County, Ohio. Abandoned deep mine, subsidence.

4. Glenns Run, Belmont County, Ohio. Coal refuse pile, landslides.

5. Harrison County Road 2, Harrison County, Ohio. Abandoned surface coal mine, highwall, slides.

6. Jackson County Road 40, Jackson County, Ohio. Abandoned surface mine, acid mine drainage, landslides.

7. New Lexington Subsidence, Perry County, Ohio. Abandoned deep mine, subsidence.

8. Rivers, Jefferson County, Ohio. Abandoned deep mine, mine seepage, earth instability.

9. Triple V Construction, Lawrence County, Ohio. Abandoned surface mine, slope instability, erosion, acid mine drainage, sedimentation of watershed.

10. Walton Shaft, Jackson Count, Ohio. Abandoned shaft.

11. WTOV Mine Shaft, Jefferson County, Ohio. Abandoned shaft.

Dated: September 15, 1982.

J. Steven Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82-25853 Filed 9-20-82; 8:45 am]

BILLING CODE 4320-05-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 387 (Sub-No. 256)]

Southern Pacific Transportation Co.; Exemption for Contract Tariff ICC-SP-C-0186 (Milled Feed)

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. 10101a 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 conditions:

This 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: September 14, 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 not tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-25922 Filed 9-20-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries about the following to Team 1, (202) 275–7992.

Volume No. OP1–155

Decided: September 13, 1982.

By the Commission, Review Board Number 1, Members Parker, Chandler and Fortier. Member Parker not participating in part.

MC 163561, filed August 26, 1982. Applicant: RUSSELL TRANSPORT, 3325 West Darbee, Akron, MI 48701. Representative: Randy Russell (same address as applicant), (517) 691–5576. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 163630, filed August 30, 1982. Applicant: WILLARD J. GOOD, P.O. Box 11, Denver, PA 17517. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415, (212) 263–2078. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers and other soil conditioners* by the owner of the motor vehicle, in such vehicle, between points in the U.S. (except AK and HI).

MC 163631, filed August 30, 1982. Applicant: TERRY G. ROBERTS, d.b.a. VBR TRANSPORTATION, P.O. Box 4990, Riverside, CA 92514. Representative: Terry Glen Roberts, 10101 Leucadia, Riverside, CA 92503, (213) 582–5619. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 163641, filed August 31, 1982. Applicant: RONALD E. BUCHANAN and JEFFREY A. BUCHANAN, d.b.a. TRANSACTIONS, 130 Commerce Way, Woburn, MA 01801. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, DC 20036, (202) 785–0024. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 163690, filed September 2, 1982. Applicant: SHREVE & HAYS, INC., B Street Pier, P.O. Box 82237, San Diego, CA 92138. Representative: Presly T. Jenkins (same address as applicant), (714) 232–89041. As a *broker* of general commodities (except household goods), between points in the U.S.

MC 163700, filed September 3, 1982. Applicant: DONLEY J. GADDIS P.O. BOX 18, Route 4, Fredericktown, OH 43019. Representative: Donley J. Gaddis (same address as applicant), (614) 694–0676. Transporting *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Please direct status inquiries about the following to team 2, (202) 275–7030.

Volume No. OP2–222

Decided: September 10, 1982.

By the Commission, Review Board number 1, Members Parker, Chandler and Fortier. Member Parker not participating.

MC 163533 (Sub-1), filed August 30, 1982. Applicant: R & K TRUCKING, 134 Redondo Beach Blvd., Gardena, CA 90247. Representative: John C. Russell, 1545 Wilshire Blvd.—Suite 606, Los Angeles, CA 90017, 213–483–4700. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 163642, filed August 31, 1982. Applicant: TEMCO EXPRESS, 799 Wright Ave., Richmond, CA 94804. Representative: James O'Grady, 8550 W. Golf Rd., Apt. 250, Niles, IL 60648, 312–827–5600. As a *broker of general commodities* (except household goods), between points in the U.S.

Please direct status inquiries about the following to Team 4. (202) 275–7669.

Volume No. OP4–335

Decided: September 15, 1982.

By the Commission, Review Board Number 2, Members Carleton, Williams and Ewing.

MC 115557 (Sub-42), filed August 25, 1982. Applicant: CHARLES A. McCAULEY, 308 Leasure Way, New Bethlehem, PA 16242. Representative: Verne T. Mahood (same address as

applicant), (814) 365–5811. Transporting (1) *general commodities* (except classes A and B explosives, and household goods), between Birmingham, Fort Dix, Mt. Holly, Pemberton, and Smithville, NJ, Canastota, New Platz, Oneida Castle, and Wallkill, NY, Alexandria, Atlasburg, Bald Eagle, Bellsena Mills, Betts Junction, Birdsboro, Buchanan, Carlisle, Carlton, Chase, Clearfield Junction, Cochranton, Dimeling, Dowler Junction, Dunbar, East Brady, Eclipse, Faunce, Flinton, Garman, Glasgow, Glen Campbell, Harbor Bridge, Heilwood, Hepburnville, Ironsides, Irvona, Julian, Kinport, Madera, Manor, Manver, McGees Mills, Milesburg, Neville, New Providence, Phoenixville, Polk State School at Polk, Port Matilda, Potts Run Junction, Quarryville, Reno, Stowe, Tarr, Tyrone, Unionville, Utica, Vail, Watts Transfer, Williamsport, Wingate, and Youngwood, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI), (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI), and, (3) transportation for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, sensitive weapons and munitions), between points in the U.S. (except AK and HI). Conditions: Issuance of a certificate in (1) above is conditioned upon applicant certifying to the Commission, prior to commencing operations, that all rail service has actually terminated at specified points. The Certification should be sent to the Deputy Director, Section of Operating Rights, Interstate Commerce Commission, Washington, DC 20423. The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 USC 11343 (A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 4, Room 2410.

MC 161577 (Sub-1), filed September 1, 1982. Applicant: FIVE STATE TRANSPORT SERVICE, 580 N. Main St., Centerville, UT 84014. Representative: Cal Buck, P.O. Box 352, Centerville, UT 84014, (801) 292–7032. (1) Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and secret weapons and munitions), between points in the U.S. (except AK and HI), and (2) as *a broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 163337, filed August 31, 1982. Applicant: ALBA BLAIR, d.b.a. ALBA BLAIR TRUCKING, 107 Holly Dr., Roland, OK 74954. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415, (121) 263–2078. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners,* by the owner of the motor vehicles in such vehicle, between points in the U.S. (except AK and HI).

MC 163666, filed September 1, 1982. Applicant: JOHN BOGASKI, P.O. Box 1168, Cortaro, AZ 85230. Representative: John Bogaski (same address as applicant) (602) 682–7182. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners,* by the owner of the motor vehicles in such vehicle, between points in the U.S. (except AK and HI).

Please direct status inquiries about the following to Team 5, (202) 275–7289.

Volume No. OP5–186

Decided: September 8, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce and Dowell.

MC 160598 (Sub-1), filed August 27, 1982. Applicant: C. R. SMITH TRUCKING P.O. Box 516, Taylor, AZ 85939. Representative: Donald E. Fernaays, 2619 N. 50th Place, Phoenix, AZ 85008, (602) 952–1560. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 163639, filed August 31, 1982. Applicant: RONALD JOHNSON, d.b.a., RON JOHNSON TRUCKING, Box 8, 314 Dakota Ave., Horace, ND 58047. Representative: Truck Licensing Service, Box 682, W. Fargo, ND 58078, (701) 282–5014. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners,* by the owner of the motor vehicles in such vehicle, between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-25919 Filed 9-20-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-No. 252)]

Burlington Northern Railroad Co. Exemption for Contract Tariffs ICC-BN-C-0129 and ICC-BN-C-0131 (Canned Goods)

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 tariffs 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. 10101a 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 conditions.

This grant neither shall be construed to mean that the Commission has approved the contracts 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 these contracts and to determine their lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Decided: September 14, 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. 82-25921 Filed 9-20-82; 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 801109.

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 allow. 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 about the following to Team 1, (202) 275-7992.

Volume No. OP1-154

Decided: September 13, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler and Fortier. Member Parker not participating in part.

MC 34600 (Sub-6), flied September 2, 1982. Applicant: C. H. COLVIN, INC., Main Street, Box 52, Cherry Creek, NY 14723. Representative: Gregory B. Fraser, 400 Market Street, Warren, PA 16365, (814) 723-7310. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S. (except AK and HI), under continuing contract(s) with Ralston Purina Company, of St. Louis, MO.

MC 111231 (Sub-370), filed August 30, 1982. Applicant: JONES TRUCK LINES, INC., 610 East Emma Ave., Springdale, AR 72764. Representative: James H. Berry (same address as applicant), (501) 751-4806. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 120991 (Sub-3), filed August 31, 1982. Applicant: FLEMING-SHAW TRANSFER & STORAGE, INC., P.O. Box 20685, 1020 Winston St., Greensboro, NC 27420. Representative: Gerald K. Gimmel, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, (301) 840-8565. Transporting (1) *general commodities* (except classes A and B explosvies, commodities in bulk, and household goods), (a) between points in Alexander, Durham, Person, Granville, Vance, Warren, Franklin, Nash, Wake, Johnston, Harnett, Cumberland, Hoke, Lee, Moore, Scotland, Richmond, Anson, Montgomery, Union, Caldwell, Mecklenburg, Stanly, Cabarrus, Rowan, Davidson, Davie, Forsyth, Stokes, Rockingham, Caswell, Randolph, Chatham, Orange, Alamance, Guilford, Yadkin, Surry, Iredell, Alleghany, Wilkes, Redell, Catawba, and Lincoln Counties, NC, and Carroll, Grayson, Wythe, Pulaski, Floyd, Patrick, Henry, Franklin, Mechlenburg, Charlotte, Halifax, Pittsylvania, Bedford, Campbell, Roanoke and Montgomery Counties, VA, on the one hand, and, on the other, points in Guilford, Alamance, Orange, Chatham, Randolph, Davidson, Davie, Forsyth, Stokes, Rockingham and Caswell Counties, NC, and Pittsylvania and Henry Counties, VA, and (b) between points in NC, and (2) *those commodities* which because of their size or weight require the use of special handling or equipment, between points in Alexander, Durhan, Person, Granville, Vance, Warren, Franklin, Nash, Wilson, Wake, Johnston, Harnett, Cumberland, Hoke, Lee, Moore, Scotland, Richmond, Anson, Montgomery, Union, Caldwell, Mecklenburg, Stanly, Cabarrus, Rowan, Davidson, Davie, Forsyth, Stokes, Rockingham, Caswell, Randolph, Chatham, Orange, Alamance, Guilford, Yadkin, Surry, Iredell, Alleghany, Wilkes, Redell, Catawba, Lincoln, Halifax, Wayne, Sampson, Bladen, Robeson, Ashe, Watauga, Burke, Cleveland, Gaston and Avery Counties, NC, Marlboro, Chesterfield, Lancaster, Chester and York Counties, SC, Brunswick, Lunenburg, Prince Edward, Campbell, Appomattox, Botetourt, Craig, Giles, Bland, Smythe, Amherst, Rockbridge, Carroll, Grayson, Wythe, Pulaski, Floyd, Patrick, Henry, Franklin, Mecklenburg, Charlotte, Halifax, Pittsylvania, Bedford, Roanoke and Montgomery Counties, VA. Condition: Issuance of a certificate in this proceeding is subject to the coincidental cancellation, at applicant's written request, of its Certificate of Registration in MC-120991 Sub 1.

Note.—The purpose of this application is to convert applicant's certificate of registration in MC-120991 Sub 1 to a certificate of public convenience and necessity.

MC 129480 (Sub-56), filed August 31, 1982. Applicant: TRI-LINE EXPRESSWAYS LTD., 9559-40 Street, S.E., P.O. Bag 1212, Station "T", Calgary, Alberta, Canada T2H-2J1. Representative: David J. Lister, 6035 East 56th Ave., Commerce City, CO 80022, (303) 287-7421. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AZ, CA, OR and WA, on the one hand,

and, on the other, points in AZ, CA, ID, MT, NV, OR, UT and WA.

MC 136031 (Sub-3), filed August 26, 1982. Applicant: EIDSON & USSERY, INC., R. R. No. 2, Marshall, MO 65340. Representative: Thomas P. Rose, P.O. Box 205, Jefferson City, MO 65102, (314) 636–2321. Transporting *general commodities* (except classes A and B explosives and household goods), (a) between points in the U.S. (except AK and HI), under continuing contract(s) with Wilson Foods Corporation, of Oklahoma City, OK, and (b) between points in MO, KS, NE, OK, IA, IL, KY, and TN, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with MFA Incorporated, of Columbia, MO.

MC 142110 (Sub-6), filed September 2, 1982. Applicant: LAURAMORE TRUCKING CO., INC., Route 3, Box 415, Glen St. Mary, FL 32040. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202, (904) 632–2300. Transporting *building and construction materials,* between points in FL, GA and AL.

MC 142730 (Sub-8), filed August 30, 1982. Applicant: T. McGINNIS TRUCKING CO., INC., Rt. 3, Box 329, Catlettsburg, KY 41129. Representative: John M. Friedman, P.O. Box 426, Hurricane, WV 25526, (304)–562–3460. Transporting *limestone,* between points in the U.S. (except AK and HI), under continuing contract(s) with Ashland Petroleum Company, Division of Ashland Oil, Inc., of Russell, KY.

MC 146300 (Sub-5), filed August 31, 1982. Applicant: J–LOR TRUCKING, INC., Box 5908, Kent, WA 98031. Representative: B. F. Brown, 625 Strader Blvd.—Suite "C", Seattle, WA 98188, (206) 575–0493. Transporting *Food and related products,* between points in WA, OR, CA, ID, NV, UT, and WY.

MC 147040 (Sub-4), filed August 30, 1982. Applicant: E. M. ELLCESSOR d.b.a. E. M. TRANSFER CO., Route 9, Box 15, Muncie, IN 47302. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6655. Transporting *machinery and metal products,* between points in Delaware County, IN, on the one hand, and, on the other, points in IL, MO, KY, WI, MI, OH, PA, and WV.

MC 150201 (Sub-3), filed August 30, 1982. Applicant: SAM F. HARKEY d.b.a. S. F. HARKEY TRUCKING, P.O. Box 423, Holdenville, OK 74848. Representative: John W. Carlisle, P.O. Box 967, Missouri City, TX 77459, (713)–437–1768. Transporting (1) *Mercer commodities;* (2) *machinery and machinery* parts; and (3) metal products, between points in the U.S. (except AK and HI).

MC 152950 (Sub-5), filed September 1, 1982. Applicant: CENTURY TRANSPORTATION CORPORATION, P.O. Box 207, Columbus, OH 39701. Representative: Lloyd R. Pate (same address as applicant), (601)–329–2121. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with (1) Humboldt Products Corporation; (2) Johnson-Tombigbee Manufacturing Company; and (3) Trojan Enterprises, Inc., each of Columbus, MS; (4) Ben C. Williams Bakery Service, of Dallas, TX; (5) Sugar Services Corporation, of Memphis, TN; (6) Magnolia Wholesale Foods, of Clinton, MS; (7) American Soap Company, of Olive Branch, MS; and (8) Signode Corporation, of Glenview, IL.

MC 153051 (Sub-3), filed August 31, 1982. Applicant: ATS TRANSPORT, INC., 34439 Mills Road, North Ridgeville, OH 44039. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114, (402) 397–9900. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of pads, padding, sanitary pads and toilet preparations, between Chicago, IL and points in Will County, IL, on the one hand, and, on the other, points in MI and OH.

MC 153361 (Sub-1), filed September 2, 1982. Applicant: ACORN TRAFFIC CONSULTANTS, INC., P.O. Box 161, Brentwood, TN 37027. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004, (202) 347–8862. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Davidson, Williamson, Cheatham, Montgomery, Robertson, Sumner, Wilson and Rutherford Counties, TN, and extending to points in the U.S. (except AK and HI).

MC 153600 (Sub-1), filed August 20, 1982. Applicant: EMPIRE TRUCK LINES, INC., 1930 McCarty Drive, Houston, TX 77029. Representative: Paul S. Broussard, 501 Crawford, Suite 401, Houston, TX 77002, (713) 227–9735. Transporting *general commodities* (except classes A and B explosives and household goods), between points in AR, LA, MS, OK and TX.

MC 155811 (Sub-1), filed August 31, 1982. Applicant: TOM MCCARTHY TRUCKING, 2400 2nd N.W., Albuquerque, NM 87102. Representative: Tom McCarty, 436 Alcazar S.E. Albuquerque, NM 87108, (505)–265–4542. Transporting *building materials,* between points in TX, NM, AZ, and CA, on the one hand, and, on the other, points in TX, NM, AZ, CA, WY, OK, KS, IL, OH, CO, UT and WA.

MC 156751 (Sub-1), filed August 31, 1982. Applicant: GREEN ARROW MOTOR EXPRESS COMPANY, P.O. Box 1645, Tacoma, WA 89401. Representative: Robert A. Dowdy, c/o Weyerhaeuser Company, Tacoma, WA 98477, (206) 924–2142. 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 United Forwarding, Inc., of Omaha, NE, and Trinity Industries, of Dallas, TX, and its subsidiaries, v12: Mosher Steel Company, and Texas Metal Fabricating Company, both of Houston, TX, Ingalls, Inc., of Birmingham, AL, Ingalls, Marine, Inc., of Decatur, AL, Gambles, Inc., of Montgomery, AL, Gretna Machine and Iron Works, of Harvey, LA, Equitable Shipyards, Inc., of Metairie, LA, and Hackney, Inc., of Dallas, TX.

MC 161740, filed August 31, 1982. Applicant: DALE BYBEE, d.b.a. 4–D TRUCKING, P.O. Box 347, Preston, ID 83263. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, (208) 343–3071. Transporting (1) *tires,* and (2) *such commodities* as are dealt in by (a) automotive service stations and (b) grocery and food business houses, between points in Bannock, Bonneville and Franklin Counties, ID, Davis, Salt Lake, Utah and Weber Counties, UT, on the one hand, and, on the other, those points in the U.S. in and west of IL, MO, AR and LA (except AK and HI).

MC 162751, filed August 30, 1982. Applicant: WASHINGTON AIR TAXI EXPRESS, INC., d.b.a. W.A.T.E., 903 Industry Drive, Tukwilla, WA 98188. Representative: David W. Wiley, 1100 Norton Bldg., Seattle, WA 98104, (206)–622–4067. Transporting *photographs, photographic materials,* and *those products used in the photofinishing process,* between points in WA and OR, under continuing contract(s) with Guardian Photo Incorporated, of Portland, OR.

MC 162770, filed August 2, 1982. Applicant: TENNYBROOK TRANSPORTATION, INC., 1150 Junction Ave., Schererville, IN 46375. Representative: Lewis S. Witherspoon, 2455 North Star Road, Columbus, OH 43221, (614) 486–0448. Transporting *commodities in bulk,* between points in the U.S. (except AK and HI), under continuing contract(s) with By Products Management of Indiana, Inc., of

Schererville, IN, and Dow Chemical U.S.A., of Rolling Meadows, IL.

MC 163130 (Sub-1), filed August 31, 1982. Applicant: B & B TRUCKING, 213 Pell Ave. Romeoville, IL 60441. Representative: S. James Boudouris (same address as applicant), (815)–886–4464. Transporting (1) *metal products;* and (2) *pulp, paper and related products,* between points in IL, WI and IN.

MC 163550, filed August 25, 1982. Applicant: J. SYVRET & CO. LIMITED, 289 Mill St., Waterdown, Ontario, Canada LOR 2H 0. Representative: Kim D. Mann, 7101 Wisconsin Ave., Suite 1010, Washington, DC 20814, (301) 986–1410. Transporting *metal products, ores and minerals, chemicals and related products, lumber and wood products, and clay, concrete, glass or stone products,* between ports of entry on the international boundary line between the U.S. and Canada in NY, MI, an MN, on the one hand, and, on the other, points in the U.S., under continuing contract(s) with Bimac Canada Metallurgical Limited, Babcock & Wilcox Refractories, Babcock & Wilcox Industries—a McDermott company, and Federated Genco Limited, all of Burlington, Ontario, Canada.

MC 163560 (Sub-1), filed August 31, 1982. Applicant: MAY TRUCKING CORPORATION, Route 2, Box 344, Giddings , TX 78942. Representative: Rogert J. Birnbaum, 3636 Executive Center Drive, Suite 151, Austin, TX 78731, (512) 346–4800. Transporting *Mercer commodities,* between points in the U.S., under continuing contract(s) with MGF Drilling Company, of Houston, TX, and High Sky Drilling, Inc., of Midland, TX.

MC 163650, filed August 31, 1982. Applicant: DUNN MANAGEMENT SERVICES, INC., Route #1, Erwin, NC 28339. Representative: Gerald W. Hayes, Jr., 109 South Ellis Avenue, Dunn, NC 28334, (919) 892–2178. As a broker at Erwin, NC, in arranging for the transportation of *passengers and their baggage,* in the same vehicle with passengers, beginning and ending at points in Harnett County, NC, and extending to points in the U.S. (except AK and HI).

MC 163610, filed August 30, 1982. Applicant: R. G. DOBBS, P.O. Box 408, Loraine, IL 62349. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501, (515) 682–8154. Transporting *lime and limestone products,* between points in St. Genevieve County, MO, on the one hand, and, on the other, points in Lee County, IA, and Mayes County, OK.

MC 163621, filed August 30, 1982. Applicant: MISSOURI TRANSFER, INC., Route 4, Box 1000, Richmond, MO 64085. Representative: Warren H. Sapp, 815 Ann Ave., Kansas City, KS 66101, (913)–621–0055. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in MO, KS, IA, AR, NE, OK, IL, IN, OH, TN and KY.

MC 163640, filed August 31, 1982. Applicant: E & S TRUCKING CO., Box 78, Meta, NY 41501. Representative: Edwin E. Ratliff (same address as applicant) (606) 631–9682. Transporting (1) *sand and gravel;* and (2) *coal,* between points in OH, KY and WV.

MC 163651, filed August 31, 1982. Applicant: WILLIAM HARDEN & ASSOCIATES, INC., 3301 South Galloway, Office No. 297, Philadelphia, PA 19148. Representative: Larry R. McDowell, 1200 Avenue of the Arts Bldg., Philadelphia, PA 19107, (215) 735–3090. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), (1) between points in DE, MD, NJ, NY, PA, VA and WV, and (2) between points in DE, MD, NJ, NY, PA, VA and WV, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163660, filed August 30, 1982. Applicant: BRENT CHRISTENSEN, d.b.a. CHRISTENSEN FARMS, Rt. 2, Box 30, Shelley, ID 83274. Representative: Kevin M. Clark, 2417 Bank Dr., Ste. 8, Boise, ID 83705, (208) 344–7714. Transporting *building materials, chemicals, metal products, machinery, and plastic products,* between points in AZ, CA, CO, ID, MT, NV, OR, UT, WA, and WY.

MC 163670, filed September 1, 1982. Applicant: MILLER TRUCKING CO., INC., PO Box 172, Spencer, WV 25276. Representative: John M. Friedman, 2930 Putnam Ave., PO Box 426, Hurricane, WV 25526, (304) 562–3460. Transporting *Mercer commodities,* between points in WV, on the one hand, and, on the other, points in IL, IN, KY, OH, PA, and VA.

MC 163671, filed September 1, 1982. Applicant: HARDEBECK TRUCKING, INC., R.R. 1, Reynolds, IN 47980. Representative: Harold O. Orlofske, P.O. Box 368, Neenah, WI 54956, (414) 722–2848. Transporting *fertilizer and fertilizer ingredients,* between points in IL, IN, KY, MI and OH.

MC 163681, filed September 2, 1982. Applicant: ANTHONY G. FERR, d.b.a. FERREIRA TOWING SERVICE, 33 Marshall Street, E. Chelmsford, MA 01824. Representative: Edward R. Lembo, 118 Washington Street (Rte. 16), P.O. Box 639, Holliston, MA 01746, (617) 429–5888. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission and commodities in bulk), between points in MA, ME, VT, RI, CT, NH, NY, NJ, and PA.

MC 163701, filed September 2, 1982. Applicant: A. TENNENBAUM COMPANY, INC., 4500 Bethany Road, North Little Rock, AR 72117. Representative: M. Douglas Wood, 201 W. Broadway, P.O. Box 5606, North Little Rock, AR 72119. (501) 376–3700. Transporting *metal products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Gray Supply Company, Inc., of North Little Rock, AR, and Arkansas Aluminum Alloys, Inc., of Hot Springs, AR.

Please direct status inquiries about the following to Team 4, (202) 275–7669.

Volume No. OP4–334

Decided: September 15, 1982.

By the Commission, Review Board Number 2, Members Carleton, Williams and Ewing.

MC 8457 (Sub-15), filed September 2, 1982. Applicant: MILWAUKIE TRANSFER & FUEL CO., P.O. Box 522, Clackamas, OR 97015. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210, (503) 226–3755. Transporting *general commodities* (except classes A and B explosives and household goods), between points in OR, WY, WA, CA, ID, NV, UT, AZ, NM, CO, and MT.

MC 15317 (Sub-6), filed September 2, 1982. Applicant: CROWN TRANSIT LINES, INC., 1650 N. 14th St., Springfield, IL 62703. Representative: Edward D. McNamara, Jr., 907 S. Fourth St., Springfield, IL 62703, (217) 528–8476. Transporting *passengers and their baggage and express in the same vehicle with passengers,* between points in Morgan and Sangamon Counties, IL.

MC 70267 (Sub-26), filed August 30, 1982. Applicant: ECKERT TRUCKING, INC., 1090 E. Springettsbury Ave., P.O. Box 1682, York, PA 17405. Representative: David Zimmerman (same address as applicant), (717) 843–0995. Transporting *iron and steel articles* and *aluminum articles,* between points in the U.S. (except AK and HI).

Note.—The purpose of this application is to convert from contract to common carrier authority.

MC 107496 (Sub-1288), filed August 31, 1982. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Ave., Des Moines, IA 50309. Representative: Kenneth L. Kessler, P.O. Box 855, Des Moines, IA 50304, (515) 245–2725.

Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 118696 (Sub-51), filed September 3, 1982. Applicant: FERREE FUNITURE EXPRESS, INC., 252 Wildwood Rd., Hammond, IN 46234. Representative: John F. Wickes, Jr., 1301 Merchants Plaza, Indianapolis, IN 46204, (317) 638–1301. Transporting *general commodities* (except classes A and B explosives, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 120547 (Sub-4), filed August 27, 1982. Applicant: PARKER'S EXPRESS, INC., 21 Parker Dr., Avon Industrial Park Avon, MA 02322. Representative: John F. O'Donnell, 60 Adams St., P.O. Box 238, Milton, MA 02187, (617) 696–7610. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. in and east of MN, IA, MO, KS, OK, and TX.

MC 120776 (Sub-2), filed September 1, 1982. Applicant: KRESSER MOTOR SERVICE, INC. 900 E. Church St., Sandwich, IL 60548. Representative: Edward G. Bazelon, 29 S. LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), (a) between points in Boone, Bureau, Cook, De Kalb, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, La Salle, Lee, Livingston, Marshall, McHenry, Ogle, Putnam, Will and Winnebago Counties, IL, (b) between points in Bonne, Bureau, Cook, De Kalb, Du Page, Grundy, Kane, Kanakee, Kendall, Lake, La Salle, Lee, Livingston, Marshall, McHenry, Ogle, Putnam, Will and Winnebago Counties, IL, on the one hand, and, on the other, points, in IL, and (c) between Chicago, IL, on the one hand, and, on the other, points, in Boone, Bureau, Cook, De Kalb, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, La Salle, Lee, Livingston, Marshall, McHenry, Ogle, Putnam, Will and Winnebago Counties, IL. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation, at applicant's written request, of Certificate of Registration in MC–120776 Sub-No. 1.

MC 134817 (sub-6), filed August 16, 1982, and noticed in the **Federal Register** issue of September 1, 1982, and republished this issue. Applicant: OWENTON EXPRESS, INC., P.O. Box 328, Carrollton, KY 41008. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602, (502) 227–2254. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Trimble County, KY, on the one hand, and, on the other, points in the U.S. (except AK and HI). The purpose of this republication is to include the above tacking statement which was previously omitted.

Note.—Applicant will tack this authority with its regular route authority in Sub 4X.

MC 140366 (Sub-5), filed September 2, 1982. Applicant: CREASY TRUCKING, INC., U.S. Hwy 231, 31A, Westmoreland, TN 37186. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., NW, Washington, DC 20004, (202) 347–8862. Transporting (1) *such commodities* as are dealt in or used by manufacturers and distributors of printed matter, between points in Sullivan and Hawkins Counties, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *transportation equipment*, between points in Rutherford County, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 141357 (Sub-11), filed August 31, 1982. Applicant: SHANUS, INC., 232 First St., N., Minneapolis, MN 55401. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting (1) *waste or scrap materials*, between Minneapolis, MN, on the one hand, and, on the other, points in IL, IA, MO, SD, and WI, (2) (a) *ores and minerals* and (b) *clay, concrete, glass or stone products*, between Minneapolis, MN, on the one hand, and, on the other, points in IN, IA, MI, MO, and WI.

MC 141546 (Sub-37), filed September 1, 1982. Applicant: BULK TRANSPORT SERVICE, INC, 1700 S. Willow St., Manchester, NH 03108. Representative: Joseph M. Klements, 89 State St., Boston, MA 02109, (617) 523–0800. Transporting *commodities in bulk and in bags*, between points in the U.S. (except AK and HI).

MC 143797 (Sub-4), filed August 31, 1982. Applicant: WALKER'S TRUCK CONTRACTORS, INC., P.O. Box 6173, Knoxville, TN 37914. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, CA 30328, (404) 256–4320. Transporting *ores and mineral*, between points in Jefferson County, AL, on the one hand, and, on the other, points in Knox County, TN.

MC 145956 (Sub-13), filed September 3, 1982. Applicant: TRANSMEDIC CARRIERS, INC., 1340 Indian Rocks Rd., Belleair, FL 33516. Representative: Robert H. Kinker, 314 W Main St., P.O. Box 464, (502) 228–8244. Trapsporting *such commodities* as are dealt in or used by grocery, drug and food business houses, between points in the U.S. (except AK and HI).

MC 146457 (Sub-9), filed August 27, 1982. Applicant: PAISLEY TRUCKING, INC., RFD–P.O. Box 208, Durango, IA 52039. Representative: James M. Hodge, 3730 Ingersoll Ave. Des Moines, IA 50312, (515) 274–4985. Transporting *chemicals and related products*, between Chicago, IL, on the one hand, and, on the other, points in IA, MN, MO, and WI.

MC 147587 (Sub-2), filed August 27, 1982. Applicant: S & E TRUCKING, INC., 12202 Crewe St., N. Hollywood, CA 91605. Representative: Steven R. Estin (same address as applicant), (213) 765–6536. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AZ, CA, and NV.

MC 150617 (Sub-6), filed August 30, 1982. Applicant: TRANSCONTINENTAL FREIGHT SYSTEMS, INC., 2559 S. Archer Ave., Chicago, IL 60608. Representative: Edward G. Bazelon, 29 S. La Salle St., Chicago, IL 60603, (312) 236–9375. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), (a) between points in AZ, AR, CA, CO, CT, DE, FL, GA, ID, KS, LA, ME, MD, MN, MS, MT, NE, NV, NH, NM, NC, ND, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY, and DC, and (b) between points in AL, IL, IN, IA, KY, MA, MI, MO, NJ, NY, OH, and PA, on the one hand, and, on the other, points in AZ, AR, CA, CO, CT, DE, FL, GA, ID, KS, LA, ME, MD, MN, MS, MT, NE, NV, NH, NM, NC, ND, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY, and DC.

MC 154667 (Sub-12) filed August 30, 1982. Applicant: B. I. TRANSPORTATION, INC., P.O. Box 691, Burlington, NC 27215. Representative: J. Franklin Fricks, Jr. (same address as applicant), (919) 228–2239. 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 Signode Corporation of Glenview, IL.

MC 163286, filed August 30, 1982. Applicant: ROWELL & WATSON CO. INC., 547 Central Ave., Dovee, NH 03820. Representative: James M. O'Donnell (same address as applicant), (603) 742–2418. Transporting *petroleum products*, between points in ME and NH,

under continuing contract(s) with Getty Oil Company, of South Portland, ME.

MC 163636, filed August 30, 1982. Applicant: FRATE-MASTERS, INC., 4924 N. Broadway, St. Louis, MO 63147. Representative: Robert E. Hagen (same address as applicant), (314) 621-4726. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between St. Louis, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163637, filed August 30, 1982. Applicant: ASK TRAILER TRANSPORTERS, 1918 S. Highland Ave., Berwyn, IL 60402. Representative: Alan Kondrisack, (same address as applicant), (312) 749-7949. Transporting *trailers, trailer parts and insulation,* between points in the U.S. (except AK and HI).

MC 163647, filed August 31, 1982. Applicant: LAN-SE-AIR TRAVEL, INC., P.O. Box 181, O'Fallon, IL 62269. Representative: James Eichelmann (same address as applicant), (618) 632-7287. As a *broker* arranging for the transportation of *passengers and their baggage,* in special and charter operations, beginning and ending at points in IL, MO and AR, and extending to points in the U.S. (except AK and HI).

MC 163676, filed August 30, 1982. Applicant: KEVIN R. PHILLIPS, 1305 Debra Lane, Madison, WI 53713. Representative: Irwin D. Rozner, 134 N. LaSalle St., Chicago, IL 60602, (312) 782-6937. Transporting *food and related products,* between points in IL, CA, AZ, NV, OR, IA, UT, WA, and MT.

MC 163686, filed September 2, 1982. Applicant: COOK COUNTY TRANSIT, INC., 3610 S. Albany Ave., Chicago, IL 60632. Representative: Edward G. Bazelon, 29 S. La Salle St., Chicago, IL 60603, (312) 236-9375. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, IN, and WI.

MC 163696, filed September 2, 1982. Applicant: KATHRYN J. DEWEY, d.b.a. PERSON TO PERSON, 3061 Eastland Rd., Muskegan, MI 49441. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933, (517) 482-2400. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Muskegon and Ottawa Counties, MI, on the one hand, and, on the other, points in MN, IA, MO, WI, IL, IN, OH, PA, NY, KY and WV.

MC 163697, filed September 3, 1982. Applicant: ROBERT SIMONSON, Bowman, ND 58623. Representative: Robert Simonson (same address as applicant), (701) 523-3785. Transporting *petroleum products,* between points in MT, ND and SD, under continuing contract(s) with Farmers Union Oil Company of Bowman, ND.

Please direct status inquiries about the following to team 5, (202) 275-7289.

Volume No. OP5-187

Decided: September 8, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce and Dowell.

W-1358, filed August 31, 1982. Applicant: EASTERN SHORE MARINE, INC., Route 1, Box 121S, St. Michaels, MD 21663. Representative: Leo C. Franey, 918 16th St., NW., Washington, DC 20006, (212) 785-3700. To operate as a *common carrier by water,* transporting *fertilizer,* in bags, between ports in NJ, DE, MD, VA, and NC.

Note.—This application contemplates operations which should result in decreased energy consumption in comparison with existing energy consumption in the affected area. To the extent traffic will be diverted from existing transportation modes, greater energy efficiencies may be obtained without disruption to existing patterns of energy distribution or to development of energy resources. The application is, in all respects, consistent with prevailing goals and objectives of the National Energy Policy.

MC 111729 (Sub-773), filed August 31, 1982. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, NY 11042. Representative: Peter A. Greene, 1920 N St., NW., Washington, DC 20036, (202) 331-8800. 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 General Electric Company, of Bridgeport, CT.

MC 123978 (Sub-6), filed August 30, 1982. Applicant: RICHEY & STEWART, INC., P.O. Box 235, Scottsburg, IN 47170. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, 317-846-6655. Transporting *food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Kolmar Products, Inc. of Austin, IN.

MC 142239 (Sub-11), filed August 31, 1982. Applicant: NEBRASKA COAST, INC., R.R. No. 1, P.O. Box 110, Neola, IA 51559. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114, (402) 397-9900. Transporting *food and related products* between Omaha, NE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 143768 (Sub-2), filed August 30, 1982. Applicant: F.R. ANDERSON, INC., 2744 S.E. Market, Box 782, Des Moines, IA 50306. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309, 515-245-4300. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Linn County, IA on the one hand, and, on the other, points in IA.

MC 145108 (Sub-65), filed August 30, 1982. Applicant: BULLET EXPRESS, INC., 5600 First Ave., P.O. Box 289, Bay Ridge Station, Brooklyn, NY 11220. Representative: Terrence D. Jones, 2033 K St., NW., Washington, D.C. 20006, (202) 429-9090. Transporting *general commodities* (except household goods and classes A and B explosives), between points in the U.S. (except AK and HI).

MC 146199 (Sub-3), filed August 30, 1982. Applicant: S.A.M. TRUCKING CO., INC., 1210 North Ave., Plainfield, NJ 07062. Representative: Harold L. Reckson, 33-28 Halsey Rd., Fair Lawn, NJ 07410, (201) 791-2270. Transporting *general commodities* (except classes A and B explosives and household goods), between points in NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 160849, filed August 31, 1982. Applicant: ERNIES WRECKER SERVICE, INC., P.O. Box 217, Prairie View, IL 60069. Representative: Irwin D. Rozner, 134 N. LaSalle St., Chicago, IL 60602, 312-782-6937. Transporting *wrecked or disabled motor vehicles and replacement motor vehicles, construction equipment and machinery,* between points in IL, MI, IN, MN, WI, OH, IA, TN, KY, MO, NE, MS, and AR.

MC 163658, filed August 31, 1982. Applicant: HOFF AND COMPANY, INC., 121-129 Depot Street, Wellington, OH 44090. Representative: Charles Ephraim, 406 World Center Bldg., 918 16th St., NW., Washington, DC 20006, (202) 833-1170. Transporting *paper and paper products,* between points in the U.S., under continuing contract(s) with Bowater Southern Paper Company, of Calhoun, TN.

Volume No. OP5-188

Decided: September 9, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce and Dowell.

MC 18088 (Sub-73), filed September 2, 1982. Applicant: FLOYD & BEASLEY TRANSFER CO., INC., P.O. Drawer 8, Sycamore, AL 35149. Representative: Charles Ephraim, 406 World Center Bldg., 918 16th St., NW., Washington, DC

2006, (202) 833–1170. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 109449 (Sub-74), filed August 26, 1982. Applicant: KUJAK TRANSPORT, INC., 6366 West Sixth St., Winona, MN 55987. Representative: Stanley C. Olsen, Jr., 5200 Wilson Road, Suite 307, Edina, MN 55424, (612) 927–8855. Transporting *general commodities* (except classes A and B explosives and household goods), betwen points in the U.S. (except HI).

MC 136699 (Sub-3), filed September 2, 1982. Applicant: ROBERT ASCHENBRENNER, d.b.a. BOB'S TRUCKING, P.O. Box 37, Surrey, ND 58785. Representative: Harris P. Kenner, 615 S. Broadway, P.O. Box 970, Minot, ND 58701, (701) 852–4118. Transporting *such commodities* as are dealt in or used by a manufacturer and distributor of dairy and related products, between points in the U.S., under continuing contract(s) with Bridgeman Creameries, a Division of Land O'Lakes, Inc., of Minneapolis, MN

MC 144598 (Sub-8), filed September 1, 1982. Applicant: C & J TRANSPORT, INC., Route 32, P.O. Box 42, N. Vassalboro, ME 04962. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., N.W., Washington, DC 20005, 202–296–3555.Transporting (1) *food and related products, machinery, rubber and plastic products, chemicals and related products, building materials,* and *such commodities* as are dealt in or used by grocery stores, food business and discount houses, between points in ME, NH, VT, MA, CT, RI, FL, and SC, on the one hand, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and TX, and (2) *pulp, paper and related products,* between those points in the U.S. in and east of MN, IA, MO, AR, and TX.

MC 146148 (Sub-21), filed September 2, 1982. Applicant: B-Right TRUCKING CO., 7087 West Boulevard, Youngstown, OH 44512. Representative: Kim D. Mann, 7101 Wisconsin Ave., Suite 1010, Washington, D.C. 20814, (301) 986–1410. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 147178 (Sub-2), filed September 1, 1982. Applicant: INFLATION FIGHTERS TRANSPORT, INC., 101 State Street, Springfield, MA 01103. Representative: David M. Marshall (same address as applicant), Springfield, MA 01103, 413–732–1136. Transporting *such commodities* as are dealt in or used by a manufacturer or distributor of chemicals and chemical products, between points in the U.S. (except AK and HI), under continuing contract(s) with Butcher Polish Company, of Marlboro, MA.

MC 163659, filed September 1, 1982. Applicant: FREEPORT TRANSPORTATION, P.O. Box 266, Clinton, MD 20735. Representative: Veloris Jean Edwards (same address as applicant), 301–868–5055. Transporting *passengers and their baggage* in the same vehicle with passengers, in charter and special operations, between points in the Washington D.C. commercial zone, on the one hand, and on the other, points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–25920 Filed 9–20–82; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Final 1982 Revised Aggregate Production Quotas for Hydromorphone and Phenmetrazine

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of final 1982 revised aggregate production quotas for hydromorphone and phenmetrazine.

SUMMARY: This notice establishes final 1982 revised aggregate production quotas for hydromorphone and phenmetrazine, controlled substances in Schedule II, as required under the Controlled Substances Act of 1970.

EFFECTIVE DATE: This order is effective September 21, 1982.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Acting Administrator of the Drug Enforcement Administration in accordance with § 0.100 of Title 28 of the Code of Federal Regulations.

On April 30, 1982, a notice of the proposed revised 1982 aggregate production quotas for certain controlled substances in Schedule II was published in the **Federal Register** (47 FR 18692). All interested parties were invited to comment on or object to these proposed aggregate production quotas on or before June 1, 1982.

Relative to hydromorphone, one comment and objection was received from Knoll Pharmaceutical Company of Whippany, New Jersey. Data subsequently submitted by the company substantiated the comment that an increased quota for this substance was needed. Increased sales particularly to hospitals, inventories which had been overestimated in the determination of the initially established quota, new product introduction, research requirements and manufacturing practices, were among the factors which influenced DEA's decision to raise the previously established hydromorphone quota for 1982.

Although no comments were received in response to the September 1, 1981, **Federal Register** notice (46 FR 43907) proposing the 1982 aggregate production quota for phenmetrazine, Ciba-Geigy Corporation of Summit, New Jersey, subsequently submitted data to DEA substantiating a need for an increased quota. Sales greater than that estimated for the first half of 1982 and the need to rebuild depleted inventories are the primary reasons for increasing the 1982 phenmetrazine quota.

Pursuant to Sections 3(c)(3) and 3(e)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Acting Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The establishment of annual aggregate production quotas for Schedule I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 8260), and delegated to the Acting Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Acting Administrator hereby orders that the 1982 revised aggregate production quotas be established as follows:

FINAL REVISED 1982 AGGREGATE PRODUCTION QUOTA

[Expressed as grams of anhydrous base]

Basic class	Grams
Hydromorphone	167,321
Phenmetrazine	2,297,000

Dated: September 14, 1982.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82-25937 Filed 9-20-82; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: October 5, 1982, 9:30 a.m., Rm. N3437 A & B Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION CONTACT:

Joseph S. Papovich, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6171, September 15, 1982.

Signed at Washington, D.C. this 15th day of September 1982.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 82-25780 Filed 9-20-82; 8:45 am]

BILLING CODE 4510-23-M

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 threated 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 October 1, 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 October 1, 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, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 13th day of September 1982.

Robert Carpenter,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Lace, Inc. (UAW)	Hackensack, NJ	8/31/82	8/25/82	TA-W-13, 760	Lace, embroidered goods, textiles.
Beckley Lick Run Co., Bonny Mine (UMWA)	Raleigh Co., WV	9/8/82	9/2/82	TA-W-13, 761	Coal, metallurgical, mining.
(The) Carbon Limestone Co. (UAW)	Lowellville, Ohio	9/1/82	8/27/82	TA-W-13, 762	Limestone, mining.
Eastern Associated Coal Corp., Keystone No. 1 Mine (UMWA).	McDowell Co., WV	9/7/82	9/1/82	TA-W-13, 763	Coal, Metallurgical, mining.
Elkem Metals Co. (OCAWU)	Marietta, Ohio	9/1/82	8/30/82	TA-W-13, 764	Electro chrome & manganese, ferro & efico manganese, standard & medium carbon ferromanganese, silicon.
General Electric, St. Louis Lamp Plant (workers)	St. Louis, Mo	9/8/82	8/24/82	TA-W-13, 765	Lamps, incandescent.
Ingersoll Rand, Waverly Casting Facility Div. (IMAWU).	Waverly, NY	9/7/82	8/24/82	TA-W-13, 766	Grey iron & ductile iron casting.
Kingston Dress Co. (ILGWU)	Fayetteville, Tenn	8/31/82	8/24/82	TA-W-13, 767	Dresses, blazers, slacks, two piece dresses.
(The) New River Co., Siltix Mine (UMWA)	Mt. Hope, WV	9/2/82	8/30/82	TA-W-13, 768	Coal, metallurgical, mining.
Sewell Coal Co., Meadow River No. 1 Mine (UMWA).	Lookout, WV	9/2/82	8/30/82	TA-W-13, 769	Coal, metallurgical, mining.
Allegheny-Ludlum Steel Corp. (USWA)	Wallingford, Conn	9/9/82	9/7/82	TA-W-13, 770	Special metals, electrical alloys, stainless strip products & various tubular products.
Itmann Coal Company, No. 1 Mine (UMWA)	Wyoming Co., WV	9/7/82	9/1/82	TA-W-13, 771	Coal mining.
Itmann Coal Company, No. 2 Mine (UMWA)	Wyoming Co., WV	9/7/82	9/1/82	TA-W-13, 772	Coal mining.
Itmann Coal Company, No. 3A Mine (UMWA)	Wyoming Co., WV	9/7/82	9/1/82	TA-W-13, 773	Coal mining.
Itmann Coal Company, Shop (UMWA)	Wyoming Co., WV	9/7/82	9/1/82	TA-W-13, 774	Repair underground mining equipment.
Itmann Coal Company, Tipple (UMWA)	Wyoming Co., WV	9/7/82	9/1/82	TA-W-13, 775	Preparation plant.
Magma Copper Co., Superior Div. (USWA)	Superior, Arizona	9/9/82	9/3/82	TA-W-13, 776	Copper—mining & milling.
Maverick Tube Corp. (USWA)	Union, Missouri	9/9/82	9/3/82	TA-W-13, 777	Seamless steel pipe.
U.S. Steel Corp., Texas Works (wkrs)	Baytown, Texas	9/3/82	8/31/82	TA-W-13, 778	Steel pipe & steel plate.
U.S. Steel Corp., Pittsburg Works (USWA)	Pittsburg, CA	9/9/82	9/3/82	TA-W-13, 779	Steel & steel product; carbon steel wire rod & products, pipe 7 tubing.
Venus Lace, Inc. (UAW)	Fort Lee, NJ	8/31/82	8/25/82	TA-W-13, 780	Lace.
Virginia Mills, Inc. (UAW)	Fort Lee, NJ	8/31/82	8/25/82	TA-W-13, 781	Lace.

[FR Doc. 82-25807 Filed 9-20-82; 8:45 a.m]

BILLING CODE 4510-30-M

[TA-W-12,737]

Columbian Chemicals Co., Trenton, N.J.; Negative Determination Regarding Application for Reconsideration

By an application dated August 5, 1982, counsel for the workers requested administrative reconsideration of the Department of Labor's Negative determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers formerly producing iron oxide pigment at the Trenton, New Jersey plant of the Columbian Chemicals Company. The determination was published in the **Federal Register** on July 9, 1982 (47 FR 29903).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Counsel for the workers claims that company officials indicated in written and oral statements that the Trenton workers were laid off because of foreign competition. Counsel claims that data in support of the company statements were not solicited by the Department from Columbian Chemicals. Counsel further claims that increased imports of autos and tires affected worker separations at Trenton.

The Department's review shows that the worker petition did not meet the increased import criterion of the Trade Act of 1974. Aggregate imports of iron oxide pigments declined absolutely and relative to domestic production in each year from 1978 through 1980 when compared with the previous year. Imports were relatively stable in absolute terms and declined relative to domestic production in 1981 compared with 1980.

Statements by company officials or workers concerning import competition are not used as a prima facie basis for certification. The Department found that company officials had no data on increased imports or iron oxide pigments but rested their claim on the fact that a foreign-based firm was producing iron oxide pigments in West Virginia. Since articles produced in West Virginia are not imports, worker separations caused by competition of this nature are not covered under the Trade Act. Company officials indicated that the Trenton plant production was transferred to other domestic plants of the company.

The claim that imports of autos and tires have adversely affected employment at Trenton also would not provide a basis for certification since imported autos and tires are not like or directly competitive with their component or incorporated parts, i.e., iron oxide pigments. Only imports of iron oxide pigments which enter the U.S. not incorporated into final articles can be considered in determining import injury to workers who manufacture these products at Trenton. The courts have held that imported finished articles are not like or directly competitive with domestic component parts thereof. *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 507 2d 174 (D.C. Cir., 1974). In that case, the court held that imported finished women's shoes were not like or directly competitive with shoe counters, a component of footwear.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application, is therefore, denied. Signed at Washington, D.C., this 13th day of September 1982.

Harold A. Bratt,

Acting Deputy Director, Office of Program Management Unemployment Insurance Service.

[FR Doc. 82-25808 Filed 9-20-82; 8:45 am]

BILLING CODE 4510-30-M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period September 6, 1982–September 10, 1982.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-13,199; Jones & Laughlin Steel Corp., Louisville, OH

TA-W-13,176; Sandler of Boston, Inc., Norwood, MA

TA-W-13,160; Bradburn & Brooks, Mt. Vernon, WA

TA-W-12,998; Arno Moccasin Co., Lewiston, ME

TA-W-13,127; Gulf & Western Industries, Inc., Energy Products Group, Taylor Forge Div., Woodstock Plant, Memphis, TN

TA-W-13,126; Gerity Schultz, Toledo, OH

TA-W-13,145; KY & J Shake Co., Chehalis, WA

TA-W-13,148; Rheem Manufacturing Co., Linden, NJ

In the following case the investigation revealed that criterion (3) had not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-13,133; Ford Motor Co., Parts & Service Div., Philadelphia District Office, Pennsauken, NJ

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-13,083; Stuttgart shoe Corp., Stuttgart, AR

Aggregate U.S. imports of slippers did not increase as required for certification

TA-W-13,183; Harbison-Walker Refractories, Div. of Dresser Industries, Inc., Cape May Point, NJ

Aggregate U.S. Imports of Magnesite did not increase as required for certification.

TA-W-13,209; Fashion Specialties, Newark, NJ

Imports of raincoats did not increase during the period under investigation.

TA-W-13,138; The Merchandising Co., Lynchburg, VA

Aggregate U.S. imports of lip balm are negligible.

TA–W–13,136; Merchants Metals, Inc., South East Region, Birmingham, AL

Aggregate U.S. imports of chain link fencing did not increase as required for certification.

TA–W–13,137; Roselon Industries, Inc., Crossville, TN

Aggregate U.S. imports of yarn re negligible.

Affirmative Determinations

TA–W–13,187; County Fair Toy & Novelty Corp., Brooklyn, NY

A certification was issued in response to a petition received on January 20, 1982 covering all workers separated on or after January 11, 1981.

TA–W–13,202; Roanoke Dress Corp., Roanoke, VA

A certification was issued in response to a petition received on January 29, 1982 covering all workers separated on or after January 2, 1982 and before November 3, 1981.

TA–W–13,200; National Garment Co., Hammonton, NJ

A certification was issued in response to a petition received on January 29, 1982 covering all workers separated on or after January 22, 1981 and before November 3, 1981

TA–W–13,149; The Baltimore Luggage Co., Baltimore, MD

A certification was issued in response to a petition received on December 15, 1981 covering all workers separated on or after December 1, 1981 and before April 17, 1982

TA–W–13,141; Boss Manufacturing Co., Chillicothe, MO

A certification was issued in response to a petition received on December 14, 1981 covering all workers separated on or after February 1, 1981.

I hereby certify that the aforementioned determinations were issued during the period September 6, 1982–September 10, 1982. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street, NW, Washington, D.C. 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: September 14, 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82–25809 Filed 9–20–82; 8:45 am]

BILLING CODE 4510–30–M

Office of Pension and Welfare Benefit Programs

[Application No. D–3488]

Proposed Exemption for Certain Transactions Involving the Radiology Associates, P.A. Profit Sharing Plan Located in Little Rock, Arkansas

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed loan of funds by the Radiology Associates, P.A. Profit Sharing Plan (the Plan) to Medical Equipment Leasing Company (the Partnership), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the Plan, the Partnership, and any other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department on or before November 3, 1982.

ADDRESS: All written comments requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D–3488. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a a profit sharing plan with 42 participants. Drs. David H. Newbern and George Regnier are the trustees of the Plan (the Trustees) and maintain authority with respect to the management and investment of the Plan's assets. Each Trustee is an employee and owns stock of Radiology Associates, P.A. (the Employer), the sponsor of the Plan. As of January 31, 1982, the Plan had net assets of $3,336,717.

2. The Employer is a professional association engaged in the practice of radiology. The Partnership owns all of the radiology equipment used by the Employer and leases the equipment to the Employer. The Partnership is comprised of 14 doctors (the Partners) who each maintain an equal 7.14% interest of the Partnership. The Partners together maintain an 87.5% interest in the Employer, with each Partner owning 6.25% of the stock of the Employer. The aggregate net worth of the Partners exceeds $5,000,000.

3. The applicant is requesting an exemption to allow the Plan to loan $240,000 to the Partnership (the Loan). The Loan will represent approximately 7% of the Plan's assets. The Loan proceeds will be used by the Partnership to repay indebtedness in the estimated amount of $240,000 to the Commercial National Bank of Little Rock, Arkansas (Commercial). The interest rate on the loan from Commercial is ½% above the prime rate. The Loan will be amortized over a five year term in quarterly installments of principal and interest. The Loan's interest rate will be ½% above the prime rate as quoted by the First National Bank in Little Rock (the Bank) and will be adjusted quarterly. In no event will the interest rate be adjusted to less than 10% per annum.

4. The Loan will be secured by a duly executed and perfected first security interest in certain radiology equipment owned by the Partnership (the Collateral). Mr. D. S. Felsenthal, the director of Valuation Counselors Southwestern Inc., located in Houston, Texas, appraised the Collateral and has determined that, as of December 31, 1981, the Collateral had a fair market value of $508,000. The current fair market value of the Collateral is equal to approximately 210% of the amount of the Loan. The Employer will insure the Collateral against damage by fire or other loss at its own expense throughout the term of the Loan, and the Plan will be the named insured.

5. The Bank will serve as the independent fiduciary with respect to the proposed Loan. Currently, the Employer and four Partners have certain commercial banking relationships with the Bank. The total deposits of the Employer and the four Partners total less than .01% of the Bank's total deposits, and the total outstanding loans to the Partners constitute less than .03% of the total outstanding loans of the Bank. One Partner maintains a nominal shareholder interest in the Bank. There are no other relationships existing between the Bank, the Employer and the Partnership.

6. The Bank has broad experience in pension and profit sharing plan administration, and has general investment and management expertise. The Bank has reviewed the terms of the Loan and has initially determined that the Loan is an appropriate investment for the Plan, and will be in the best interest of the Plan and its participants and beneficiaries. The Bank will make the same determination immediately prior to the consummation of the transaction. The Bank will have final administrative authority and control over the Loan, and will monitor and enforce the performance of the Partnership's obligations under the Loan. Additionally, the Bank's duties will include, but not be limited to, the quarterly adjustment of the Loan's interest rate, the determination of any need for the provision of additional collateral to ensure that the total value of the collateral securing the Loan remains in excess of 150% of the outstanding balance of the Loan, determining whether adequate insurance on all collateral is maintained to protect against a loss by fire or other damage, and the execution and filing of a valid security agreement and financing statement in favor of the Plan.

7. In summary, the applicant represents that the proposed Loan will satisfy the criteria of section 408(a) of the Act because (a) the Loan will be secured by a perfected first security interest in the Collateral which has an initial value equal to 210% of the Loan; (b) the Bank, a qualified, independent party, has reviewed the proposed transaction and has determined that the Loan is appropriate and in the best interest of the Plan and its participants and beneficiaries; and (c) the Bank will monitor the Loan and enforce the performance of the Employer's obligations under the Loan.

Notice to Interested Persons

Within 10 days after the publication of this notice in the **Federal Register**, notice will be provided to participants and beneficiaries of the Plan by prominent posting at the Employer's place of business, and by mailing or hand delivery. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment on and request a hearing with regard to the proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the Loan, as described herein, by the Plan to the Partnership, provided that the terms and conditions of the Loan are not less favorable to the Plan than those obtainable in a similar transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately described all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 14th day of September, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-25956 Filed 9-20-82; 8:45 am]

BILLING CODE 4510-29-M

[Application Nos. D-3072 and D-3073]

Proposed Exemption for Certain Transactions Involving the Raznick & Sons, Inc. Pension and Profit Sharing Plans Located in Woodland Hills, California

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed temporary exemption would exempt, for a period of five years, the proposed purchases by the Raznick & Sons, Inc. Pension Plan and the Raznick & Sons, Inc. Profit Sharing Plan (collectively, the Plans) of first mortgages and first deeds of trust (collectively, the Contracts) from Partnerships (the Partnerships) which are or will be 50% or more owned by Raznick & Sons, Inc. (the Employer), the sponsor of the Plans. The proposed exemption would also exempt the guarantees to repurchase Contracts which are in default by the Employer and by Mr. and Mrs. Arnold L. Raznick (Mr. and Mrs. Raznick), parties in interest with respect to the Plan. The proposed exemption, if granted, would affect the Employer, Mr. and Mrs. Raznick, the Partnerships, and the participants and beneficiaries of the Plans.

DATE: Written comments and requests for a public hearing must be received by the Department on or before November 1, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application Nos. D-3072 and D-3073. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8972. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan by Aaron L. Raznick, the trustee of the Plan (the Trustee), pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plans consist of a money purchase pension plan with net assets of approximately $85,581 on December 31, 1981 and a profit sharing plan with net assets of approximately $123,152 on December 31, 1981. The assets of the Plans are commingled for investment purposes. Each of the Plans has approximately nine participants. Investment decisions for the Plans are made by an administrative committee consisting of Aaron L. Raznick, Wayne Colmer and George Palermo, all of whom are officers and employees of the Employer.

2. The Partnerships consist of currently existing and yet-to-be-formed partnerships which are or will be 50% or more owned by the Employer. The applicant is requesting an exemption for a five-year period to permit the Partnerships to sell certain of the above-described Contracts to the Plans. The proposed exemption would also, if granted, exempt the guarantees by the Employer and/or Mr. and Mrs. Raznick to repurchase any Contracts which are in default. The five-year period for the exemption would begin on the date the grant of an exemption for the proposed transactions appears in the **Federal Register.** The Plan currently has approximately 39 percent of its assets invested in mortgages which were purchased from the Employer or the Partnerships. The applicants represent that the Plans have experienced no losses as a result of these investments. No exemptive relief is proposed by the Department for these prior transactions. Accordingly, the applicants represent that they will pay all excise taxes which are applicable under section 4975(a) of the Code by reason of such sales to the Plan within 60 days of the publication in the **Federal Register** of a final notice of the granting of the exemption proposed herein.

3. The Partnerships purchase undeveloped real estate in established communities in southern California, subdivide the same, construct homes on the real estate and obtain mortgages thereon. The Partnerships then sell the homes to purchasers under a purchase money deed of trust or a first mortgage loan. All first mortgage loans will be conventional, FHA, or VA insured loans, the proposed transactions would involve new construction by the Partnerships.

4. In reviewing residential loan applications and in making such loans, the Partnerships will follow the Federal National Mortgage Association (FNMA) guidelines. All Contracts purchased by the Plans will meet all FNMA underwriting criteria. The factors influencing acceptability will include the credit record and financial statements of the loan applicant, the ratio between expenses to be assumed as a result of the loan and the stabilized income of the applicant, the value of the property offered as security and the ratio of the amount of the loan sought to the value of the security. There will be an appraisal of the property which is the security for the Contract by an independent, qualified appraiser prior to the purchase of any Contract by the Plans. The Plans will not purchase any Contract where the amount of the loan exceeds 80 percent of the fair market value of the property as indicated by the appraisal, and any Contract where the Plans do not have a first security interest in the property. Only Contracts which are at least six months old and have an established record of timely payments will be considered for purchase by the Plans. The purchasers of the properties will provide title insurance and property insurance for the

value of any Contracts held by the Plans, with the Plans designated as the beneficiaries of the policies.

5. The Plans will not purchase any Contract from the Partnerships which upon its purchase would put the value of all Contracts owned by the Plans at 50 percent or more of the then current assets of the Plans. No more than 10 percent of Plan assets will be invested in any one Contract and the Plans will not purchase more than one Contract involving any mortgagor. Neither the Employer nor the Partnerships will receive any financial benefit from any Contract sold to the Plans. No commissions will be paid by the Plans with respect to any Contract purchased by them. If the Employer or the Partnerships receive any premiums or additional consideration in connection with any Contract, such premium or consideration will be passed along to the Plans. The Partnerships will service the Contracts at no cost to the Plans.

6. Prior to any purchase of a Contract by the Plans, Mr. Fred Cravens (Cravens), a party unrelated to the Employer or the Partnerships, will determine whether each such transaction is a suitable investment for the Plans and that the terms and conditions of the proposed transactions are at least as favorable to the Plans as those which the Plans could receive in the same type of transaction with an unrelated party. Cravens is a retired Bank or America vice president and a residential real estate specialist with forty years of experience in real estate and finance. Cravens will make all final decisions with regard to which Contracts are purchased by the Plans and the terms and conditions of all such pruchases. Cravens will also monitor the transactions, including the servicing of the Contracts, and will take any steps necessary to enforce the rights of the Plans.

7. The purchase price of the Contracts to be paid by the Plans will be the lesser of the unpaid principal or the discounted value of the unpaid principal as determined by Cravens, such that the yield to the Plans after discount will be equal to or greater than the current annual average effective standard interest rate on a mortgage from the Federal Home Loan Bank Board statistics as published in The Wall Street Journal.

8. The Employer, Aaron L. Raznick and his wife jointly and severally guarantee as follows:

To repurchase at the higher of the Plans' cost or the current market value any mortgage with accrued interest more than three month delinquent in payments at any time during the life of the mortgage. If the Employer has not purchased the mortgage and deed of trust with the accrued interest within ten days of being three months in arrears in payments, Aaron L. Raznick or his wife shall do so within ten days thereafter.

As of April 30, 1981, the Employer had total net assets in excess of $9,000,000. As of December 31, 1980, Mr. and Mrs. Raznick had net assets in excess of $1,000,000.

9. The Trustee represents that the proposed transactions are in the best interests of the Plans in that these investments can result in higher yields for Plan participants than those which are currently being obtained from other investments.

10. The applicants represent that the proposed transactions wil satisfy the statutory criteria of section 408(a) of the Act as follows: (1) the Trustee represents that the proposed transactions are in the best interests of the Plans; (2) the proposed transactions will be approved and monitored by an independent party; (3) the exemption will be a temporary exemption for five years; (4) the Plans will receive a high rate of return on their investments; (5) the Employer and Mr. and Mrs. Raznick guarantee to repurchase any Contracts more than three months in arrears: (6) the dollar amount of all Contracts at the time of their being placed in the Plans will be limited to 50% of the assets of the Plans: (7) no commissions will be paid by the Plans; and (8) the Partnerships will service the Contracts at no cost to the Plans.

Notice to Interested Persons

Within ten days after the notice of pendency is published in the **Federal Register** notice will be given to all the Plans' participants, beneficiaries, and other interested parties by mail, personal delivery, or by posting in locations where participants work and which are customarily used for notices to employees. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the **Federal Register** and shall inform interested persons of their right to comment and request a hearing within the time period set forth in the notice of proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure

75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sales by the Partnerships to the Plans of the Contracts herein described, or to the guarantees by the Employer and Mr. and Mrs. Raznick, as herein described.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in this application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 14th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82–25958 Filed 9–20–82; 8:45 am]

BILLING CODE 4510–29–M

[Application No. L–3537 and L–3538]

Proposed Exemption for Certain Transactions Involving Painters District Council No. 3 Vacation Fund and Painters District Council No. 3 Health & Welfare Fund Located in Kansas City, Missouri

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The proposed exemption would exempt the transfer of certain unclaimed funds from the Painters District Council No. 3 Vacation fund (Vacation Fund) to the Painters District Council No. 3 Health & Welfare Fund (the Welfare Fund, collectively, the Funds). The proposed exemption, if granted, would affect the Funds and their participants and beneficiaries.

DATE: Written comments and requests for a public hearing must be received by the Department on or before November 10, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application Nos. L–3537 and L–3538. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenuye, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Department, telephone (202) 523–8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of two applications for exemption from the restrictions of section 406(b)(2) of the Act. The proposed exemption was requested in applications filed by the Funds' trustees (the Trustees), pursuant to section 408(a) of the Act and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Summary of Facts and Representations

The applications contain representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the applications on file with the Department for the complete representations of the applicants.

1. The Funds are collectively bargained multiemployer welfare plans established in accordance with section 302 of the Labor-Management Relations Act of 1947, as amended. Prior to the termination of the Vacation Fund effective May 10, 1978, the participants in each Fund were virtually identical, all participants being covered by the collective bargaining agreement establishing the Funds. For the year ending 1978, employer contributions were made on behalf of approximately 622 Vacation Fund participants and 622 Welfare Fund participants. Four of the six Trustees serve as Trustees for both Funds.

2. Prior to termination of the Vacation Fund, the Trustees attempted to locate participants by mailing their benefit checks to their last known address, as provided by the participant. Upon terminating the Vacation Fund, the Trustees again mailed participants' benefit checks to the most current address the Trustees could obtain. After 90 days or receipt of the uncashed or undelivered checks, a listing of the participants and their benefit amounts was published in the Kansas City Star, a general circulation newspaper in the Kansas City Metropolitan Area.

3. As of June 14, 1982, 671 former Vacation Fund participants had not claimed benefits to which they were entitled, which amounted to a total of $19,809.29. The Trustees wish to transfer these funds to the Welfare Fund, an action which the Vacation Plan document empowers them to take, provided approval is secured from appropriate governmental agencies.

4. The Trustees represent that they have made all diligent efforts to locate the 671 former participants with unclaimed benefits and believe that further retention of such unclaimed benefits by the Vacation Fund will lead to their ultimate total depletion due to administrative costs.

5. The Trustees state that the transfer of the Funds is preferable to a pro-rata distribution to former Vacation Fund participants, because of the administrative difficulty and expense of making such a distribution. The Trustees believe it would be in the interests of the Welfare Fund participants if the unclaimed funds were transferred to the Welfare Fund to be utilized exclusively for the benefit of Welfare Fund participants. The 671 former Vacation Fund participants would be protected by the agreement by the Welfare Fund to pay any such participant the full amount of his unclaimed benefit should he make a claim subsequent to the transfer proposed herein. As of June 30, 1982, the Welfare Fund had net assets of $998,448.42.

6. In summary, the applicants represent that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act, due to the following: (a) It is a one-time transfer of assets between the Funds; (b) it will enhance the level of benefits currently being received by participants of the Welfare Plan; (c) it will eliminate the administrative costs which would otherwise be incurred by the Vacation Plan in maintaining the funds and/or distributing the funds to participants on a pro-rata basis; and (d) the rights of participants of the Vacation Plan are protected by means of the agreement by the Welfare Plan to pay any future claims for benefits due former Vacation Fund participants.

Notice to Interested Persons

Within 20 days of the publication of the proposed exemption in the **Federal Register**, notice of the proposed exemption will be given to interested persons by: (1) Posting it in the offices of the Funds; and (2) posting it in the offices of the Painters District Council No. 3 and the Builders Association of Missouri, the parties to the collective bargaining agreement creating the Funds. The notice will include a copy of

the proposed exemption and will inform interested persons of their right to comment on or request a hearing regarding the proposed exemption.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under sections 406(a), 406(b)(1) and (3) of the Act;

(3) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the transfer of the remaining assets in the Vacation Fund to the Welfare Fund, as described above.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the applications are true and complete, and that the applications accurately describe all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 14th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82–25957 Filed 9–20–82; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–3554]

Proposed Exemption for Certain Transactions Involving Goldman, Sachs & Co., Located in New York, New York

AGENCY: Pension and Welfare Benefit Programs, Office, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendence before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would allow collective investment funds (together, the Funds) that are managed by Goldman, Sachs & Co. (GSC) and its affiliates, in which employee benefit plans participate, to engage in certain transactions provided specified conditions are met. The proposed exemption, if granted, would affect participants and beneficiaries of employee benefit plans, employers of employees covered under such plans, the funds, and other persons engaging in the described transactions.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before November 8, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D–3554. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, telephone (202) 523–8881. (this is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of GSC, Institutional Property Assets (the Trust), its trustees, and employee benefit plans (Participating Plans) which invest in the Trust, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Preamble

On July 25, 1980, the Department published a class exemption, Prohibited Transaction Exemption 8–51 (PTE 80–51, 45 FR 49709), which permits collective investment funds that are maintained by banks and in which employee benefit plans participate to engage in certain transactions provided that specified conditions are met. The transactions for which the applicant has requested relief are those which are the subject of PTE 80–51.

The Department stated in PTE 80–51 that a comment had been received to the proposed class exemption requesting that it be amended to apply to collective investment funds that are not maintained by banks. Relief was granted for bank collective investment funds because, among other reasons,

such funds are regulated by other governmental agencies and constitute a well-defined class of funds. In the case of collective investment funds that are not maintained by banks, the Department found that the record was insufficient to determine the nature of the funds and the entities managing the funds that would comprise the class covered by such broad relief. As a result, the Department stated that it could not make the required statutory findings for such relief, and that relief for non-bank maintained collective investment funds should be dealt with on an individual rather than a class basis.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. GSC is a limited partnership which is a registered investment adviser under the Investment Advisers Act of 1940. GSC and the Trust have entered into an investment management agreement, pursuant to which GSC is responsible for the Trust's investment, management and administrative operations. GSC consults with the Trust's trustees (the Trustees) and furnishes them with advice and recommendations with respect to the acquisition, holding and disposition of property by the Trust. GSC's compensation as investment manager for the Trust is based on the fair market value of the assets held by the Trust rather than of any particular transaction and is not performance related.

2. The Trust is a group trust within the meaning of Rev. Rul. 81–100, 1981–13 I.R.B. 32, and it has received an Internal Revenue Service determination letter holding that it is exempt from federal income tax under section 501(a) of the Code. The Trust was executed by the Trustees in December 1981 and is now being offered to qualified employee benefit plans as a medium for pooling their assets with other qualified plans for investment primarily in real estate. No contributions to the Trust by an employee benefit plan will be accepted, and no units representing a beneficial interest in the Trust (Units) will be issued, until participation agreements subscribing to at least $25,000,000 worth of Units have been executed.

3. The operation and the organization of the Trust is set forth in detail in a private placement memorandum, which includes copies of the Trust Agreement, the Investment Management Agreement and Participation Agreement. The private placement memorandum also describes the Trust's management, investment objectives and criteria, compensation to GSC, and the income tax consequences of an acquisition of Units by a Participating Plan.

4. Only trusts that are exempt from income tax under section 501(a) of the Code as part of qualified pension or profit sharing plans under section 401(a) of the Code may acquire Units. To participate, a Participating Plan must have total net assets in excess of $10,000,000 and must make an initial investment of at least $1,000,000. Subsequent contributions may be made in amounts of $250,000 or more. After a Participating Plan makes an initial acquisition of Units in the Trust, no additional contributions are required.

5. The Trustees in their discretion may refuse to permit a plan to participate in the Trust. Any decisions as to whether an investment in the Trust is appropriate, however, will be made by the fiduciaries of the Participating Plan who will have no affiliation with GSC or the Trustees. Neither the Trustees nor any employee, officer or partner of GSC will (a) own an equity interest in the Trust, (b) act in a fiduciary capacity to any Participating Plan (other than to the extent such persons would be deemed fiduciaries by reason of the Participating Plan's acquisition of Units in the Trust, or (c) will serve as a director or officer of any employer sponsor of a Participating Plan.

6. In accordance with the requirements of Rev. Rul. 81–100, the Trust's Participation Agreement prohibits the transfer or assignment to a third party of Units acquired by a Participating Plan. A Participating Plan may at any time request redemption of all or part of its Units. Redemption requests will be considered on any quarterly valuation date. While requests for redemption of Units may be satisfied as a result of the sale of the Trust's assets, the Trustees are under no obligation to sell any Trust asset to redeem Units. Redemption of Units is required if a Participating Plan loses its tax-exempt status under section 501(a) of the Code. The Trustees may also require the redemption of a Participating Plan's Units if its continued participation in the Trust would result in a violation of the Act or other applicable law. The Trust may be terminated by the Trustees in their discretion or by the affirmative vote of the holders of two-thirds of the outstanding Units.

7. As stated in paragraph 1 above, GSC is a registered investment adviser under the Investment Advisers Act of 1940. Therefore, certain, but not all, of its activities and operations are regulated by the Securities and Exchange Commission and subject to periodic examination.

8. The Trustees, all of whom are general partners of GSC, receive no compensation from the Trust for their services as Trustees.

9. The Trustees have retained Coopers & Lybrand to serve as the independent certified public accountants for the Trust. Within 120 days after the end of each fiscal year, a report containing a balance sheet, profit and loss statement, and a statement of net asset value as of the end of the year will be distributed to all Participating Plans. Participating Plans will also receive statements of all fees paid to GSC and all distributions and investments made during the year. Appraisals of all interests in real property owned directly or indirectly by the Trust will be made at least once each year by independent appraisers, and such appraisals will be made available by GSC to Participating Plans upon request. All Trust records maintained pursuant to the Trust Agreement will be available for inspection by any Participating Plan at reasonable times during usual business hours.

10. The applicants represent that denial of their exemption application would impose substantial administrative burdens and costs on the Trust. In the absence of exemptive relief, elaborate audit and examination procedures must be undertaken to ensure that no prohibited transactions occur. In addition, the Trust could be precluded from leasing property to excellent tenants or from purchasing worthwhile investment properties due to, for example, the existence of a pre-existing lease involving a party in interest with respect to one of the Participating Plans. The applicants represent that the investment restrictions imposed by the prohibited transaction rules and the administrative burdens and costs resulting therefrom would operate to the detriment of the Participating Plans and their participants and beneficiaries and might impair the Trust's ability to provide qualified pension and profit sharing plans with diversified investments in real property.

11. In summary, the applicants represent that the subject transactions meet the criteria of section 408(a) of the Act because: (1) The Trust will provide that Participating Plans with the best possible real estate investments and leasing opportunities, efficient and relatively inexpensive property management and a broader selection of appropriate real estate investment

vehicles; (2) each of the protections provided to Participating Plans and their participants and beneficiaries by PTE 80–51 will be satisfied for the subject transactions, except that the Trust is privately maintained; and (3) the decisions to invest in the Trust are made by knowledgeable fiduciaries of large employee benefit plans on the basis of a detailed private placement memorandum. Furthermore, such fiduciaries are unrelated to GSC or any of its affiliates. In addition, the proposed exemption imposes limitations which are designed to prevent the potential for abuse while permitting the relief requested by the applicants.

Notice to Interested Persons

Within 14 days of the publication of this notice of proposed exemption in the **Federal Register**, the Trustees will notify by mail the fiduciaries responsible for investment of each Participating Plan that has invested in the Trust. The notice will contain a copy of the proposed exemption and will inform interested persons of their right to comment and request a hearing on the proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the following exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Section I. *Exemption for Certain Transactions Involving the Fund.*

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transactions Between Parties-In-Interest and the Fund: General.*

Any transaction between a party-in-interest with respect to a Participating Plan and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if the party in interest is not GSC or one of its affiliates and if, at the time of the transaction, acquisition or holding, the interest of the plan, together with the interests of any other plans maintained by the same employer or employee organization in the Fund, does not exceed 5 percent of the total of all assets in the Fund.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiemployer Plan and the Fund.*

Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) that is a Participating Plan, and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

(A) The interest of the multiemployer plan in the Fund does not exceed 10 percent of the total assets in the Fund, and the employer is not a substantial employer with respect to the plan, or

(B) The interest of the multiemployer plan in the Fund exceeds 10 percent of the total assets in the Fund, but the employer is not a substantial employer with respect to the plan and would not be a substantial employer if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(3) *Acquisitions, Sales or Holdings of Employer Securities and Employer Real Property.*

(A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities or employer real property by the Fund which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this Section I, if no commission is paid to GSC or to the employer, or any affiliate of GSC or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease of employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the Fund are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The property of the Fund that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither GSC nor any of its affiliates is an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either:

1. The Fund owns the obligations at the time the plan acquires an interest in the Fund, and interests in the Fund are offered and redeemed in accordance with valuation procedures of the Fund applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation: (a) not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at

the time of acquisition is held by such plan, and (b) in the case of an obligation that is a restricted security within the meaning of Rule 144 under the Securities Act of 1933, at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. GSC, its affiliates and any collective investment fund maintained by GSC or its affiliates shall be considered to be persons independent of the issuer if GSC is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which GSC or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which GSC or its affiliate has such investment discretion.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party-in-interest with respect to a Participating Plan by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) The restrictions of section 406(a)(1) (A) through (D) and section 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the transactions described below, if the conditions of Section III are met.

(1) *Transactions With Persons Who Are Parties-in-Interest With Respect to a Participating Plan Solely by Virtue of Being Certain Service Providers or Certain Affiliates of Service Providers.* Any transaction between the Fund and a person who is a party-in-interest with respect to a Participating Plan if—

(A) The person is a party-in-interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Fund, and

(B) The person is not an affiliate of GSC.

(2) *Certain Leases and Goods.* The furnishing of goods to the Fund by a party-in-interest with respect to a Participating Plan or the leasing of real property owned by the Fund to such party-in-interest and the incidental furnishing of goods to such party-in-interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Fund;

(B) The party-in-interest is not GSC, any affiliate of GSC, or one of the other Funds; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party-in-interest, or any affiliate thereof) does not exceed the greater of $25,00 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(3) *Management of Real Property.* Any services provided to the Fund by GSC or by an affiliate of GSC in connection with the management of the real property owned by the Fund, if the compensation paid to GSC or its affiliate does not exceed the cost of the services to GSC or its affiliate.

(4) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party-in-interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the purchase and sale of Units of beneficial interest in the Fund if no more than reasonable compensation is paid therefor, each purchase and sale is authorized in writing by a fiduciary of the Participating Plan who is independent of GSC and any of its affiliates, and the applicable conditions of Section III are met.

Section II. *Excess Holdings Exemption for Employee Benefit Plans.*

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Fund) by a Participating Plan if (1) the acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Fund; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and (3) the applicable conditions set forth in section III of this exemption are met.

Section III. *General Conditions.*

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of GSC or its affiliate, the terms of the transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) GSC or its affiliate maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of GSC or its affiliate, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessd under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Fund of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly

authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of GSC or its affiliate, or commercial or financial information which is privileged or confidential.

Section IV. *Definitions and General Rules.*

For the purposes of this exemption,

(a) The term "the Fund" shall include the Trust and any collective investment fund that may hereafter be established, operated and managed by GSC or its affiliate in essentially the same manner as the Trust.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e) The term "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563(a)(4) and (e)(3)(c) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year.

(f) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease of apply to a holding exempt by virtue of Section I(a)(1) at such time as the interest of the Participating Plan exceeds the percentage interest limitation of Section I(a)(1), unless no portion of such excess results from an increase in the assets allocated to the Fund by the Participating Plan. For this purpose, assets allocated do not include the reinvestment of Fund earnings. Nothing in this paragraph (f) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this proposed exemption.

Signed at Washington, D.C., this 14th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-25959 Filed 9-20-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-143; Exemption Application Nos. D-3250 and D-3251]

Exemption From the Prohibitions for Certain Transactions Involving the Profit Sharing Plan for the Employees of Dekalb-Gwinnett Pathologists, P.C., and the Profit Sharing Plan for the Employees of Pathology & Laboratory Medicine, P.C. Located in Atlanta, Ga.

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits the sale of promissory notes (the Notes) issued by an unrelated party by certain participants (the Applicants) of the Profit Sharing Plan for the Employees of Dekalb-Gwinnett Pathologists, P.C. and the Profit Sharing Plan for the Employees of Pathology & Laboratory Medicine, P.C. (collectively, the Plans) to the Applicants' respective individual Plan accounts.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 20, 1982, notice was published in the **Federal Register** (47 FR 31471) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b) (1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above-described transaction. The notice set forth a summary of facts and representations contained in the applications for exemption and referred interested persons to the applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was distributed in accordance with the notice requirements of the proposed exemption. No public comments and no

requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Applicants; and

(c) It is protective of the rights of the Applicants.

Accordingly, the restrictions of section 406(a), 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of the Notes by the Applicants to their respective individual accounts in the Plans, provided that the purchase price for the Notes is not more than the fair market value of the Notes on the date of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the applications are true and complete, and that the applications accurately describe all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 14th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services, Administration, U.S. Department of Labor.

[FR Doc. 82–25946 Filed 9–20–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–144; Exemption Application Nos. D–3453 and D–3454]

Exemption From the Prohibitions for Certain Transactions Involving the LIL Nursery Distributors, Inc. Money Purchase Plan and the LIL Nursey Distributors, Inc. Employees Profit Sharing Plan Located in Worthington, Ohio

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption will permit (1) the sale of an unimproved parcel of real property (the Property) by the LIL Nursery Distributors, Inc. Money Purchase Plan (Money Purchase Plan) and the LIL Nursery Distributors, Inc. Employees Profit Sharing Plan (Profit Sharing Plan; collectively, the Plans) to Mr. Lee W. Larson (Mr. Larson), a disqualified person with respect to the Plans; and (2) other transactions to be executed in accordance with the terms of the sale. Because Mr. Larson is the sole owner of LIL Nursery Distributors, Inc., the sponsor of the Plans, and is the only particpant in the Plans, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Internal Revenue Code of 1954 (the Code).

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 23, 1982, notice was published in the **Federal Register** (47 FR 31993) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code, for the above-described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 4975(c)(2) of the Code does not relieve a fiduciary or other disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply; nor does the fact the transaction is the subject of an exemption affect the requirement of

section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transction is, in fact, a prohibited transaction.

Exemption

In accordance with section 4975(c)(2) of the Code and the procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722, and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the of sale the Property by the Plans to Mr. Larson for $42,500, and (2) the extention of credit by the Plans to Mr. Larson under the Note and Mortgage, as such terms are described in the notice of pendency, provided that the terms of the transactions are not less favorable to the Plans than those obtainable in similar transactions with an unrelated third party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 14th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82–25947 Filed 9–20–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–145; Exemption Application No. D–2277]

Exemption From the Prohibitions for Certain Transactions Involving the Racine Neurosurgical Associates, S.C. Restated Pension Plan and Trust Located in Racine, Wisconsin

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption would permit the proposed loan (the Proposed Loan) of $100,000 by the Racine Neurosurgical Associates, S.C. Restated Pension Plan and Trust (the Plan), to Kandem Associates (the Partnership), a party in interest with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Horace C. Green of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 6, 1982, notice was published in the **Federal Register** (47 FR 29407) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the above-described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that he has complied with the notification requirements as set forth in the notice. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his of her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the

Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the Proposed Loan, provided the terms and conditions of the Proposed Loan will be and remain at least as favorable to the Plan as those which the Plan could receive in an arm's-length transaction with an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 15th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-25948 Filed 9-20-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-146; Exemption Application Nos. D-2909, D-2912 and D-2913]

Exemption From the Prohibitions for Certain Transactions Involving MIH Pension Plan and Trust, MIH Profit Sharing Plan and MIH Employees Benefit Trust Located in New York, New York

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption will permit a loan by MIH Pension Plan and Trust, MIH Profit Sharing Plan and MIH Employees Benefit Trust (the Plans) to Marine and Industrial Hydraulics, Inc. (the Employer), a party in interest with respect to the Plans, for the lesser of $160,000 or one-third of each Plan's assets and to the personal guarantee of repayment by John J. and Kathleen Wright (Plan's Trustees).

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523-8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 23, 1982, notice was published in the **Federal Register** (47 FR 31994) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the transactions described in an application filed by legal counsel for the Plans. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the applications for a complete statement of the facts and representations. The application has been available for the public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied with the requirements of the notification to interested persons as set forth in the notice of pendency. No public comments and no request for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a loan by the Plans to the Employer for the lesser of $160,000 or one-third of each Plans' assets and to the guarantee of repayment by the Plans' Trustees, provided that the terms of the transactions are not less favorable to the Plans than those obtainable in arm's length transactions with an unrelated party at the time of consummation of the transactions.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C. this 15th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-25949 Filed 9-20-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-147; Exemption Application No. D-3096]

Exemption From the Prohibitions for Certain Transactions Involving Property Investment Separate Account Maintained by Prudential Life Insurance Co. of America Located in Newark, N.J.

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the past and prospective leasing (the Leases) of office space by Property Investment Separate Account (PRISA), a separate account in which employee benefit plans (the Plans) invest, which is maintained by the Prudential Insurance Company of America (Prudential), to Bache, Halsey, Stuart, Shields, Inc. (Bache), a subsidiary of Prudential.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 8, 1982, notice was published in the **Federal Register** (47 FR 24887) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (D) of the Code, for the above described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. The applicant has represented that a copy of the notice was distributed in accordance with provisions set forth in the proposed exemption, except that the notification was made as of August 3, 1982, whereas the proposed exemption stipulated that the notice was to be made prior to June 23, 1982. However, the applicant represents that the notice informed recipients that the 30-day comment period had been extended through September 2, 1982. The Department has received no public comments regarding the proposed exemption.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1) (E) and (F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the Leases between PRISA and Bache, provided that the terms and conditions of the Leases are at least as favorable to PRISA as those it could obtain from an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions that are the subject of the exemption.

Signed at Washington, D.C., this 15th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-25950 Filed 9-20-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-148; Exemption Application No. D-3111]

Exemption From the Prohibitions for Certain Transactions Involving the F. T. Carey, M.D., P.C. Employee Benefit Plan and Trust Located in Sunnyside, N.Y.

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the proposed sale by the F. T. Carey, M.D., P.C. Employee Benefit Plan and Trust (the Trust) of a parcel of improved real property (the Property) located in Jupiter, Florida to Dr. and Mrs. F. T. Carey (Dr. and Mrs. Carey), disqualified persons with respect to the Trust. The Trust consists of two plans, the F. T. Carey, M.D., P.C. Money Purchase Pension Plan and the F. T. Carey, M.D.,

P.C. Profit Sharing Plan (collectively, the Plans). Because Dr. and Mrs. Carey are the sole shareholders of F. T. Carey, M.D., P.C., the sponsor of the Plans and the only participants in the Plans, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

FOR FURTHER INFORMATION CONTACT: Katherine D. Lewis of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523–8972. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 20, 1982, notice was published in the **Federal Register** (47 FR 31473) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the proposed sale of the Property by the Trust to Dr. and Mrs. Carey as described in an application filed on behalf of the Trust by Dr. and Mrs. Carey. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. Because Dr. and Mrs. Carey are the sole shareholders of F. T. Carey, M.D., P.C., the sponsor of the Plans, and the only participants in the Plans, it was determined that there was no need to distribute the notice of pendency to interested persons. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 4975(c)(2) of the Code does not relieve a fiduciary or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly the restrictions of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of the Property by the Trust to Dr. and Mrs. Carey for the cash sum of $131,000, provided that this amount is not less than the fair market value of the Property on the date of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 15th day of September, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82–25951 Filed 9–20–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–149; Exemption Application No. D–3182]

Exemption From the Prohibitions for Certain Transactions Involving the Elsinore Corporation Profit Sharing and Retirement Investment Trust Located in Las Vegas, Nev.

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption exempts the sale by the Elsinore Corporation Profit Sharing and Retirement Investment Trust (the Trust) of its interest in the John Hancock Mutual Life Insurance Company Group Annuity Contract No. 2776 GAC (the Annuity Contract) to Elsinore Corporation (the Employer).

FOR FURTHER INFORMATION CONTACT: Katherine D. Lewis of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523–8972. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 23, 1982, notice was published in the **Federal Register** (47 FR 31991) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above-described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written

request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was been provided to interested persons in compliance with the notification provisions as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Trust to the Employer of its interest in the Annuity Contract for $397,248, less any amounts received by the Plan from John Hancock Mutual Life Insurance Company under the Annuity Contract between January 22, 1982 and the date of sale, provided that such amount is not less than the fair market value of the Annuity Contract on the date of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 15th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-25952 Filed 9-20-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-150; Exemption Application Nos. D-3191 and D-3192]

Exemption From the Prohibitions for Certain Transactions Involving the C. John Robbins Individual Retirement Account and the Ralph Anglin Individual Retirement Account Located in Philadelphia, Pennsylvania

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits cash purchases by the C. John Robbins Individual Retirement Account and the Ralph Anglin Individual Retirement Account (collectively, the Accounts) of certain residential mortgages (the Mortgages) which are owned by Beach Avenue, Ltd. (the Partnership). Since Messrs. Robbins and Anglin are the only participants in their respective Accounts, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3-2(d). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Internal Revenue Code of 1954 (the Code).

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Office of Fiduciary Standards, pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216. (202) 523-8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 20, 1982, notice was published in the **Federal Register** (47 FR 31477) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the sanctions resulting from the application of section 4975 of the code, by reason of section 4975(c)(1) (A) through (E) of the Code, for certain transactions described in an application filed on behalf of Messrs. Robbins and Anglin. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretarty of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 4975(c)(2) of the Code does not relieve a fiduciary or other disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Code. These

provisions include any prohibited transaction provisions to which the exemption does not apply, nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 4975(c)(2) of the Code and the procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722, and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Accounts and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Accounts.

Accordingly, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash purchases by each Account of the Mortgages owned by the Partnership, provided the amounts paid for the Mortgages are not more than their fair market values on the dates said pruchases are made.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 15th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-25953 Filed 9-20-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-151; Exemption Application No. D-3204]

Exemption From the Prohibitions for Certain Transactions Involving the David Evans and Associates Profit Sharing Plan and Retirement Trust Located in Portland, Oregon

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the sale of a parcel of unimproved real property (the Property) by the David Evans and Associates Profit Sharing Plan and Retirement Trust (the Plan) to a partnership (the Partnership), which is a party in interest with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523–8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 20, 1982, notice was published in the **Federal Register** (47 FR 31464) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for a transaction described in an application filed by David Evans and Associates, Inc., the sponsor of the Plan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied with the notice to interested persons requirements as set forth in the notice. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary on other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fidiciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of the Property by the Plan to the Partnership for the greater of $126,179.21 or the fair market value of the Property at the time of the sale plus certain pre-construction costs associated with the development of the Property.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 15th day of September, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-25954 Filed 9-20-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-152; Exemption Application Nos. D-3381 & D-3382]

Exemption From the Prohibitions for Certain Transactions Involving Ritchie Enterprises Pension Plan for Salaried Employees, and Ritchie Enterprises Pension Plan for Hourly Paid Employees Located in Wichita, Kansas

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption will permit for a period of five years certain proposed loans of money by the Ritchie Enterprises Pension Plan for Salaried Employees and the Ritchie Enterprises Pension Plan for Hourly Paid Employees (together, the Plans) to the Ritchie Corporation (the Employer), the sponsor of the Plans.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523-7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 20, 1982, notice was published in the **Federal Register** (47 FR 31461) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the above described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has satisfied the notification provisions as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply for a period of five years to the Loans by the Plans to the Employer provided that the terms and conditions of the Loans are at least as favorable to the Plans as those which the Plans could receive in similar transactions with an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 15th day of September, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-25955 Filed 9-20-82; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (82-52)]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to William G. Simpson of Huntsville, Alabama, a limited, exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 3,941,355 for a "Mixing Insert For Foam Dispensing Apparatus" which issued March 2, 1976, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by November 22, 1982.

ADDRESS: National Aeronautics and Space Administration, Code GP-4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 755-3954.

Dated: September 14, 1982.

S. Neil Hosenball,

General Counsel.

[FR Doc. 82-25981 Filed 9-20-82; 8:45 am]

BILLING CODE 7510-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments: Certain Methods for Extruding Plastic Tubing

The United States International Trade Commission (the Commission) has found a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into, or the sale in, the United States of extruded plastic tubing and reclosable plastic bags that are the product of a process that, if practiced in the United States, would infringe certain claims of U.S. Letters Patent Re 26,991, Re 28,959, or Re 29,208, thereby causing a threat of substantial injury to an efficiently and economically operated domestic industry. The Commission issued an order excluding the products produced by the process from importation into the United States.

Under section 337(g), the President may disapprove the determination of the Commission for policy reasons within sixty days following receipt of the determination and record. Disapproval by the President would cause the determination, and any order issued under that determination, to be without force or effect. The President also may approve the determination, making the determination, and any order issued under it, final on the date the Commission receives notice. The determination, and any related order, will become final automatically following the sixty day review period if the President decides to take no action to disapprove or to approve it.

Interested parties are invited to submit comments concerning foreign or domestic policy issues that should be considered by the President in making his decision regarding the case. Parties submitting comments regarding domestic policy issues should refer to the portion of the Commission record in which information or comment concerning that issue was presented. If no presentation of the domestic policy issue being raised was made to the Commission, the party submitting the comment should include the reason for the lack of such presentation. The Trade Representative will be reluctant to review comments concerning domestic policy issues not addressed in the record developed before the Commission. Interested parties need not refer to the Commission record to submit comments based upon foreign policy issues.

Comments submitted should not exceed 15 double spaced, letter sized pages, including attachments. The original and 19 copies of the submission must be delivered by the close of business Friday, October 1, 1982, to the Secretary, Trade Policy Staff Committee, 600 17th Street, N.W., Washington, D.C. 20506. Copies of comments received will be made available upon request and additional comments will be accepted through the close of business Friday, October 8, 1982. For further information, call Alice Zalik (202) 395-3432.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 82-25979 Filed 9-20-82; 8:45 am]

BILLING CODE 3190-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: Notice of proposal and opportunity to comment.

SUMMARY: On September 16, 1982, the Pacific Northwest Electric Power and Conservation Planning Council ("the Council") approved release of a proposed Columbia River Basin Fish and Wildlife Program for purposes of public review and comment. This notice describes the proposed program, provides information on how to obtain copies, and outlines the process and schedule for submitting oral and written comments.

DATES AND ADDRESSES: Copies of the proposed program may be obtained at the Council's Central Office, Suite 200, 700 Southwest Taylor Street, Portland, Oregon 97205 or by calling Ms. Beata Teberg at 1-800-547-0134 (toll-free in Montana, Idaho, Washington and California), 1-800-452-2324 (toll-free in Oregon), or 503-222-5161. Hearings are scheduled as follows:

1. October 12, 1982, Portland, Oregon, Hilton Hotel (The Pavilion), 921 S.W. Sixth Avenue, 8 a.m.-5 p.m. and 7 p.m.-9 p.m.;

2. October 15, 1982, Boise, Idaho, The Hall of Mirrors, 700 West State Street, 8 a.m.-5 p.m. and 7 p.m.-9 p.m.;

3. October 18, 1982, Missoula, Montana, The Holiday Inn, 1609 West Broadway, 9:30 a.m.-5 p.m. and 7 p.m.-9 p.m.; and,

4. October 22, 1982, Yakima, Washington, The Holiday Motor Hotel, 1300 North First Street, 8 a.m.-5 p.m. and 7 p.m.-9 p.m.

Requests for time slots at the hearings should be made to Ms. Teberg, through the telephone numbers and addresses given above, at least five weekdays prior to the day of the hearing at which a time slot is requested. Written comments must be received in the Council's Central Office, 700 Southwest Taylor Street, Suite 200, Portland, Oregon 97205, by 5 p.m. Monday,

October 25, 1982. They should be addressed to the attention of Ms. Bobbe Strizek.

FOR FURTHER INFORMATION CONTACT: Ms. Torian Donohoe, Acting Director of Public Involvement, 700 Southwest Taylor Street, Suite 200, Portland, Oregon 97205 (toll-free 1–800–547–0134 in Montana, Idaho, Washington and California; toll-free 1–800–452–2324 in Oregon, or 503–222–5161).

SUPPLEMENTARY INFORMATION: By passage of the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501, 94 Stat. 2697, 16 U.S.C. 839 et seq. ("the Act"), Congress provided for the establishment of the Pacific Northwest Electric Power and Conservation Planning Council ("the Council"), a regional agency composed of two gubernatorial appointees each from the states of Idaho, Montana, Oregon and Washington. Congress charged the Council with two major responsibilities: (1) Preparation of a program to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development, operation, and management of hydroelectric facilities on the Columbia River and its tributaries; and (2) Development of a conservation and electric power plan for the Pacific Northwest. The Council must adopt its fish and wildlife program first and thereafter incorporate that program into its conservation and electric power plan.

As required by the Act, the Council initiated the statutory process for development of its fish and wildlife program by adopting a motion on June 10, 1981 asking for recommendations for: (1) Measures which can be expected to be implemented by the Bonneville Power Administration and other federal agencies to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of hydroelectric facilities on the Columbia River and its tributaries; (2) Objectives for the development and operation of hydroelectric facilities on the Columbia River and its tributaries in a manner designed to protect, mitigate, and enhance fish and wildlife; and, (3) Fish and wildlife management coordination, research, and development activities, including funding, which would assist protection, mitigation, and enhancement of anadromous fish at and between the region's hydroelectric dams. The Council asked for submission of such recommendations by November 15, 1981.

By November 15, 1981 the Council received more than 2,200 pages of recommendations and related documents. It distributed those materials throughout the region in sets of four "blue books." On January 11, 1982, it opened a public comment period on the recommendations. The comment period ran through April 1, 1982 and included public hearings in Boise, Idaho; Missoula, Montana; Portland, Oregon; and the Yakima Indian Reservation at Toppenish, Washington. Since April, the recommendations also formed the basis for informal and formal consultations, as required by the Act.

Program Proposal

On September 16, 1982, in a public meeting in Helena, Montana, the Council approved release of a proposed Columbia River Basin Fish and Widlife Program for the purposes of public review and comment. As proposed, major program sections would address downstream migration, ocean survival, and upstream migration of anadromous fish; natural and artificial production of fish; protection of resident fish; special fishery problems in the Yakima River Basin; protection of wildlife; establishment of a Council fish and wildlife committee; new hydroelectric development; and coordination of river operations. Each draft section includes a summary of the problem addressed, recommendations for solving the problems, the Council's response to those recommendations, and the Council's proposed program measures. Also included in the program document are two appendices, one providing a glossary to aid understanding of technical terms, and the other outlining how the Council proposes to dispose of each program recommendation it received.

Federal agencies which own, operate or regulate hydroelectric facilities in the Columbia River Basin will be responsible for implementation of the program measures. Those agencies include the Bonneville Power Administration and the Federal Energy Regulatory Commission in the U.S. Department of Energy; the Corps of Engineers, U.S. Department of the Army; and the Bureau of Reclamation, U.S. Department of the Interior. Under the Act, those agencies must take the Council's program "into account at each relevant stage of decisionmaking processes to the fullest extent practicable." The program would be funded primarily through hydroelectric power rates.

Copies of the proposed program now are available at the Council's Central Office at 700 Southwest Taylor Street, Suite 200, Portland, Oregon 97205. They may be ordered by writing to Ms. Beata Teberg at that address or by calling her at 1–800–547–0134 (toll-free in Montana, Idaho, Washington and Califorina), 1–800–452–2324 (toll-free in Oregon), or 503–222–5161.

The Council will accept comments on the proposed program through October 25, 1982. An expedited comment process is necessary because Congress has required the Council to adopt its program on or before November 15, 1982.

Hearings

The dates, times, and locations for the public hearings and the process for reserving a time slot at the hearings are set out above, under "**DATES AND ADDRESSES.**" Persons who have not reserved time slots will be permitted to speak as time permits. The Council encourages speakers to use their hearing time to summarize written comments. Each interested agency, organization and individual will be asked to speak at only one of the four hearings.

The hearings will be chaired by the chairman or vice-chairman of the Council, not a hearing examiner. No cross-examination of speakers will be permitted. However, Council members may ask clarifying questions.

Transcripts of the hearings will be made and will become part of the Council's administrative record of program development. Copies of the transcript will be available for review and copying between 9 a.m. and 4:30 p.m. in the Council's Central Office, 700 Southwest Taylor Street, Suite 200, Portland, Oregon.

Written Comments

All written comments on the proposed program must be received in the Council's Central Office, at the address given above, by 5 p.m. Monday, October 25, 1982. Comments received after that time will not be considered.

Because of the large number of comments expected, special attention should be given to written comments. Written comments should be specific and concise, refer to program sections, and provide alternative language to aid redrafting. The Council requests 10 copies of each set of comments.

A copy of the administrative record of program development, including written comments on the proposed program, may be inspected and copies at the Council's public reading room in Suite 200, 700 Southwest Taylor Street, Portland, Oregon, between the hours of 9 a.m. and 4:30 p.m. weekdays.

(Sec. 4, Pub. L. 96–501, 16 U.S.C. 839b)

Edward Sheets,

Executive Director.

[FR Doc. 82–25924 Filed 9–20–82; 8:45 am]

BILLING CODE 0000–00–M

DEPARTMENT OF STATE

Office of the Secretary

[Delegation of Authority No. 147; Public Notice 826]

Under Secretary of State for Management Delegation of Authority

By virtue of the authority vested in me as Secretary of State, including the authority of section 4 of the Act of May 26, 1949 (22 U.S.C. 2658), the following functions are hereby delegated to the Under Secretary of State for Management:

1. *General Delegation.*

The functions vested in the Secretary of State by Title II of the State Department Basic Authorities Act of 1956, as amended (the Foreign Missions Act, Title II of Pub. L. 97–241).

2. *Technical Provisions.*

(a) As used in this delegation of authority, the term "functions" includes any duty, obligation, power, authority, responsibility, right, privilege, discretion, determination or activity.

(b) Notwithstanding any provision of this delegation of authority, the Secretary of State or the Deputy Secretary of State may at any time exercise any function herein delegated.

(c) Any officer to whom functions are delegated by this delegation of authority may, to the extent consistent with law:

(1) Redelegate such functions and authorize their successive redelegation; and

(2) Promulgate such rules and regulations as may be necessary to carry out such functions.

(d) This delegation of authority shall be deemed to be effective on the effective date of the Foreign Missions Act (Title II of Pub. L. 97–241), which is October 1, 1982.

Dated: September 13, 1982.

George P. Shultz,

Secretary of State.

[FR Doc. 82–25963 Filed 9–20–82; 8:45 am]

BILLING CODE 4710–10–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980; Form Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Form under review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Request for information, including copies of the form proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for Tennessee Valley Authority, 395–7340.

Agency Clearance Officer: E. Eugene Mynatt, Tennessee Valley Authority, 275 Lupton Building, Chattanooga, TN 37401; (615) 751–2146, FTS 858–2146.

Type of Request: Revision.

Title of Information Collection: TVA 7136B, TVA 7136C, and TVA 7136D, TVA Energy Saver Home Program Participation Forms.

Type of Affected Public: Architects, Contractors, Home Builders, and Local Inspection Agencies.

Standard Industrial Classification: 152.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 5,000.

Estimated Total Annual Burden Hours: 2,500.

Estimated Annual Cost to Federal Government: $1,600,000.

Need For and Uses of Information: To promote solar and energy-efficient new home construction, and to certify homes complying with the TVA Energy Saver Home Guidelines.

Dated: September 14, 1982.

Charles Bonine, Jr.,

Manager, Office of Management Services.

[FR Doc. 82–25966 Filed 9–20–82; 8:45 am]

BILLING CODE 8120–01–M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 183
Tuesday, September 21, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Tuesday, September 21, 1982.

PLACE: 2033 K Street, N.W., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

NYFE/NYSE Industrial Stock Index Designation
NYFE/NYSE Financial Stock Index Designation
NYFE/NYSE Utility Stock Index Designation
CME 6-month T-Bill Designation

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1342-82 Filed 9-17-82; 10:05 am]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, October 1, 1982.

PLACE: 2033 K Street, N.W., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Briefing

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1343-82 Filed 9-17-82; 10:05 am]

BILLING CODE 6351-01-M

3

FEDERAL COMMUNICATIONS COMMISSION

September 16, 1982.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, September 23, 1982, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

General—1—*Title:* In the Matter of Amendment of the Commission's Rules to Allow the Selection from Among Mutually Exclusive Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings, Gen. Docket No. 81-768. *Summary:* The Commission will consider whether to adopt a Second Notice of Proposed Rule Making to implement the FCC's random selection authority contained in the recent amendments to 47 U.S.C. 309(i). This rule making proposes to establish a general framework for random selection of certain initial telecommunications licenses, including procedures, administration and preferences.

Private Radio—1—Title: Amendment of Part 83 to delete or reduce the requirements for spare parts for compulsory ship stations in the Maritime Mobile Service. Summary: The FCC will consider whether to adopt a Notice of Proposed Rule Making. This action was initiated by the staff after a review of rules governing the requirements to carry spare parts, tools, test equipment and circuit diagrams to determine if these rules were unduly complex or outdated:

Common Carrier—1—*Title:* In the Matter of Satellite Business Systems. Application for authority pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire and operate lines of communication between points in the contiguous United States and points in the United Kingdom and beyond. *Summary:* The Commission will consider the application of Satellite Business Systems to provide digital data communications services between the United States and the United Kingdom.

Common Carrier—2—*Title:* Amendment of Parts 34 and 35 Uniform System of Accounts and corresponding revisions to Annual Report Forms O and R with respect to accounting for customer-premises equipment (CPE) after detariffing. *Summary:* The Commission will consider soliciting views on the accounting to be followed for the detariffing of CPE, as ordered in Docket 21005 and Computer II, and the regulating changes to Parts 34 and 35 of the Commission's Rules and Regulations (Uniform System of Accounts).

Common Carrier—3—*Title:* Amendment of the Uniform System of Accounts, Part 31, to provide for changing the accounting treatment for certain telephone plant (i.e., account 221, "Central office equipment,"; account 232, "Station connections-other"; and account 234, "Large private branch exchanges"). *Summary:* This Commission will consider the adoption of a Notice of Proposed Rulemaking (1) to change the basis of depreciation and retirement procedures for the "Station connections-other" subclass of account 232 to that used for accounts 242:1, "Aerial cable," and 242:3, "Buried cable"; (2) to transfer the "Station connections-other" plant to account 242:1 and 242:3; and (3) to classify all network channel terminating equipment and subscriber pair gain equipment to account 221 regardless of its location.

Common Carrier—4—*Title:* Amendment of Annual Report Form M regarding revision of certain schedules. *Summary:* The Commission will consider whether to adopt a Notice of Proposed Rulemaking to ease certain reporting requirements in the annual report for telephone carriers in response to a petition of American Telephone and Telegraph Company.

Common Carrier—5—*Title:* Modifications to the Uniform System of Accounts for Class A and Class B Telephone Companies required by detariffing of customer premises equipment and proposed detariffing of customer provided cable/wiring as part of an intrasystem for PBXs and key systems. *Summary:* The Commission will consider whether to adopt a Notice of Proposed Rulemaking to modify the current accounting for public telephone equipment and company used station apparatus. Also this proposal establishes the prescribed accounting for telephone companies that sell or lease customer premises equipment on a detariffed basis.

Broadcast—1—*Title:* Memorandum Opinion and Order In re Application of Satellite Television Corporation for Authority to Construct an Experimental Direct Broadcast Satellite System. *Summary:* On December 17, 1980, Satellite Television Corporation filed an application for authority to begin construction of a Direct Broadcast Satellite System. This Order considers that application and all petitions to deny and other pleadings associated with that application.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office; telephone (202) 254-7674.

Issued: September 16, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-1344-82 Filed 9-17-82; 10:17 am]

BILLING CODE 6712-01-M

4

FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Thursday, September 23, 1982, following the Open Meeting which is scheduled to commence at 9:30 am., in Room 856, at 1919 M Street N.W., Washington, D.C.

Agenda, Items No., and Subject

Hearing—1—Draft Decision in the City of New York Municipal Broadcasting System AM radio proceeding (Docket Nos. 11227, 17588, 19403).

This item is closed to the public because it concerns adjudicatory matters (See CFR 0.603(j)).

The following persons are expected to attend:

Commissioners and their Assistants
Managing Director and Members of his staff
General Counsel and Members of his staff
Chief, Office of Public Affairs and Members of his staff

Action by the Commission September 13, 1982. Commissioners Fowler, Chairman; Quello, Washburn, Fogarty, Jones, Dawson and Rivera voting to consider this item in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Issued: September 16, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-1345-82 Filed 9-17-82; 10:12 am]

BILLING CODE 6712-01-M

5

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 10 a.m., Monday, September 27, 1982.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of computer equipment within the Federal Reserve System.
2. Proposed acquisition of check reader sorters within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments and salary actions) involving individual Federal Reserve System employees.
4. 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: September 17, 1982.

James McAfee,

Associate Secretary of the Board.

[S-1348-82 Filed 9-17-82; 4:00 pm]

BILLING CODE 6210-01-M

6

NATIONAL COMMISSION ON STUDENT FINANCIAL ASSISTANCE

On September 14, 1982, on page 40522 we announced an open hearing on the National Commission on Student Financial Assistance's Study of the Insurance Premium. We are issuing a correction.

The notice should read:

DATE: Friday, September 24, 1982.

TIME/PLACE: 8 a.m. to 10:30 a.m., at the state capitol in Jefferson City, Missouri on the third floor in the Senate Lounge.

TIME/PLACE: 1:30 p.m. to 3:30 p.m., at Central Missouri State University in the Science Building Auditorium.

PURPOSE: To hold a hearing on the National Commission on Student Financial Assistance's study of the Insurance Premium charged to borrowers under the Guaranteed Student Loan Program.

FOR FURTHER INFORMATION CONTACT: Richard T. Jerue, Chief Executive Officer (202) 472-9023.

This hearing was called by the Insurance Premium Subcommittee Chairman, Congressman Wendell Bailey.

Submitted the 16th day of September 1982.

Richard T. Jerue,

Chief Executive Officer.

[S-1341-82 Filed 9-17-82; 10:01 am]

BILLING CODE 6820-BC-M

7

NUCLEAR REGULATORY COMMISSION

DATE: Week of September 20, 1982.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: *Thursday, September 23:*

10:00 a.m.:
Discussion of Management-Organization and Internal Personnel Matters (Closed—Exemptions 2 and 6)

3:30 p.m.:
Affirmation/Discussion and Vote (Public Meeting)
a. ALAB-680, Denial of Stay Motion on San Onofre Initial Decision

ADDITIONAL INFORMATION: On September 15, the Commission voted 5-0 to hold on short notice Discussion of Management-Organization and Internal Personnel Matters, held that day. Additional item: Friday, September 17, 9:55 a.m., Affirmation of Revision to Give Additional Delegation of Authority to Director, NMSS to Appoint Presiding Officer to Conduct Informal Hearing (Public Meeting).

Discussion of affirmation of Indian Point Special Proceeding—Order Responding to Licensing Board's Certified Questions held September 9 was continued on September 10.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498. Those planning to attend a meeting should reverify the status on the date of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

Walter Magee,

Office of the Secretary.

September 16, 1982.

[S-1349-82 Filed 9-17-82; 4:00 pm]

BILLING CODE 7590-01-M

8

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of September 20, 1982, at 450 5th Street, N.W., Washington, D.C.

A closed meeting will be held on Thursday, September 23, 1982, at 2:30 p.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b (c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Commissioners Evans, Longstreth and Treadway voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Thursday, September 23, 1982, at 2:30 p.m., will be:

Formal orders of investigation.
Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.
Regulatory matter regarding financial institution.

At time changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Richard Starr at (202) 272–3195.

September 14, 1982.

[S–1347–82 Filed 9–17–82; 3:50 pm]

BILLING CODE 8010–01–M

9

TENNESSEE VALLEY AUTHORITY.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: — FR ——, (September —, 1982).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:15 a.m., Wednesday, September 22, 1982.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

ADDITIONAL MATTER: The following item is added to the previously announced agenda:

F—Unclassified
Agreement among The Tellico Reservoir Development Agency, State of Tennessee, the Little Tennessee River Port Authority, and TVA providing for a cooperative project to promote economic development in the Tallico project area.

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.

SUPPLEMENTAL INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting to be changed to include the additional item shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below.

Dated: September 17, 1982.
Approved:

C. H. Dean,

S. David Freeman,

Richard M. Freeman.

[S–1346–82 Filed 9–17–82; 3:50 pm]

BILLING CODE 8120–01–M

federal register

Tuesday
September 21, 1982

Part II

Department of the Interior

Bureau of Land Management

Grazing Administration, Exclusive of Alaska; Amendment of Miscellaneous Provisions

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2514]

43 CFR Parts 4100 and 9260

Grazing Administration, Exclusive of Alaska; Amendment of Miscellaneous Provisions

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: The final rulemaking amends the existing regulations for the administration of livestock grazing use on the public lands. These amendments respond to Executive Order 12291 of February 17, 1981, by eliminating needless, burdensome and counterproductive provisions. The intent of this rulemaking is to simplify and improve the administration of grazing use and to remove cumbersome procedural detail from the regulations. The specific amendments to the existing regulations resulted from review of public comments requested by the Secretary of the Interior and consultation with affected interests.

EFFECTIVE DATE: October 21, 1982.

ADDRESS: Any suggestions or inquiries should be addressed to: Director (220), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Chester Conard, (202) 653–9193.

SUPPLEMENTARY INFORMATION: Proposed rulemaking to amend the existing grazing regulations was published in the Federal Register on November 13, 1981 (46 FR 56132) with comments invited for a period of 60 days. The comment period was later extended to February 11, 1982. A total of 81 comments were received and were carefully reviewed as part of the decisionmaking process in the development of this final rulemaking.

The discussion of the comments will be divided into two categories. General comments will be discussed first, then specific comments will be addressed in connection with the sections to which they refer.

General Comments

Most of the comments were supportive of the Department of the Interior's effort to remove what were perceived to be burdensome and cumbersome sections of the existing regulations. Commenters generally thought the proposed amendments streamlined the regulations and would provide local managers with greater flexibility in developing rangeland management programs and solutions that would be appropriate to local needs and conditions.

Much of the streamlining will be accomplished by transferring administrative detail now contained in the existing grazing regulations to the Bureau Manual sections relating to grazing administration, particularly where such detail does not contribute to an understanding of the regulations but, instead, consists of technical or procedural guidelines for field offices responsible for grazing administration. These manual sections are public documents which are available for public review upon request. Specific sections of the existing regulations that will be transferred to the Bureau Manual will be identified in the discussion of those sections.

Numerous comments expressed the concern that removal of references to land use planning from specific sections of the regulations would limit public involvement in land-use planning and reduce the Bureau of Land Management's compliance with the statutory requirement for multiple use management of the public lands. Removal of references to land-use plans is consistent with efforts to eliminate repetitive provisions from the regulations. In addition, 43 CFR 1600 and the Federal Land Policy and Management Act require grazing administration to be consistent with land-use planning. Deletion of numerous references to planning from the regulations does not negate the Bureau of Land Management's responsibility to comply fully with the requirements for land-use planning. These requirements specify that all uses of the public lands be considered within the context of multiple use, and that the planning process provide adequate opportunities for public participation.

The final rulemaking, however, amends the proposed rulemaking to reaffirm the Bureau of Land Management's intent to conduct land-use planning as required by law. A reference to land use plans is included within the "Objectives" section and references to land use planning have been retained in sections 4120.1—Allotments and 4130.2(d)(3)—Grazing Permits or Leases. These references affirm that land use planning is the primary method for determining the balance of resource uses that will best satisfy the requirement for multiple use of the public lands.

Comments also expressed a general concern about the proposal to remove from the existing regulations the section outlining the specific requirements of Rangeland Program Summaries. After considering the comments received, it was decided that transferring this section to the appropriate Bureau Manual section complied with efforts to remove administrative detail from the regulations, while not affecting the program itself.

Specific Comments

Objectives, § 4100.0–2–Several comments expressed the view that the existing language was negative in tone, and unfairly portrayed the resources as needing protection from livestock grazing. The Taylor Grazing Act, the Federal Land Policy and Management Act, and the Public Rangelands Improvement Act all refer to protection of the rangeland resources, including the prevention of injury caused by overgrazing.

To ensure that the Objectives section fairly represents legislative intent, the final rulemaking modifies the objectives to include specific language taken from these laws, and to reflect the Department of Interior's intention to deter unauthorized use of rangeland resources.

Definitions, § 4100.05—The proposed rulemaking would have modified three definitions, deleted one definition, and added two new definitions to the existing regulations. Comments received on the proposed rulemaking offered several modifications to proposed definitions, and suggested changes to other existing definitions. Each comment was reviewed, and several changes were made to proposed or existing definitions in response to the comments.

The final rulemaking retains the definition of the term "Allotment Management Plan" set forth in the proposed rulemaking, but removes subparagraphs describing the detailed provisions of such plans. These subparagraphs will be transferred to the Bureau Manual as part of the streamlining of the existing regulations.

The final rulemaking modifies the new term, "certified actual use," which was included in the proposed rulemaking to provide managers with certified information concerning the amount of use made by livestock during the grazing period. Most comments expressed the view that the proposed definition was satisfactory, but some expressed concern that certified use reports could possibly be used as the basis for actions against unauthorized use. One comment indicated that the proposed rulemaking, as written, could result in misinformation because it required certification on the basis of animal unit months and permittees and lessees were not trained to compute use in animal

unit months. In response to this comment, the final rulemaking removes the reference to AUM's from the definition. This amendment does not remove the provision that the permittee or lessee may be required to submit a certified actual use report of the livestock use made under the permit or lease.

Several comments were received suggesting various changes to the definition of "consultation, cooperation and coordination" in the proposed rulemaking. Although these comments were carefully considered, they were not adopted as final rulemaking.

One respondent recommended that the term "grazing preference" be additionally defined as "a right to the privilege of grazing." Although the Taylor Grazing Act and the Federal Land Policy and Management Act both provide that existing holders of permits or leases shall normally receive preference in the renewal of permits or leases, these laws also give the Secretary of the Interior the authority to revoke these privileges under certain circumstances. In addition, Section 3 of the Taylor Grazing Act specifies that issuance of a permit (or lease) pursuant to the provisions of the Act "shall not create any right, title, interest, or estate in the land." Thus, adoption of this recommendation would be inconsistent with the law.

One comment recommended a change in the term "indigenous animal." The definition has not been changed; however, the final rulemaking does include revisions to § 4130.4–4 and § 4140.1 which relate to indigenous animals.

The term "monitoring" was also the subject of comments. Some comments indicated that the definition was not entirely consistent with the use of the term in the regulations, or that it might be confused with use supervision. The final rulemaking modifies the definition of monitoring to reflect these comments.

The proposed rulemaking removed the definition of "range betterment fund" from the existing regulations. Some comments recommended retention of the definition and additionally suggested it be modified to state that the fund should be devoted to on-the-ground improvements. Other comments interpreted the deletion of the definition and all reference to the range betterment fund from the regulations to mean the Bureau of Land Management would not comply with the law. The range betterment fund is mandated by the Federal Land Policy and Management Act and must be maintained by the Bureau of Land Management. References to this fund have been omitted from the final rulemaking as unnecessary.

Several comments received concerning the term "Range improvement" indicated the language was not consistent with that of the Public Rangelands Improvement Act. After reviewing these comments, this section was revised to reflect language taken directly from the Public Rangelands Improvement Act.

One comment was received suggesting that the definition of supplemental feed be revised to indicate that supplements may be supplied to complement grazing animal maintenance and/or management. The intent of this comment is reflected in the revised definition specifying that supplements are used for improved livestock and rangeland management, rather than to supplement range forage.

Comments were also received concerning the term "suspended preference". Most comments expressed a preference for a definition that focused on voluntary non-use by the operator. After consideration of these comments, it was decided that the term "suspended preference," as defined in the proposed rulemaking, should be retained because it more accurately describes the procedures used when a portion of the public land grazing use is suspended because forage is not available on a sustained yield basis. Temporary non-use is a voluntary adjustment. The final rulemaking, however, does add language to the term "suspension" to recognize that permittees or lessees may voluntarily request that portions of their active grazing preference be placed in suspension.

Base property, § 4110.2–1—The proposed rulemaking would have deleted the requirement that an applicant provide a legal description of the base property. Comments received recommended this language be retained because the authorized officer uses the legal description to determine if the applicant owned or controlled base property. Ownership or control of base property is required before the authorized officer can recognize or approve transfer of a grazing preference. As a result of the comments, this section has been retained in the final rulemaking.

Transfers of grazing preference, § 4110.2–3—Several comments were received on this section. Generally, they indicated that the existing process was cumbersome to follow. After careful consideration of these comments, the Bureau of Land Management removed procedural guidance from final regulations for the purposes of streamlining. The portions removed will be incorporated into the Bureau Manual.

Additional forage, § 4110.3–1—The comments received concerning this section varied widely. The proposed rulemaking alters the priority for allocating additional forage permanently available for livestock grazing, over and above the existing preference. The priority as proposed was to be: first, to the permittees in proportion to their contributions which resulted in this increase; and second, in proportion to the permittee's preference or to other qualified applicants.

Based on comments received during the comment period, the Bureau has placed "other qualified applicants" into a third priority, to emphasize that existing permittees would receive a higher priority. Several comments noted that this system of allocation creates incentives for investment in public lands and may lead to the creation or expectation of a vested interest in the public land. It is Bureau policy to encourage private investment in public lands, based on the assumption that such investment will create better stewardship practices on the public lands.

Permits for range improvements can be authorized under § 4120.6–3 of these regulations or through a cooperative agreement under § 4120.6–2 of these regulations. The range improvement permit acknowledges that a structure or facility is the property of the permittee. However, such ownership does not imply any interest, right, or title to the lands.

One comment noted that it was not clear whether the timing of the initial adjustment is dependent upon the availability of data or is based upon mutual agreement. Data gathering through monitoring efforts will be the primary method utilized to modify the allocation of forage to livestock.

Decrease in forage, § 4110.3–2—Public comments dealt with two proposed changes to paragraph (c) of this section. The first change would have allowed reductions to be implemented either through mutual agreement or by decision. Some of the comments received expressed concern that mutual agreements would not be open for public review, and therefore could not be contested. Other comments requested clarification of what is meant by mutual agreement. Following careful review of public comments, it was determined that even in the case of mutual agreement, the agreement should be open for public review. Therefore, the amendments provide for including the substance of the agreements in the Rangeland

Program Summary and subsequent updates, if appropriate.

The second change would allow authorized officers to issue decisions providing for monitoring to collect adequate, reliable data prior to the initiation of a five year adjustment period. This recognizes that a one-point-in-time survey or forage inventory without monitoring support is not considered adequate, reliable data to serve as a basis for forage allocation decisions.

Comments received indicated that, as written, the proposed rulemaking would permit arbitrary decisions, or decisions without adequate basis in fact. Other comments stated that decisions should not be issued at all until such time as adequate data were available, and that the data be acceptable to all affected parties rather than to just the authorized officer.

This paragraph has been reworded to clarify the intent of the proposed rulemaking. Decisions issued when adequate data are unavailable will specify the data needed and the procedures to be used for arriving at the adjustments in the livestock stocking rates. This provision allows BLM to commence the five year adjustment period when adequate, reliable data are available and to assure that needed adjustments are made in a timely manner.

One comment suggested that the Grazing Advisory Boards be involved in the adjustment process. The role of Grazing Advisory Boards is specifically defined in the Federal Land Policy and Management Act to advise and make recommendations on the development of Allotment Management Plans and the utilization of range betterment funds. Within the scope of allotment management planning, the District Manager can seek advice regarding management considerations such as stocking rates, seasons of use, grazing systems, etc. Although not specified in their charter, Grazing Advisory Boards can participate in the land use planning process, which leads to the issuance of grazing decisions.

Several commenters suggested retaining the provision that the initial adjustment shall be sufficient to achieve significant progress towards achieving the vegetation objectives set forth in the land use plan for the five year period. This phrase was not retained for two reasons. First, in some cases data will not be available to determine an initial level of adjustment needed to achieve identified vegetation objectives.

Second, in those cases where sufficient data exist to base an initial adjustment, the adjustment will be further modified through the use of monitoring data. Since the initial adjustment is simply a starting point for management, it is not always possible to determine the magnitude of an adjustment necessary to lead toward the achievement of vegetation objectives. Such information becomes apparent through the monitoring process.

Additional land acreage § 4110.4–1—Two commenters wanted to eliminate the discretionary authority of the authorized officer because such authority could be used arbitrarily. One commenter suggested that the deletion of the reference to land use planning left the authorized officer without guidance for making allocations of forage and if this reference was removed, the phrase "multiple use management objectives" should be substituted. The discretionary authority permitted the authorized officer refers only to a decision on whether a forage allocation will be made. If made, the regulation provides guidance to the authorized officer by requiring that any allocations shall be made based upon the factors listed at § 4110.5.

Decrease in land acreage § 4110.4–2—One comment stated that if grazing was canceled due to reduction of land available for grazing, the original grazing permittee should have preference to the grazing use if it is reinstated. Section 4110.5 specifies how such distribution shall be made, and notes that historical use shall be one of the factors considered in reallocating grazing use.

Several comments were also received concerning changing the provision of paragraph (b) of this section requiring a two year notification prior to cancellation of a grazing permit or lease in part as well as in whole, when public lands are disposed of or are devoted to a public purpose which precludes livestock grazing. Concern was expressed by some commenters that requiring two year notification for partial cancellation would unduly delay other uses of the land such as making additional lands available for community expansion purposes. In response to these comments, it was determined to return to the language in the original regulations, providing for a 2 year notification in the case of cancellation in whole.

Mandatory terms and conditions § 4120.2–1—The language of the proposed rulemaking was designed to conform paragraph (b) with language contained in section 402(e) of the Federal Land Policy and Management Act. Several comments were received stating that placing decisions in full force and effect granted excessive authority to the authorized officer and that any adjustments in grazing use should be made following consultation, coordination and cooperation with the affected parties. After careful consideration of these comments, it was determined that existing statutes grant authority to manage livestock and that authority is properly reflected in existing regulations which are being retained in the final rulemaking. The management authority contained in paragraphs (b) and (c) of the existing regulations is needed to allow the decision maker to adequately protect the public lands. The proposed change would excessively limit the authority given by statutes to protect the public lands and their users. The final rulemaking does delete the language contained in paragraph (b) on placing decisions in full force and effect.

As a result of this change, the procedures for applying full force and effect decisions will be placed in the Bureau Manual.

Other terms and conditions, § 4120.2–2—Paragraph (c) of this section was revised to include the phrase "for improved livestock and rangeland management" to acknowledge that placement of supplemental feed, including salt, can be used as a range management tool. Several comments were received concerning the proposed changes to paragraph (d) that would require livestock permittees to submit a certified actual use report within 15 days. Two commenters thought 15 days was too short; another thought that certification would not ensure an accurate report of use; a fourth felt that certifying actual use was burdensome. These comments were carefully considered. However, the language was retained because actual use reports must be as accurate as possible to support the Bureau's monitoring efforts. Under normal circumstances, 15 days should be adequate for certification.

Allotment management plans, § 4120.2–3—Some commenters expressed a concern that giving the authorized officer the authority to determine when allotment management plans may be developed was contrary to the intent of the Public Rangelands Improvement Act. The Department has determined that this is a proper delegation of Secretarial authority within the intent of the Public Rangelands Improvement Act of 1978. Section 8 of this act conveys discretionary authority for the Secretary to develop allotment management plans, and if he elects to do so, it requires consultation, cooperation and coordination among all affected parties

concerning the development of such plans.

Temporary modifications and closures to livestock use, § 4120.3—Proposed rulemaking modified this section by removing procedural detail that belongs more appropriately in the Bureau Manual. Comments received generally were in agreement with the proposed language. One comment suggested that paragraph (a)(3) be retained as needed guidance for the authorized officer. This recommendation was accepted and is incorporated in final rulemaking. Another commenter suggested that paragraph (a)(4) be retained and modified to allow ranchers five to ten days to remove livestock affected by the closure. This suggestion was not adopted because this section addresses emergency situations, such as fire, flood, insect infestation or drought, that require immediate action. Consequently, decisions made under this section are implemented under full force and effect provisions.

Ownership and control of livestock, § 4120.4—One commenter recommended that all language after the first sentence be deleted. This recommendation was not adopted because it would substantially bypass the statutory requirement to manage public lands in the public interest, and to administer livestock grazing on the public lands. Other commenters suggested that any identifying marks on livestock should be in compliance with state law. These suggestions were not accepted because of the substantial variation among states concerning appropriate identification and the fact that in some cases, grazing activity occurs across state boundaries. BLM does recognize state livestock identification practices and procedures and relies upon these for identification of livestock on the public lands. The proposed regulations will be adopted as final rulemaking.

Conditions for range improvements, § 4120.6–1—Three commenters stated that the word "install" should not be deleted from paragraph (c) because this authority is needed to assure that terms and conditions are adhered to, particularly in allotments where there are two or more permittees or lessees. This suggestion was adopted by including it as a separate paragraph (d) to emphasize its applicability to allotments with two or more permittees or lessees and to assure that the terms and conditions of an agreement are met.

Several commenters opposed deletion of existing paragraph (e) of this section which deals with the distribution and use of range betterment funds. The expenditure of these funds is governed by statute and need not be repeated in regulations to assure BLM's compliance with existing law. Removal also contributes to streamlining the regulations.

Cooperative agreements, § 4120.6–2—One commenter suggested that credit in the title to a rangeland improvement be given in proportion to the investment made by a permittee or lessee in a rangeland improvement constructed under cooperative agreement. This suggestion is not adopted at this time because procedures for determining what portion of the improvement vests in the Federal government and what portion vests in a permittee or lessee may involve unforseen administrative difficulties. This comment will be fully considered at a later date. Section 4120.6–3 provides for issuing a range improvement permit which allows a permittee or lessee to construct a removable range improvement with total private funding, and retain full title to that improvement.

Range improvement permits, § 4120.6–3—One commenter requested that paragraph (c) of this section be revised so that redesignation of base waters could only be done with the permission of the permittee and with the concurrence of the water base owner. This suggestion was not adopted because the Bureau of Land Management needs to retain the capability to redesignate livestock use areas to achieve multiple use objectives.

Standards, designs and stipulations, § 4120.6–4—Several comments were received which opposed the Bureau's authority to require modification of existing improvements. This provision was retained because the Bureau of Land Management by law is required to provide for multiple use of the public lands and to accomplish multiple use objectives. In some cases, modifications to existing improvements may be necessary to assure the improvement is compatible with other uses.

Assignment of range improvements, § 4120.6–5—One commenter thought that this section should be deleted and range improvements should transfer automatically with the transfer of a permit. This suggestion was not adopted. Such assignment is necessary for the protection of an existing permit holder's interest in rangeland improvements, as required by the Taylor Grazing Act.

Removal and compensation for loss of range improvements, § 4120.6–6—One commenter thought that the language in paragraph (a) of this section requiring prior authorization for removal of range improvements amounted to confiscation of private property. No change was made in response to this comment. The requirement for prior authorization for installation or removal of an improvement is necessary to ensure that such action does not conflict with multiple use objectives, and that necessary rehabilitation measures are performed.

One commenter suggested deletion of paragraph (b) concerning installation and removal of range improvements when the improvement no longer serves the purpose for which it was originally installed. The commentor stated that ". . . there is no statutory authority to force an individual to remove improvements." The Taylor Grazing Act and the Federal Land Policy and Management Act provide the Bureau with the authority to regulate the use of the public lands. Removal or modification of range improvements are consistent with the intent of existing law.

One commenter suggested that paragraph (c) of this section be revised to require that permittees or lessees receive fair market value from the United States for their interest in authorized rangeland improvements when the public lands are no longer available for grazing purposes. The regulation presently provides that permittees or lessees shall receive fair market value, less salvage value, for their interest in authorized range improvements on the public lands. This results in the permittee or lessee receiving fair market value.

One commenter suggested that paragraph (c) of this section be retained, but modified to remove the phrase "less salvage value." This suggestion was not adopted because, unless salvage value is substracted from the market value of the existing improvement, the Federal government would be reimbursing the permittee or lessee for an improvement in excess of its fair market value.

Two comments were received that addressed paragraph (d) of this section. One commenter requested the words "in this removal" be added at the end of the paragraph. The intent of this comment was adopted because it clarifies that any rehabilitation measures deemed necessary by the authorized officer must be directly associated with the removal of a specific improvement. Another commenter stated that the Bureau of Land Management's authority to require rehabilitative measures following removal of an improvement was a "repressive regulation without statutory authority." No changes were made in response to this comment because laws applicable to public land management mandate the Bureau shall manage the

public lands in a manner that will protect and improve the environment.

Special rules, § 4120.8—Several commenters responded to the proposed revision of this section by recommending retention of the provision requiring that special rules be published in a local newspaper. This recommendation was adopted to reflect the Bureau of Land Management's intent to provide adequate public notice to all persons potentially affected by any special rule.

Grazing permits or leases, § 4130.2—One commenter suggested that paragraph (a) of this section be modified to allow for grazing permits or leases to be issued for a term "not less than nor to exceed" 10 years. This suggestion was not adopted because the Federal Land Policy and Management Act recognizes specific conditions exist that warrant the issuance of a permit or lease for a period shorter than 10 years. One commenter thought that the proposed amendments to paragraph (b) of this section removed the authority to authorize nonuse. No changes were made in response to this comment because reference to this authority is contained in the opening paragraph of Section 4130.1. Two commenters recommended removal of paragraph (c), of section 4130.2 which specifies that "grazing permits or leases convey no right, title, or interest held by the United States in any lands or resources." Since this provision is specifically mandated by Section 3 of the Taylor Grazing Act, this recommendation was not adopted. A few comments suggested that the proposed removal of subparagraph (d)(2) of this section deleted guidance to the authorized officer. These comments were not adopted because the Federal Land Policy and Management Act lists specific conditions under which permits or leases can be issued for periods of less than 10 years. Guidance to the authorized officer for complying with these specific conditions will be provided through the Bureau Manual.

A comment was received concerning subparagraph (d)(3) of this section, suggesting that it be revised by substituting the word "may" for "shall". This comment was not adopted because where such changes are required by land use planning, the Bureau's authority is non-discretionary, and decisions reached through the land use planning process cannot be modified except through amendment to the land use plan. One commenter thought that all of paragraph (d) violated congressional intent. Since all provisions of paragraph (d) are derived from statutory authority, no changes were made in response to this comment.

Other grazing authorizations, § 4130.4–4—One comment received in relation to section 4130.4–1(b) suggested the insertion of additional language to clarify the original purpose for agreements for exchange-of-use outside allotments. This subpart has been modified in the final rulemaking to emphasize that lands outside of allotment boundaries may be included in an exchange-of-use agreement, but only where it would meet multiple use objectives for the public lands. Another commenter wanted a provision in this subpart stating that State agencies would be notified whenever a permittee or lessee offered State lands for an exchange-of-use agreement. This provision would be more appropriately addressed through the Bureau Manual and, consequently, the suggestion was not adopted. Another commenter stated that all of Section 4130.4–1 should be deleted, because its provisions were not covered by statutory authority. No changes were made in response to this comment because it was determined that the statutory authority to manage and improve the public lands for multiple use provided the Bureau with the capability to authorize actions which would contribute to achievement of multiple use objectives.

Special grazing permits or leases, § 4130.4–4—One comment was received suggesting that the phrase "land use plans" be deleted and replaced by "multiple-use objectives." This suggestion was adopted.

Payment of fees, § 4130.5–1—Numerous comments were received on this section. One commenter requested that the definition of an Animal Unit Month be revised and variable conversion rates be established, based on the kind, class, and age of animal. This suggestion was not adopted because billings would become extremely complex, and it would be impossible to ensure that the livestock being grazed conformed with those for which the grazing fee had been assessed. In addition, the Bureau already takes these factors into consideration when determining livestock stocking rates for public land areas.

Another commenter suggested that the minimum fee of ten dollars be deleted. This suggestion was not adopted because the provision meets the need to recover administrative costs associated with a grazing permit, and is in support of the Department of Interior's program of maximizing cost recovery.

Several individuals suggested that billings be after-the-fact, both in areas covered by allotment management plans and areas not covered by such plans. After consideration of the comments, it was determined not to adopt this suggestion for two reasons. First, allowing after-the-fact billing in allotment management plan areas was provided as an incentive to encourage permittees and lessess to participate in the development of intensive management plans. Government regulations generally require payment in advance for goods or services provided by the government. A waiver had to be obtained from the Office of Management and Budget to allow for even limited after-the-fact billing in the case of allotment management plans. Second, the interest receipts that would be lost to the government cannot be justified, particularly in view of Federal efforts to offset government expenses and maximize returns.

One commenter recommended that the language in paragraph (f) of this section be retained in order to assure compliance with existing law concerning deposit of fifty percent of grazing fee receipts in a separate account in the Treasury for the range improvement program. This provision was deleted as part of the streamlining of the regulation. The Bureau is still obligated by law to place these monies in a separate account in the Treasury.

Refunds, § 4130.5–2—One comment was received on this section, asking that the word "may" be changed to "shall" to remove the discretionary authority of the authorized officer to refund grazing fees when a permittee or lessee applies for a refund prior to the period of use for which a grazing fee has been paid. This comment was considered but not adopted because the Taylor Grazing Act authorizes the refunding of fees only under specified emergency conditions.

Service charge, § 4130.5–3—Several comments were received on this section. Most requested clarification of how fees would be assessed because of variations among Districts, or asked that a set fee be established. After consideration of these comments, the proposed rulemaking was modified to clarify that a Bureauwide Service Charge would be established, and that a service charge would only apply to supplemental billing notices, transfers of grazing preference and crossing permits. The service charge would not apply to original billings or actions initiated by the authorized officer.

Changes in grazing use, § 4130.6—One comment was received concerning changes in grazing use. The commenter

requested that the word "may" be replaced by "shall". After consideration of this suggestion, the Department determined that "may" should be retained since the authorized officer must consider whether the changes in grazing use as applied for are consistent with multiple use objectives.

Pledge of permits or leases as security for loans, § 4130.7—One comment suggested that only the first sentence of this section be retained. This suggestion was not adopted because the language is required to clearly state the fact that grazing permits are a privilege and not a right, and that the Secretary retains the right to modify or revoke such permits or leases as needed to provide for the management of public lands, or to allow the lands to be devoted to other public purposes.

Acts prohibited on public lands, § 4140.1—Several comments interpreted the provisions of paragraph 1(b) of this section to mean that persons committing prohibited acts could be made subject to both civil and criminal penalties, and could be prosecuted under Title 18 and suffer loss or reduction of privileges under section 4170. These provisions are specifically provided for under the Federal Land Policy and Management Act and the legal question of double jeopardy is not applicable on this point. The issue raised by this comment will be further considered by the Solicitor at a later date. Authorization for public land use is granted at the discretion of the Secretary of the Interior, and the Department reserves the right to examine the activities of users of the public lands to determine whether this use should continue to be granted, especially in the case of an individual who has violated a statute.

Several other commenters requested deletion of various prohibited acts because they thought they were redundant or exceeded statutory authorities. These comments were not adopted because the authority is established by the Taylor Grazing Act and the Federal Land Policy and Management Act to pursue violations of these acts. Further, publication of these prohibited acts as part of regulations emphasizes which acts are prohibited and is intended to prevent and discourage such acts.

Notice and order to remove, § 4150.2—Two comments were received suggesting that the language be revised to cover the situation where it is "known" that a violation exists rather than where it "appears" that a violation exists. This suggestion was not adopted because it requires prejudging that a violation has occurred and would deny an alleged violator the right to present evidence to the contrary.

One commenter indicated that the proposed language appeared to remove the authorized officer's authority to place decisions in full force and effect in an emergency situation. This authority is provided for in §§ 4120.3 and 4160.3 of these regulations.

One comment recommended retention of the provision for notifying a lienholder when it appears a violation exists. A second comment recommended removing this provision because it would appear to create uncertainty on the part of the lienholder. After consideration of these comments, specific procedures for notification of lienholders concerning violations will be placed in the Bureau Manual and have been deleted from this section as well as other sections of the regulations.

One comment objected to the use of the term "specified time" to remove livestock. It was determined that the use of the term "specified time" provided sufficient flexibility to accommodate individual requirements. The final rulemaking includes a sentence under paragraph (a) to acknowledge that the "Notice and Order to Remove" shall also allow a specified time for the alleged violator to show that there has been no violation or to make settlement. The purpose is to allow the alleged violator due process.

Settlement, § 4150.3—Several comments were received that supported an increase in fines for unauthorized use. Several other comments objected to increases in settlement costs, particularly in cases of nonwillful unauthorized use. Since nonwillful violations may occur because of the actions of other public land users, the comments expressed the view that the increased assessments in the proposed rulemaking were punitive or unduly harsh.

Increased settlement charges of three times the value of the forage consumed for willful or repeated willful violations have been retained as proposed because it is believed that these settlement charges will act as a deterrent to unauthorized use. All expenses incurred by the United States in cases necessitating impoundment of livestock are included in settlement costs for all categories of unauthorized use because impoundment action is taken only when an alleged violator refuses to remove the livestock following notification, or the owner of the livestock is unknown.

In these cases, the costs of impoundment result from the negligence of the alleged violator, and are therefore an obligation of the livestock owner and included in settlement charges.

In response to comments concerning settlement for nonwillful violations, the final rulemaking modifies this section to recognize that isolated instances of nonillful unauthorized use do occur and should be assessed at the value of the forage consumed, as specified under section 4150.3(a)(1). In addition, a new category of unauthorized use called "repeated nonwillful" has been developed in the final rulemaking to handle situations where permittees or lesses fail to take actions which would prevent reoccurrence of nonwillful use. Settlement charges for repeated nonwillful use will be assessed at twice the value of the forage consumed.

Impoundment and disposal, § 4150.5, redesignated as § 4150.4—Comments received on this section requested that the time period between notification and impoundment of livestock, as specified in 4150.5–1 and 4150.5–2, be increased from 5 to 10 days. These comments were not adopted because it was determined that 5 days are adequate for the livestock owner to remove unauthorized livestock from the public lands. One comment recommended several subparagraphs be removed from the section and replaced by a statement that the Bureau of Land Management would comply with appropriate State laws and regulations affecting impoundment and disposal of livestock. The authorized officer, in exercising discretionary authority, can follow State law when deemed appropriate. The current regulations state, when a suitable agreement with the State is in effect, the Bureau may turn the impounded livestock over to the State for disposal. Two comments specifically addressed the need to retain language authorizing reoffering of impounded livestock for sale, or destroying the livestock, if satisfactory bids were not received during the original sale offer. Final rulemaking adopts this suggestion to ensure that, when sold, a fair market price is received for the livestock.

Closure to control unauthorized grazing use, § 4150.6—Numerous comments were received recommending that this section be retained. The concerns expressed were that the Bureau of Land Management needed to retain closure authority to control chronic unauthorized use problems and to take action when emergency measures were needed for resource protection. No changes were made in response to these comments because emergency closure authority is provided under section 4120.3. The Bureau has strengthened its ability to address

chronic unauthorized use problems by increasing settlement charges for such use under section 4150.2 and by providing authorized officers with the additional authority to take action under section 4170 of these regulations.

Proposed decisions on permits and leases, § 4160.1—Final rulemaking amends proposed changes to the opening paragraph of this section that would have erroneously limited the issuance of decisions to only actions on applications for permits or leases. Numerous comments were received on paragraph (a) of this section concerning the proposed deletion of procedural requirements for the Rangeland Program Summary and appropriate Updates. Commentors also expressed the view that a "summary document" would not fulfill the requirement for a Rangeland Program Summary. The final rulemaking does not reverse the Bureau of Land Management's commitment to publishing a document summarizing land-use planning decisions affecting specific areas of the rangeland. Rather, the intent is to provide sufficient flexibility concerning the name of the documents that have the major purpose of summarizing rangeland programs.

The proposed rulemaking would have deleted the requirement for updates to the summary document. In response to numerous comments indicating this deletion would restrict public participation in the Bureau of Land Management's decisionmaking process, the final rulemaking reestablishes the requirement for preparation of appropriate updates.

The final rulemaking does not modify the proposed removal of procedural detail concerning information that should be included in summary documents and updates. This administrative detail will be transferred to the Bureau Manual as part of the effort to streamline these regulations.

One comment received on paragraph (b) of this section recommended the word "shall" be changed to "may" in the opening sentence to indicate that grazing decisions need not include all items listed. The final rulemaking does not incorporate this suggestion because such modification would dilute the authority necessary for proper administration of grazing use.

Proposed decisions on alleged violations, § 4160.1–2—One comment suggested the protest period be extended from 15 to 30 days. This comment was not adopted because the Department of the Interior determined that 15 days are adequate for a permittee or lessee to file a written protest or to have a verbal protest accepted and recorded. Another comment requested that final rulemaking delete notification of a lienholder when proposed decisions are issued. The concern was that such notification would raise unnecessary doubts in the mind of the lienholder concerning the managerial ability of the livestock operator. Final rulemaking does not incorporate this suggestion.

Protests, § 4160–2—The final rulemaking amends a proposed change that would have unintentionally limited protests to decisions on violations only. The correct provision is that adversely affected interests may protest proposed decisions under section 4160.1 of these regulations.

Final decisions, § 4160.3—The final rulemaking modifies the proposed rulemaking by inserting the word "known" in subparagraph (b) of this section to clarify that authorized officers are required to serve final decisions to "known affected interests". This change clarifies that an authorized officer cannot issue final decisions to all affected interests unless they make themselves known.

Numerous comments expressed the concern that the proposed removal of the procedural guidance for issuing full force and effect decisions would leave the Bureau of Land Management without the authority needed to issue such decisions. The Bureau retains this authority under paragraph (c) of this section. Procedural guidance will be placed in the Bureau Manual as part of the effort to streamline these regulations.

The final rulemaking clarifies the revisions made to the existing paragraph (e), by changing the phrase "5-year phased-in decision" to "5-year implementation schedule". This change was made to clarify that the adjustments in grazing use (either suspensions or increases) would be made through the issuance of separate decisions over a five year period, in years 1, 3, and 5. In addition, this section was modified to reflect that the decisions issued in the fifth year of a 5-year implementation schedule may be placed into full force and effect.

Two comments expressed the view that the regulations should provide for reimbursement of economic losses suffered by permittees or lessees on a reversal of a full force and effect decision that has been appealed. The final rulemaking does not incorporate this suggestion. Adequate legal recourse is already available to persons wanting compensation for losses incurred as a consequence of administrative actions.

Penalty for violations, § 4170.1–1—A number of comments were received addressing the potential for double jeopardy. One comment expressed the view that only the courts, and not federal agencies, should be able to assess penalty for violations of regulations. These comments have been previously responded to in this preamble, under the heading "Prohibited Acts on Public Lands".

Other changes, § 9264.1, is being amended to reflect changes made by this final rulemaking in subpart 4140. Section 9264.1 is a simple restatement of the prohibited acts that may be subject to criminal penalties set out in subpart 4140 and is, therefore, administrative. Editorial corrections have been made as needed and some wording has been added to improve the clarity of the regulations.

The principal author of this final rulemaking is Ronald B. Wenker, Division of Rangeland Resources, Bureau of Land Management, assisted by the Office of Legislation and Regulatory Management.

The Department of Interior has determined that this document is not a major rule under Executive Order 12291. This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354). The purpose of the rulemaking is primarily to streamline existing regulations and procedures, and will affect all individuals or entities in a similar manner. The information collection requirement contained in § 4120.6–1 has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0068.

List of subjects

43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management.

43 CFR Part 9260

Continental shelf, Forest and forest products, Law enforcement, Penalties, Public lands, Range management, Recreation, Wild horses, Wildlife.

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315(a)–(r), Section 4 of the Act of August 28, 1937 (43 U.S.C. 1181(d)) and the Federal Land Policy and Management Act of 1976, as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1701 et seq.), Part 4100, Subchapter D and Part 9260, Subchapter I, Chapter II of Title 43 of the

Code of Federal Regulations are amended as set forth below.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

August 12, 1982.

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

1. Insert immediately above the heading, Part 4100—Grazing Administration—Exclusive of Alaska:

Note.—The information collection requirements contained in 43 CFR Part 4100 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers: 1004–0005; 1004–0016; 1004–0019; 1004–0020; 1004–0041; 1004–0047; 1004–0048; 1004–0049; 1004–0051; and 1004–0068. The information is being collected to allow the authorized officer to determine if an application to utilize the public lands for grazing purposes should or should not be granted. This information will be utilized in making this determination. The obligation to respond is required to obtain a benefit.

2. Section 4100.0–2 is revised to read:

§ 4100.0–2 Objectives.

The objectives of these regulations are to enhance the productivity of the public rangelands by preventing overgrazing and soil deterioration; to provide for their orderly use, improvement and development; to stabilize the livestock industry dependent upon the public range; provide for inventory and categorization of public rangelands on the basis of range conditions and trends; consistent with land-use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in 43 CFR Subpart 1725; the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a–315r); section 102 of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1701 et seq.) and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.).

§ 4100.0–5 [Amended]

3. Section 4100.0–5 is amended as follows:

a. By removing the paragraph designations.

b. By revising the definition for "Allotment management plan" as follows:

"Allotment management plan (AMP)" means a document program which applies to livestock operations on the public lands, prepared in consultation, cooperation and coordination with the permittee(s), lessee(s) or other involved affected interests.

c. By adding in alphabetical order or revising the following definitions:

"Certified actual use" means a report of the actual livestock grazing use certified to be accurate by the permittee or lessee.

* * * * *

"Consultation, cooperation and coordination" means communication between the Bureau of Land Management, other agencies and affected permittee(s) or lessee(s), landowners involved, the district grazing advisory boards where established, any State having lands within the area to be covered by such an allotment management plan and other affected interests regarding the planning and preparation of management alternatives for the purpose of deliberation, the interchange of opinions, and the potential resolution of differences or disputes, which recognizes:

(1) The knowledge and experience of those involved or interested in the management of rangelands; and

(2) The Bureau of Land Management's ultimate authority to ensure the proper management and use of public lands;

* * * * *

"Grazing fee year" means the 12 month period used for billing purposes.

* * * * *

"Land use plan" means a planning decision document under the provisions of the Federal Land Policy and Management Act which establishes resource allocations and coordinated objectives and constraints for all forms of public land and resource use within the area covered by the plan;

* * * * *

"Livestock grazing capacity" means the number of animal unit months of forage available for livestock grazing on a sustained yield basis on the public lands.

* * * * *

"Monitoring" means the orderly collection of data to evaluate:

(1) Effects of management actions; and

(2) Effectiveness of actions in meeting management objectives.

"Range improvement" means any activity or program on or relating to rangelands, designed to improve production of forage; change vegetative composition; control patterns of use; provide water; stabilize soil and water conditions; and provide habitat for livestock and wildlife.

* * * * *

"Supplemental feed" means concentrates or harvest feed supplied for improved livestock and rangeland management.

* * * * *

"Suspension" means temporarily withholding, in whole or in part, grazing use authorized under a grazing permit, lease or other grazing use authorization. The withholding may be voluntary by the permittee or lessee."

d. By removing the definition for "Range betterment fund".

§ 4110.2–3 [Amended]

4. Section 4110.2–3 is amended by:

a. Removing paragraph (a)(2) in its entirety;

b. Redesignating paragraph (a)(3) as paragraph (a)(2);

c. Redesignating paragraph (a)(4) as paragraph (a)(3) and removing the last sentence of the subparagraph; and

d. Redesignating paragraph (a)(5) as paragraph (a)(4).

e. Revising paragraph (b) to read:

* * * * *

(b) If base property is sold or leased, the transferee shall within 90 days of the date of sale or lease file with the authorized officer a properly executed transfer application showing the base property and the amount of grazing preference being transferred in animal unit months.

* * * * *

f. Amending paragraph (c) by removing all after the first sentence of the paragraph.

g. Redesignating paragraphs (d) through (f) as paragraphs (e) through (g) respectively.

h. Adding a new paragraph (d) to read:

* * * * *

(d) If the transfer application was properly filed and met the requirements under paragraph (a) of this section, the authorized officer may approve the transfer and may issue a grazing permit or lease.

* * * * *

§ 4110.2–4 [Amended]

5. Section 4110.2–4 is amended by removing in the second sentence the word "applicant" and inserting the words "preference holder".

§ 4110.3 [Amended]

6. Section 4110.3 is amended by removing the text. However, the section heading remains in place.

§ 4110.3–1 [Amended]

7. Section 4110.3–1 is amended by:

a. Revising the introductory paragraph to read:

Additional forage may be allocated to qualified applicants for livestock grazing use consistent with multiple-use management objectives.

* * * * *

b. Revising paragraphs (c)(1) and (c)(2) and adding paragraph (c)(3) to read:

(c) * * *

(1) Permittee(s) or lessee(s) in proportion to their contribution or efforts which resulted in increased forage production; or

(2) Permittee(s) or lessee(s) in proportion to their preference; or

(3) Other qualified applicants under § 4110.5 of this title.

* * * * *

c. Revising paragraph (d) to read:

* * * * *

(d) Permanent increases in allocations of livestock forage shall be implemented over a period not to exceed 5 years, except that increases of 15 percent or less of the authorized active use for the previous year shall be phased in over a period of less than 5 years. The authorized officer may subsequently modify (either increase or decrease) such allocation of forage to livestock based on the results of monitoring.

* * * * *

§ 4110.3-2 [Amended]

8. Section 4110.3-2 is amended by:

a. Revising paragraph (b) to read:

* * * * *

(b) When authorized grazing use, which includes active use and any approved nonuse, exceeds the amount of forage available and allocated for livestock grazing within an allotment, or where reduced grazing use is necessary to facilitate achieving multiple-use management objectives for the allotment, the authorized grazing use shall be reduced to the livestock grazing capacity. The difference between the authorized grazing use and the grazing preference shall be held in suspension.

* * * * *

b. Revising paragraph (c) to read:

* * * * *

(c) Provisions in paragraph (b) of this section shall be implemented over a 5-year period through mutual agreement documented in the Rangeland Program Summary, or by decision. If data acceptable to the authorized officer are available, an initial reduction shall be taken on the effective date of the decision and the balance taken in the third and fifth years following that effective date, except as provided in paragraph (d) and (e) of this section. If data acceptable to the authorized officer to support an initial reduction are not available, a decision will be issued identifying the data needed and procedures to be used for arriving at the adjustments in authorized grazing use. Adjustments based on the additional data shall be implemented by a decision that will initiate the 5 year implementation period.

* * * * *

c. Amending paragraph (d) by removing the word "interest" and replacing it with the word "interests".

9. § 4110.3-2(e) is amended by revising the last sentence in paragraph (e) to read:

"* * * However, such new decision shall not extend an implementation period established in the original decision."

10. Section 4110.4-1 is revised to read:

§ 4110.4-1 Additional land acreage.

When lands outside designated allotments become available for livestock grazing under the administration of the Bureau of Land Management, the livestock forage available may be allocated to qualified applicants at the discretion of the authorized officer. Grazing use shall be allocated under § 4110.5 of this title.

§ 4110.5 [Amended]

11. Section 4110.5 is amended by revising the introductory paragraph to read:

When more than one qualified applicant applies for livestock grazing use of the same public land and/or where additional livestock forage or additional acreage becomes available, the authorized officer may allocate grazing use of such land or forage on the basis of § 4110.3-1 of this title or on the basis of any of the following factors:

* * * * *

§ 4120.2-1 [Amended]

12. Section 4120.2-1(b) is amended by removing the phrase "and shall be put into full force and effect on the date specified by the authorized officer. See § 4110.3-2."

* * * * *

§ 4120.2-2 [Amended]

13. Section 4120.2-2 is amended by:

a. Removing in the opening paragraph, the words "achieving objectives identified in land use plans," and replacing them with the words "achieving management objectives,"; and

* * * * *

b. Revising paragraphs (c) and (d) to read:

* * * * *

(c) Authorization to use, and directions for placement of supplemental feed, including salt, for improved livestock and rangeland management on the public lands;

(d) A requirement that permittees or lessees, operating under a grazing permit or lease, submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, the certified actual use made;

* * * * *

§ 4120.2-3 [Amended]

14. Section 4120.2-3 is amended by:

a. Revising the opening paragraph to read:

If the authorized officer elects to develop an allotment management plan, the following provisions apply:

* * * * *

b. Revising paragraph (a) to read:

* * * * *

(a) An allotment management plan shall be prepared in careful and considered consultation, cooperation and coordination with affected permittee(s) or lessee(s), landowners involved, the district grazing advisory boards where established, any State having lands within the area to be covered by such an allotment management plan and other affected interests. Allotment management plans shall be implemented when approved by the authorized officer (see § 4100.0-5(d) of this title). The allotment management plan shall include terms and conditions under § 4120.2-1 of this title, and shall prescribe a system of grazing designed to meet specific multiple-use management objectives. The plan shall specify the limits of flexibility within which the permittee or lessee may adjust their operations without prior approval of the authorized officer. The plan shall provide for the collection of data that shall be used to evaluate the effectiveness of management actions in achieving the specific multiple-use management objectives of the plan.

* * * * *

c. Amending paragraph (c) by removing the words "parties involved" and replacing them with the words "affected interest."

d. Revising paragraph (e) to read:

* * * * *

(e) Permittees or lessees operating under a grazing permit or lease incorporating an allotment management plan shall, within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, submit a certified actual use report.

* * * * *

§ 4120.3 [Amended]

15. Section 4120.3 is amended by replacing the semicolon at the end of paragraph (a)(3) with a period and by removing paragraphs (a)(4), (a)(5), (b) and (c) in their entirety.

§ 4120.4 [Amended]

16. Section 4120.4(a) is amended by removing all of the paragraph except the first sentence.

§ 4120.6–1 [Amended]

17. Section 4120.6–1 is amended by:

a. Removing from paragraph (a) the phrase "land use plans." and replacing it with the phrase "multiple use management.";

b. Removing the word "install" in paragraph (c) and by adding after the words "public lands", the phrase "under § 4120.2–2 of this title.";

c. Removing paragraph (e) in its entirety.

d. Redesignating paragraph (d) as paragraph (e); and

e. Inserting a new paragraph (d) to read:

(d) The authorized officer may require a permittee or lessee to install range improvements on the public lands in an allotment with 2 or more permittees or lessees and/or to meet the terms and conditions of an agreement.

§ 4120.6–3 [Amended]

18. Section 4120.6–3 is amended by inserting in paragraph (c) the word "those" after the words "under § 4110.2–1 of this title and".

19. Section 4120.6–4 is revised to read:

§ 4120.6–4 Standards, design and stipulations.

Range improvement cooperative agreements and permits shall specify the standards, design, construction and maintenance criteria for the range improvements and other additional conditions and stipulations or modifications deemed necessary by the authorized officer. Where an existing range improvement is significantly inconsistent with established design criteria, the authorized officer may require such improvement be improved or modified to meet established standards through modification of the cooperative agreement or permit. The authorization for improvements may be cancelled for failure to comply with such criteria.

§ 4120.6–6 [Amended]

20. Section 4120.6–6 is amended by removing from paragraph (c), after the words "If grazing permits or", the word "grazing".

21. Section 4120.6–6(d) is revised to read:

* * * * *

(d) Permittees or lessees may be allowed a period of 180 days from the date of cancellation of a range improvement permit to salvage material owned by them and perform rehabilitation measures necessitated by the removal.

22. Section 4120.8 is revised to read:

§ 4120.8 Special rules.

When a State Director determines that local conditions require a special rule to achieve improved administration consistent with the objective of this part, the Director may approve such rules. The rules shall be subject to public review and comment, as appropriate, and upon approval, shall become effective when published in the **Federal Register** as final rules. Special rules shall be published in a local newspaper.

§ 4130.2 [Amended]

25. Section 4130.2 is amended by:

a. Revising paragraph (b) to read:

* * * * *

(b) Grazing permits or leases shall be issued to authorize livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management. These grazing permits or leases shall specify terms and conditions as required by § 4120.2 of this title.";

* * * * *

b. Amending paragraph (d)(1) by removing the words "BLM control" and replacing them with the words "the administration of the Bureau of Land Management";

c. Revising paragraph (d)(2) to read:

* * * * *

(d) * * *

(2) Exceptions to the issuance of a grazing permit or lease for a term of 10 years shall be made on a case-by-case basis.";

* * * * *

d. Revising paragraph (e)(1) to read:

* * * * *

(e) * * *

(1) The lands remain available for livestock grazing in accordance with multiple use management (See § 4120.1 of this title)."

§ 4130.4 [Amended]

26. Section 4130.4 is amended by deleting the comma between the words "permits" and "or" where they first appear.

§ 4130.4–1 [Amended]

27. Section 4130.4–1 is amended by:

a. Revising paragraph (b) to read:

* * * * *

(b) The lands offered for exchange-of-use shall be within the exterior boundaries of the allotment, except lands outside such boundaries may be included only where it would meet multiple use objectives for the allotment.

* * * * *

b. Revising paragraph (d) to read:

* * * * *

(d) The exchange-of-use grazing agreement may be issued for a term of not more than 10 years.

* * * * *

28. Section 4130.4–2 is revised to read:

§ 4130.4–2 Nonrenewable grazing permits and leases.

Nonrenewable grazing permits or leases may be issued on an annual basis to qualified applicants when forage is temporarily available, provided this use is consistent with multiple-use objectives and does not interfere with existing livestock operations on the public lands.

§ 4130.4–4 [Amended]

29. Section 4130.4–4 is amended by removing the phrase "land-use plans" and replacing it with the phrase "multiple-use objectives."

§ 4130.5–1 [Amended]

30. Section 4130.5–1 is amended by:

a. Revising paragraph (a) to read:

(a) Grazing fees shall be established annually by the Secretary based upon the grazing fee formula in the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901).

* * * * *

b. Revising paragraph (c) to read:

* * * * *

(c) Fees shall be charged for livestock grazing upon or crossing the public lands and other lands administered by the Bureau of Land Management at a specified rate per animal unit month. A minimum annual fee of $10 shall be charged for livestock grazing upon these lands.

* * * * *

c. Revising paragraph (e) to read:

* * * * *

(e) Fees are due upon issuance of the billing notice and shall be paid in full prior to grazing use except where an allotment management plan providing for later payment has been incorporated in a grazing permit or lease. In such cases, a billing notice based on certified actual use may be issued at the end of the grazing period or year, or a billing notice based on the normal operation may be issued prior to the grazing period or year followed by an adjusted billing notice based on certified actual use after grazing use has been completed. If a certified actual use report is not submitted, the amount due shall be based on grazing use at the upper limit of flexibility specified in the allotment management plan. Actual use billing privileges shall be cancelled by the authorized officer where the permittee or lessee fails or refuses to:

(1) Submit a timely certified actual use report: or

(2) Make timely payment upon issuance of a billing notice based upon a certified actual use report or, if the actual use report has not been submitted, the upper limit of flexibility specified in the allotment management plan.

In any event, the permittee or lessee, is not relieved of the responsibility for submitting a certified actual use report under § 4120.2–3(e) of this title.

* * * * *

d. Removing paragraph (f) and the citation of authorities immediately following it in their entirety.

§ 4130.5–2 [Amended]

31. Section 4130.5–2 is amended by:

a. Amending paragraph (a) by removing the phrase "at the discretion of the authorized officer"; and

b. Amending paragraph (b) by inserting in the last sentence after the phrase "fees, in whole or in part, or" the word "postpone" and by removing after the words "fee payment" the words "may be postponed."

32. Section 4130.5–3 is revised to read:

§ 4130.5–3 Service charge.

A service charge shall be assessed for each crossing permit, transfer of grazing preference and each replacement or supplemental billing notice except for actions initiated by the authorized officer. Pursuant to section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734(a)), calculation of the Bureau service charge assessed shall reflect processing costs and shall be adjusted periodically as costs change. Notice of changes shall be published periodically in the **Federal Register.**

§ 4130.6 [Amended]

33. Section 4130.6 is amended by revising paragraph (b) to read:

* * * * *

(b) Changes in grazing use may be granted by the authorized officer.

* * * * *

§ 4140.1 [Amended]

34. Section 4140.1 is amended by:

a. Revising the opening paragraph to read:

The following acts are prohibited on public lands and other lands administered by the Bureau of Land Management:

* * * * *

b. Revising the introductory text of paragraph (b)(1) to read:

* * * * *

(b) * * *

(1) Allowing livestock or other privately owned or controlled animals to graze on or be driven across these lands——";

* * * * *

c. Amending paragraph (b)(10) by inserting after the words "cooperative agreements" the words "certified actual use reports";

d. Removing paragraph (b)(12) in its entirety.

§ 4150.1 [Amended]

35. Section 4150.1 is amended by inserting after the words "impoundment and disposal" the words "of their livestock" and by deleting the last sentence of the section.

36. Section 4150.2(a) is revised to read:

§ 4150.2 Notice and order to remove.

(a) Whenever it appears that a violation exists and the owner of the unauthorized livestock is known, written notice of unauthorized use and order to remove livestock by a specified date shall be served upon the alleged violator or the agent of record, or both, by certified mail or personal delivery. The written notice shall also allow a specified time from receipt of notice for the alleged violator to show that there has been no violation or to make settlement under § 4150.3.

* * * * *

§ 4150.3 [Amended]

37. Section 4150.3 is amended by:

a. Revising the opening paragraph to read:

The authorized officer shall determine if the violation is nonwillful or willful. When violations are determined to be nonwillful, settlement shall be made under paragraphs (a)(1), (a)(4) and (a)(5) of this section. When violations are determined to be repeated nonwillful, settlement shall be made under paragraphs (a)(2), (a)(4) and (a)(5) of this section. When violations are determined to be willful or repeated willful, settlement shall be made under paragraphs (a)(3), (a)(4) and (a)(5) of this section. Where violations are repeated nonwillful or willful, the authorized officer may take action under § 4170.1–1(a) of this title. Where violations are repeated willful, the authorized officer shall take action under § 4170.1–1(b) of this title.

* * * * *

b. Paragraphs (a)(2) through (a)(4) are redesignated as paragraphs (a)(3) through (a)(5);

c. Redesignated paragraph (a)(3) is revised to read as follows:

(a) * * *

(3) "Willful and repeated willful violations." Three times the value of the forage consumed as determined in paragraph (a)(1) of this section.

* * * * *

d. New Paragraph (a)(2) is added to read:

(a) * * *

(2) "Repeated non-willful violations." Twice the value of the forage consumed as determined in paragraph (a)(1) of this section.

* * * * *

e. Amending paragraph (c) by removing the words "or § 4160.5," and adding at the end a new sentence to read: "The proposed decision shall include a demand for payment."

§ 4150.4 [Removed]

38. Section 4150.4 is removed in its entirety.

§ 4150.5 [Redesignated as § 4150.4]

39. Section 4150.5 is redesignated as § 4150.4.

§ 4150.5–1 [Redesignated as § 4150.4–1 and amended]

40. Section 4150.5–1 is redesignated as § 4150.4–1 and is amended by;

a. Removing the phrase "and a copy of the notice shall be sent to any lienholder of record" from paragraph (a).

b. Adding a new paragraph (c) to read:

* * * * *

(c) To deter unauthorized use from occuring within a specific area, a notice of intent to impound any livestock other than those authorized in the area described in the notice, shall be published under procedures in paragraph (b) of this section.

41. Section 4150.5–2 is redesignated as § 4150.4–2 and is revised to read:

§ 4150.4–2 Impoundment.

After 5 days from delivery of the notice under § 4150.4–1(a) of this title or any time after 5 days from publishing and posting the notice under §§ 4150.4–1(b) or 4150.4–1(c) of this title, unauthorized livestock may be impounded without further notice any time within the 12-month period following the effective date of the notice.

§§ 4150.5–3 and 4150.5–4 [Redesignated as §§ 4150.4–3 and 4150.4–4]

42. Sections 4150.5–3 and 4150.5–4 are redesignated §§ 4150.4–3 and 4150.4–4 respectively; and § 4150.4–3 is amended by removing the phrase "and lienholders of record", from the last sentence.

§ 4150.5–5 [Redesignated as 4150.4–5 and amended]

43. Section 4150.5–5 is redesignated as § 4150.4–5 and is amended by removing all after the first sentence of the section and replacing it with a sentence to read: "* * * If a satisfactory bid is not received, the livestock may be reoffered

for sale, condemned and destroyed or otherwise disposed of under these regulations, or if a suitable agreement is in effect, in accordance with State Law."

§ 4150.6 [Removed]

44. Section 4150.6 is removed in its entirety.

§ 4160.1–1 [Amended]

45. Section 4160.1–1 is amended by:

a. Revising the opening paragraph to read:

The authorized officer shall serve a proposed decision on any applicant, permittee or lessee, or the agent of record, or both, who is affected by the proposed action on applications for permits (including range improvement permits) or leases, or by the proposed action relating to terms and conditions of permits (including range improvement permits) or leases, by certified mail or personal delivery. The authorized officer shall also send copies to those who have indicated in writing that their interests may be affected by the proposed decision. The proposed decision shall state reasons for the action, including reference to pertinent terms, conditions and/or provisions of these regulations, and shall provide for a period of 15 days after receipt for the filing of a protest.

* * * * *

b. Amending the introductory text of paragraph (a) by removing the words "rangeland program summary and appropriate updates" and replacing them with the words "summary document or appropriate updates".

c. Removing paragraphs (a)(1) and (a)(2) in their entirety;

d. Redesignating paragraph (b) as paragraph (c);

e. Inserting a new paragraph (b) to read;

* * * * *

(b) Updates to the summary document shall be prepared prior to each subsequent adjustment scheduled under § 4110.3 of this title.

* * * * *

46. Section 4160.1–2 is amended by removing the phrase "and shall notify any lienholder of record of the proposed decision" from the first sentence.

47. Section 4160.2 is revised to read:

§ 4160.2 Protests.

Any applicant, permittee, lessee or other adversely affected interests may protest the proposed decision under § 4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision.

§ 4160.3 [Amended]

48. Section 4160.3 is amended by:

a. Amending paragraph (b) by removing in the second sentence the words "known interested individual" and replacing them with the words "known affected interests,"; and by removing the phrase "and shall notify any lienholder of record of the final decision".

b. Amending paragraph (c) by removing the words "paragraphs (e) and (f)" and replacing them with the words "paragraphs (d) and (e)" and by deleting from the last sentence the words "as provided in paragraph (d) of this section,";

c. Removing paragraph (d) in its entirety;

d. Redesignating paragraph (e) as the introductory text of paragraph (d) and adding paragraphs (d)(1)–(d)(3) to read:

(d) * * *

(1) Decisions in the fifth year of a 5-year implementation schedule may be placed into full force and effect. If the decision is placed into full force and effect, an appeal of such final decision shall not suspend the operation of that decision.

(2) An appeal of the third year increment of a 5-year decision shall suspend implementation of the decision and grazing use shall be authorized at the level scheduled for the first year of the phase-in period.

(3) An application for grazing use in excess of that established for any year of an implementation schedule, or an appeal from a decision rejecting such application shall not suspend the operation of the 5-year implementation schedule.

* * * * *

e. Redesignating paragraph (f) as paragraph (e) and amending it by inserting the word "total" between the words "provides for" and "implementation".

§ 4160.5 [Removed]

49. Section 4160.5 is removed in its entirety.

PART 9260—LAW ENFORCEMENT—CRIMINAL

50. Section 9264.1 is amended by:

a. Revising paragraph (a) to read:

(a) Allowing livestock or other privately owned or controlled animals to graze on or be driven across those lands without a permit or lease or in violation of the terms and conditions of a permit or lease, either by exceeding the number of livestock authorized, or by allowing livestock to be on these lands in an area or at a time different from that designated;

* * * * *

b. Removing paragraph (k) in its entirety;

c. Redesignating paragraph (l) as paragraph (k).

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Tuesday
September 21, 1982

Part III

Department of Health and Human Services

Food and Drug Administration

New Drugs; Camphorated Oil Drug Products for Human Use

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N-0227]

New Drugs; Camphorated Oil Drug Products for Human Use

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this final rule establishing that any camphorated oil drug product or any similar drug product for human use is misbranded and a new drug, and is subject to regulatory action unless it is the subject of an approved new drug application. FDA is issuing this final rule after considering public comments on the proposed rule. This final rule is part of FDA's ongoing review of OTC drug products.

EFFECTIVE DATE: September 21, 1982.

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 September 26, 1980 (45 FR 63869), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), a proposal to establish a regulation for camphorated oil drug products and drug products containing in excess of 11 percent camphor, together with the conclusions and recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products.

In accordance with § 330.10(a)(2), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, after deletion of information considered confidential.

Interested persons were invited to file, by November 25, 1980, written comments regarding the proposed rule. Twenty-two comments were received, including comments from individual consumers, groups of consumers, physicians, pharmacists, drug manufacturers, a drug manufacturer association, a pharmaceutical association, and State departments of health.

Although the proposal would have established conditions for both camphorated oil and other drug products containing camphor in excess of 11 percent, the final rule is limited, for reasons discussed later in this document, to camphorated oil and similar drug products (i.e., any drug product containing camphor in oil and any drug product containing camphor that is represented, suggested, or purported to be camphorated oil).

The agency's conclusions on other camphor-containing drug products, including those that contain camphor in excess of 11 percent, will be made as part of the agency's conclusions on the recommendations of the various advisory review panels that have reviewed camphor for specific uses, i.e., antimicrobial, anorectal, cough/cold, and external analgesic. Those conclusions will be published in future issues of the **Federal Register.**

In the preamble to the proposed regulation, FDA advised that it would not follow the full OTC rulemaking procedure set forth in § 330.10, but would proceed directly to a final order after consideration of comments to the proposal. The agency also advised in the proposal that a final order would become effective on the date of its publication in the **Federal Register.**

Because of the risk to pubic health in the potential for accidental ingestion and toxicity to occur from the continued availability of camphorated oil drug products, the Secretary of Health and Human Services and the Commissioner of Food and Drugs have found that there is good cause to have this final rule become effective on the date of publication, as authorized by 5 U.S.C. 553(d)(3) and by 21 CFR 10.40(c)(4)(ii). This final rule containing the agency's final decision on camphorated oil drug products is, therefore, effective immediately.

I. The Agency's Conclusions on the Comments

1. A number of comments concurred with the agency's proposal to remove camphorated oil and other drug products containing more than 11 percent camphor from the OTC market, stating that such action would be beneficial in reducing the number of toxic responses attributed to camphor preparations.

2. A number of comments objected to the Panel's recommendation to remove camphorated oil drug products from the OTC market. The comments argued that the continued marketing of camphorated oil is warranted based on its long history of widespread use and consumer acceptance. The comments also maintained that marketing camphorated oil in child-resistant containers and with distinct and specific labeling would minimize the potential for poisoning. One comment recommended that the confusion surrounding "camphorated oil" could be eliminated by recognizing "camphor liniment" as the product's established name. The comment argued that the name "camphor liniment" indicates the purpose for which the product is intended and eliminates the word "oil," which may have contributed to the confusion of this product with other products that are intended for internal use.

The agency believes that the continued marketing of camphorated oil products is not warranted. The Miscellaneous External Panel reported that statistics compiled by the National Clearinghouse for Poison Control Centers show 706 ingestions of camphorated oil from 1974 to 1978 (Ref. 1) (45 FR 63872). The latest statistics available from the National Clearinghouse for Poison Control Centers show 130 ingestions of camphorated oil in 1979, of which 38 were considered toxic cases (Ref. 2). As the Miscellaneous External Panel also pointed out, some infants and young children have died from ingesting camphorated oil. If death does not occur, mental retardation can be an after effect of camphorated oil ingestion. Even in less serious cases, convulsions followed by central nervous system depression and coma may occur (45 FR 63872).

Accidental ingestions of camphorated oil occur under various circumstances. Sometimes adults confuse camphorated oil for other products and ingest it themselves; sometimes adults mistakenly administer it to other adults; sometimes adults mistakenly administer it to children; and sometimes children drink it themselves. In most cases, the accidental ingestion is attributable to confusion of the camphorated oil product with another product. Most frequently the confusion occurs in the home; sometimes it happens in the store at the time of purchase.

The agency has identified 32 poisoning incidents in which the cause of the ingestion is reported (Ref. 3). In 28 cases, the cause was confusion with another product. In 20 cases, that product was castor oil; in three cases, cough medicine; in one case, acetaminophen. In four cases, the identity of the drug for which camphorated oil was mistaken could not be determined. Of the 28 cases in which confusion occurred, 15 cases involved ingestion of the product by the person who made the mistake, 12 cases involved administration of the product to another person, often a child, and in one case the person who took the

product could not be determined from the information available.

The agency has considered various possible alternatives to removing camphorated oil from the market in order to prevent these accidental ingestions. The alternatives primarily involve either requiring physical changes in the product or limiting the product's availability through a requirement that it be sold by prescription only. These alternatives were rejected for the following reasons.

One way to try to prevent confusion of camphorated oil with other products is to give it a distinctive appearance. Because camphorated oil is often mistaken for castor oil, which has a similar physical appearance (an amber colored, slightly viscous liquid), changes could be required in the color of camphorated oil products and in the appearance of the containers. However, even if camphorated oil were required to be of a non-amber color in an opaque and distinctively-shaped container, it cannot reliably be concluded that the confusion which leads to ingestion would cease. The Panel identified several products other than castor oil—including cod liver oil, mineral oil, olive oil, and cough medicine—for which camphorated oil also has been mistaken. Because these products have various physical appearances, it is unlikely that color and container changes would prevent accidental ingestions of camphorated oil.

Child-resistant containers also have been suggested as a possible solution to the problem. Although this measure could substantially reduce or eliminate the number of accidental ingestions by very young children who drink the product on their own, it would not affect the mistaken administrations by adults. Of the 32 poisoning incidents identified by the agency in which the cause of the ingestion was reported, only four were cases of young unattended children drinking the camphorated oil.

As the comment argues, it might be possible to reduce the confusion surrounding "camphorated oil" if "camphor liniment" were recognized as the product's established name. The argument is that use of the word "oil" has contributed to the confusion of this product with other products that are intended for internal use.

The word "oil" in the product name may well have contributed to the confusion. Yet "camphor liniment" historically has been the established name for this product. "Camphorated oil" was the official synonym for camphor liniment for most of the time that camphor liniment was recognized in the official compendia. Camphorated oil remained the officially recognized synonym in the National Formulary (NF) XI (October 1, 1960), but was deleted as the officially recognized synonym in NF XII (September 1, 1965). Ultimately, camphor liniment was deleted from the official compendium with publication of NF XIII (September 1, 1970). Although camphor liniment was the last established name for the product, it has been marketed under both names since the product was deleted from the official compendium. It is unlikely that reinstating "camphor liniment" as the established name would eliminate the confusion surrounding this product. Through custom and usage, many people could be expected to continue to refer to the product as "camphorated oil," even if it were labeled "camphor liniment. Furthermore, because camphorated oil has been confused with various products that do not have "oil" in the product name, such as cough medicines and analgesics, it is clear that the name is not the only cause of the confusion. Therefore, changing the name would not eliminate the confusion.

Another possible alternative for eliminating the confusion and the resultant accidental ingestions is to have strong warnings on the labeling. Camphorated oil products have for years borne specific label warnings that these products are for external use and not for ingestion; yet confusion with products for internal use has persisted. It is possible that bolder warnings, combined with changes in the physical appearance and name of the product, would reduce the number of accidental ingestions. The risk of mistaking camphorated oil for other products, however, would not necessarily be reduced by such changes. Because of the long history of use of camphorated oil products and concomitant confusion with products intended for ingestion, the agency believes that adequate directions and warnings to protect against unsafe use of camphorated oil products cannot be written. Given the questionable therapeutic benefits from camphorated oil, FDA does not believe that it is worth the risk of additional poisonings to test the possible effectiveness of stronger labeling and other physical changes in preventing confusion of the product with ingestible products.

Requiring camphorated oil products to be sold by prescription only is another possible way to deal with the hazards posed by the drug. If camphorated oil were sold only by prescription, purchasers could be more aware of the product's toxicity through communications with the physician and the pharmacist and through the very fact of prescription status. However, this alternative also does not provide adequate assurance that accidental ingestions would be substantially eliminated. Among the poisoning incidents in which the cause of ingestion was reported were several poisonings that resulted from confusion by older children or teen-agers. Persons in this age group, unlike very young children, make a conscious, but mistaken, decision to take the product, thinking it is something else. Limiting camphorated oil to prescription distribution is unlikely to alert these persons to the toxicity of the product and the need to avoid confusing it with other products, because these persons probably do not purchase the product themselves. Furthermore, they may not share in the communications with the physician, either because they are too young or because the prescription was intended for another member of the household.

Oral communications by health professionals often can significantly reduce the risks involved with toxic drug products. However, given the long history of camphorated oil use, as well as the persistence of the confusion with other products, the risk of confusion and mistaken ingestion could remain significant. Other members of the household would not have received the physician's oral warnings; even the person for whom the prescription was intended might confuse the product with others, especially if some time had passed since the oral warnings had been communicated.

The agency cannot definitively demonstrate that physical alterations, stronger warnings, prescription status, or some combination of these changes would not eliminate the possibility of confusion between camphorated oil and other products and of accidental ingestion for other reasons. Unless these changes are made, the effectiveness of these measures cannot be determined with certainty. The agency believes, however, that there is a sufficient factual basis to conclude that an appreciable risk of poisonings (which might include deaths) will remain even if these measures are instituted, and that the risk is unacceptable in light of the marginal therapeutic value of the product.

References

(1) Poison Control Statistics, Food and Drug Administration, 1974–1978.

(2) Poison Control Statistics, Food and Drug Administration, 1979.

(3) Fow, M. L., Food and Drug Administration, "Analysis of Camphorated Oil Ingestion and Poisoning," Docket No. 80N–0227, Dockets Management Branch.

3. Several comments requested that the agency permit the continued marketing of camphorated oil preparations containing 3 to 11 percent camphor. In support of this request, the comments pointed out that the Advisory Review Panel on OTC Topical Analgesic Drug Products concluded that preparations containing 3 to 11 percent camphor are safe and effective for use as counterirritants (44 FR 69802; December 4, 1979).

As discussed more fully in comment 2 above, the agency's decision on camphorated oil is based on the large number of accidental ingestions of camphorated oil products that have occurred. The Advisory Review Panel on OTC Topical Analgesic Drug Products (hereinafter referred to as the Topical Analgesic Panel), in its report on external analgesic drug products (44 FR 69768; December 4, 1979) concluded that 3 to 11 percent camphor products were safe and effective for external use as counterirritants. The Panel stated that it was unaware of any case of poisoning that had occurred from topical administration of a camphor product. However, that Panel also pointed out that ingesting 0.7 to 1 gram (g) camphorated oil proved fatal to a child and that poisonings from accidental ingestions continue to occur (44 FR 69803). The Miscellaneous External Panel noted that a 3-year-old girl had a convulsion after ingesting an estimated 0.7 g of camphor from a product containing about 5 percent camphor (45 FR 63872). It is clear that toxic amounts of camphor can be ingested accidentally from products containing 3 to 11 percent camphor.

The confusion surrounding camphorated oil products appears to stem from various factors, including the products' appearance and readily ingestible form. The 3 to 11 percent camphorated oil products have the same features contributing to accidental ingestions that the higher concentration camphorated oil products have. Because all of the camphorated oil products pose an unacceptable risk of poisoning in light of their marginal therapeutic value, the agency concludes that camphorated oil products at all concentrations are not generally recognized as safe for human use and are misbranded.

4. Numerous comments objected to the agency's proposal to remove from the OTC market dosage forms, other than camphorated oil, of drug products containing more than 11 percent camphor. The comments contended that, although there was evidence available to demonstrate a potential for toxicity to occur from accidentally ingesting camphorated oil, such evidence was not available for other dosage forms of camphor-containing drug products. The comments pointed out that cream and ointment dosage forms would not be mistaken for castor oil or other internally ingested medicinal products and are unlikely to be accidentally ingested by children. One comment further stated that the potential for toxicity to occur is minimized because of the difficulty in swallowing a sufficiently large amount to cause harm.

One comment urged that the final regulation specifically exempt from enforcement products containing more than 11 percent camphor in combination (chemical complex) with metacresol in a ratio of 3 to 1 respectively. The comment stated that data previously submitted to the agency demonstrate that this combination is unique in that it is far less toxic than pure camphor. The comment argued that these data, plus a 50-year marketing history without one report of adverse reaction from topical use of products containing this combination of ingredients, are sufficient to exempt these products from the final regulation.

The agency points out that the basis for including drug products that contain greater than 11 percent camphor in the proposed rule was the recommendation of the Topical Analgesic Panel in its report on external analgesic drug products (44 FR 69768; December 4, 1979) that OTC counterirritant drug products should not contain more than 11 percent camphor. The agency has not yet evaluated comments on the Topical Analgesic Panel's report. Camphor was reviewed by various OTC advisory review panels for use in cough/cold, anorectal, topical analgesic, anesthetic, and antipuritic products. On September 26, 1980, the administrative records for the rulemakings on these OTC drug products were reopened to allow for consideration of the Miscellaneous External Panel's recommendations on camphor-containing drug products (45 FR 63874–79). That Panel recommended that camphor be limited in OTC drug products for external use to less than 2.5 percent and that the quantity of camphor in a package be limited to 360 mg. Interested persons were invited to comment on the Miscellaneous External Panel's recommendations for camphor products in the respective rulemakings. At a future time, interested persons will also be given an opportunity to comment on this Panel's recommendations with respect to camphor in OTC antimicrobial drug products.

The name, appearance, and readily ingestible form appear to be significant elements contributing to the accidental ingestion of camphorated oil. As the comments pointed out, other dosage forms of camphor-containing products do not necessarily share these characteristics leading to consumer confusion. Because these other camphor-containing products are substantially distinct from camphorated oil products, and because the agency has not yet fully evaluated the comments regarding these other products, the agency has decided not to include other camphor-containing products in this final rule on camphorated oil products. Instead, the agency's final decisions on other camphor-containing products, including those with camphor in excess of 11 percent and including those with camphor complexed with metacresol, will be made in the context of the individual rulemakings in which the other products are being considered. These decisions will be published in future issues of the **Federal Register.**

5. Several comments objected to the proposed recall of camphorated oil to the retail level. The comments contended that recalls to the retail level should be reserved for removing products which present a significant hazard to the public health and not for products that are safe when used as directed and unsafe only when misued. The comments urged the agency to allow these products to be phased off the market instead of being recalled to the retail level.

Another comment urged that any recall be limited to products marketed after one of the following dates: (1) The date of the recall order; (2) the final date for offering comments to the proposed rulemaking (November 25, 1980); (3) 1 month after the proposed rulemaking was published in the **Federal Register** (October 26, 1980).

The agency stated in the preamble to the Panel's report (45 FR 63870) that "* * * because the risk of poisoning in infants and young children upon accidental ingestion [of camphorated oil] greatly outweighs any questionable benefits to be derived from the medicinal use of this drug, the agency has determined that marketing of any camphorated oil drug products should cease," and that, upon the effective date of this regulation, "the agency will request firms to recall to the retail level all drug products containing camphor which purport to be or are represented as camphorated oil or camphor limiment * * *" The agency reaffirms this recall at this time. Because of the risk to the public health from harmful accidental ingestions of camphorated oil drug

products, the agency has found that there is good cause to have this final rule become effective on the date of publication, as authorized by 5 U.S.C. 553(d)(3) and by 21 CFR 10.40(c)(4)(ii). A phase-out of existing stocks would allow these products to remain on the market for a substantial period of time, with the continuous risk of accidental ingestion. Limiting the recall to products marketed after a certain date would also allow the risk to the public health to continue for an unacceptably long period of time. This final rule, which contains the agency's final decision on camphorated oil drug products, is effective immediately. The agency is currently initiating a recall of all of these products to the retail level.

6. One comment contended that FDA is without authority to remove camphorated oil drug products from the market under the new drug and misbranding provisions (sections 201(p) and 502) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p) and 352). The comment stated that the proposal failed to state why these products were new drugs or misbranded and that this inadequacy violated the requirements of *Rutherford* v. *United States*, 542 F. 2d 1137 (10th Cir. 1976), that FDA have an administrative record to support its determination that a drug is a new drug. The comment concluded that the agency is without authority to remove camphorated oil drug products from the market on the basis of their toxicity if used other than according to their labeling directions, such as in the case of accidental ingestions. The comment suggested that, rather than removing these products from the market, a proper course of action would be to submit any information on accidental ingestion of these products to the Consumer Product Safety Commission (CPSC), which has express authority to regulate products causing injury resulting from misuse, for whatever action it deems appropriate.

The agency points out that section 502(f) of the act declares a drug to be misbranded unless its labeling bears adequate directions for use and adequate warnings against use "by children where its use may be dangerous to health" and against "unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users." As discussed in comment 2 above, although camphorated oil drug products for years have borne label statements that these products are for external use and not for ingestion, poisonings resulting from accidental ingestion continue to occur from confusing these products with other products that are intended to be ingested. The agency concludes that because consumers continue to confuse camphorated oil with other products, directions and warnings are not adequate to protect against dangerous use by children or to protect the user from an unsafe method of administration. Moreover, because of the long history of use of camphorated oil products and persistent confusion with products intended for ingestion, the agency believes that adequate directions and warnings to protect against unsafe use of camphorated oil products cannot be written. Therefore, the agency concludes that camphorated oil or any drug product which is represented or suggested to be camphorated oil is misbranded under section 502(f) of the act. The introduction or delivery for introduction into interstate commerce of a misbranded drug is a prohibited act under section 301(a) of the act (21 U.S.C. 331(a)).

In addition, under section 201(p) of the act, a drug whose composition is "not generally recognized among [qualified] experts * * * as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling" is a "new drug." The regulations detailing the standards for determining whether OTC drugs are generally recognized as safe and effective are set forth in 21 CFR 330.10(a)(4). The safety criteria include a low incidence of ill effects under adequate directions and warnings against unsafe use, as well as "low potential for harm which may result from abuse under conditions of widespread availability" (21 CFR 330.10(a)(4)(i)). The results of human experience during marketing are to be included in making the safety determination.

The "conditions" of use of camphorated oil products have included a long history of nonprescription use accompanied by confusion resulting in accidental ingestions and toxicities. As has been pointed out previously, statistics compiled by the National Clearinghouse for Poison Control Centers show 836 accidental ingestions in the period 1974 to 1979 alone. The marketing experience thus has shown camphorated oil products to have a significant potential for harm under their customary conditions of use.

Under the applicable regulations, the benefit-to-risk ratio of a drug is to be considered in determining its safety and effectiveness (21 CFR 330.10(a)(4)(iii)). As discussed more fully in comment 2 above, the agency believes that the risk of poisonings from camphorated oil products greatly outweighs any marginal benefits these products might have. The agency concludes that camphorated oil products are not generally recognized as safe and, therefore, are new drugs within the meaning of section 201(p) of the act. The continued marketing of these products without approved new drug applications would be in violation of section 505(a) of the act (21 U.S.C. 355(a)).

The agency concludes that it does have authority under the act to declare camphorated oil products to be misbranded and "new drugs" in this final regulation. Therefore, there is no need to request CPSC to take separate regulatory action. The agency also believes that the administrative record in this rulemaking proceeding supports the agency's determinations as reasonable and correct.

II. Summary of Significant Changes From the Proposed Rule

The agency proposed that any drug product labeled as "camphorated oil," camphor liniment," or any similar name, and drug products containing camphor in excess of 11 percent be declared misbranded and not generally recognized as safe and effective. As discussed in comment 4 above, the final rule is limited to drug products containing camphor in oil and camphor-containing drug products that are represented, suggested, or purported to be camphorated oil. The agency's conclusions on camphor-containing OTC drug products other than camphorated oil drug products, including those that contain camphor in excess of 11 percent, will be made as part of other appropriate individual rulemakings (e.g., antimicrobial, anorectal, cough/cold, and external analgesic).

III. The Agency's Final Conclusions on Camphorated Oil Drug Products

Historically, camphorated oil (also known as camphor liniment), a solution of 20 percent camphor in cottonseed oil, has been marketed as an OTC drug product for various uses, primarily as a topical counterirritant or liniment. A large number of accidental ingestions of camphorated oil and resultant toxicities have been reported, often because camphorated oil is mistaken for castor oil, cod liver oil, mineral oil, olive oil, cough medicine, or other drug products intended for oral ingestion. Even with labeling explicitly stating that these drug products are intended for extenal use only and not for ingestion, ingestions and toxicities have continued to occur. The agency does not believe that the

suggested alternatives to removing camphorated oil products from the market would effectively reduce the risk of accidental ingestions. The agency concludes that adequate directions and warnings cannot be written to protect against dangerous use by children or to protect the user from an unsafe method of administration. The agency also concludes that any benefit to be obtained from the continued availability of camphorated oil and similar products is insignificant when compared to the risk. Based upon this adverse benefit-to-risk ratio, camphorated oil and similar drug products (i.e., any drug product containing camphor in oil or any camphor-containing drug product that is represented, suggested, or purported to be camphorated oil) cannot be generally recognized as safe. Therefore, the continued marketing of these drug products is not warranted.

Based on the available evidence, the agency is making a final determination that "camphorated oil" or any drug product which is represented, suggested, or purported to be camphorated oil, e.g., "camphor liniment," "camphor oil," "camphorated liniment," is misbranded under section 502(f) of the act and is a new drug under section 201(p) of the act for which an approved new drug application under section 505 of the act and Part 314 of the regulations (21 CFR Part 314) is required for marketing. Any such drug product may not be initially introduced or initially delivered for introduction into interstate commerce on or after the effective date of this final rule. Any such drug product in interstate commerce after the effective date of this final rule that is not in compliance with the regulation is subject to regulatory action. The agency is unaware of any camphorated oil drug product that is the subject of an approved new drug application.

In addition, because of the risk associated with the continued availability of camphorated oil drug products, the agency is requesting firms to recall to the retail level all camphorated oil and similar drug products.

The agency has examined the economic consequences of this rulemaking and has determined that it does not require a Regulatory Impact Analysis as specified in Executive Order 12291. The final rule will prohibit the continued marketing of camphorated oil as an OTC drug product and establish it as a new drug under 21 CFR Part 310. The final rule will further require the recall (market withdrawal) of all stocks of camphorated oil currently marketed as an OTC drug product to eliminate the risk of poisonings resulting from the accidental ingestion of the product. The agency believes that the benefits of camphorated oil are insignificant when compared to this risk and that this final rule will benefit society because it will result in the withdrawal of an unsafe drug product. Given the small volume of sales of camphorated oil products in 1981 and the small number of firms listed as marketing these products, the agency believes that the negative economic effects of this rule will be minimal. Therefore, the agency concludes that the final rule is not a "major" rule as defined in section 1(b) of Executive Order 12291. A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch (address above). The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because the proposed rule was issued prior to January 1, 1981, and is therefore exempt.

List of Subjects in 21 CFR Part 310

New drugs.

PART 310—NEW DRUGS

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), Part 310 is amended by adding new § 310.526 to Subpart E, to read as follows:

§ 310.526 Camphorated oil drug products.

(a) Historically, camphorated oil (also known as camphor liniment), a solution of 20 percent camphor in cottonseed oil, has been marketed as an over-the-counter (OTC) drug product for various uses, primarily as a topical counterirritant or liniment. A large number of accidental ingestions of camphorated oil, often mistaken for castor oil, cod liver oil, mineral oil, olive oil, cough medicine, or other drug products, have been reported and toxicity has often resulted, primarily in infants and young children. Because of the potential hazard for poisoning to occur, the benefit from using any drug product containing camphor in oil or from using any camphor-containing drug product that is labeled as "camphorated oil" or "camphor liniment," or any similar name such as "camphor oil" or "camphorated liniment," for any use, is insignificant when compared to the risk. Based upon the adverse benefit-to-risk ratio, camphorated oil, any drug product containing camphor in oil, or any other drug product containing camphor that is represented, suggested, or purported to be camphorated oil, such as a product labeled "camphor liniment," "camphor oil," "camphorated liniment," or any similar name, cannot be considered generally recognized as safe.

(b) Any camphorated oil drug product, any drug product containing camphor in oil, or any other drug product containing camphor that is represented, suggested or purported to be camphorated oil, e.g., "camphor liniment," "camphor oil," "camphorated liniment," is misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act and is a new drug within the meaning of section 201(p) of the act for which an approved new drug application under section 505 of the act and Part 314 of this chapter is required for marketing.

(c) A completed and signed "Notice of Claimed Investigational Exemption for a New Drug" (Form FD–1571), as set forth in § 312.1 of this chapter, is required to cover clinical investigations designed to obtain evidence that any camphorated oil drug product is safe for the purpose intended.

(d) Any such drug product in interstate commerce after September 21, 1982 that is not in compliance with this section is subject to regulatory action.

Effective date. This rule is effective on September 21, 1982.

(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, 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704))

Mark Novitch,

Acting Commissioner of Food and Drugs.

Dated: August 18, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

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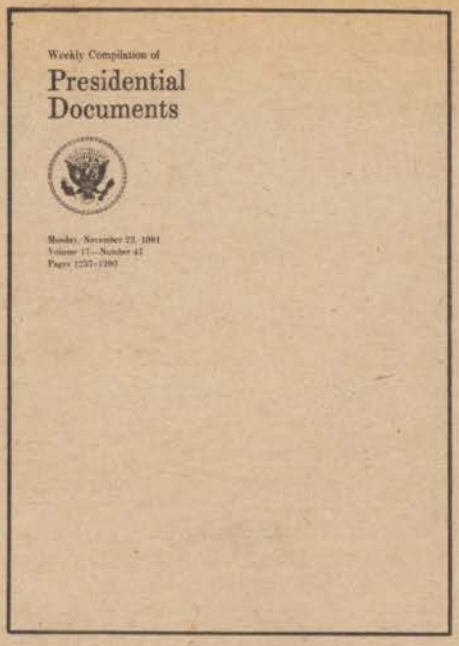
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