

11-23-82
Vol. 47 No. 226
Pages 52691-52956

Registered Federal Taxes

OK
Tuesday
November 23, 1982

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Banks, Banking
Federal Reserve System

Coal Mining
Surface Mining Reclamation and Enforcement Office

Consumer Protection
Commodity Futures Trading Commission

Dental Health
Veterans Administration

Education of Handicapped
Education Department

Elementary and Secondary Education
Defense Department

Equal Employment Opportunity
Equal Employment Opportunity Commission
Personnel Management Office

Flood Insurance
Federal Emergency Management Agency

Food Grades and Standards
Food and Drug Administration

Income Taxes
Internal Revenue Service

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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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Meat and Meat Products

Agricultural Marketing Service

News Media

United States Information Agency

Reporting and Recordkeeping Requirements

Nuclear Regulatory Commission

Securities

Government National Mortgage Association

Water Pollution Control

Environmental Protection Agency

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

Regulations for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Agricultural Marketing Service revises the rates for voluntary Federal meat grading and certification services because of increased program costs. This change is being implemented on an interim basis without a prior proposal because of the Agency's need to increase these rates to cover increased costs of providing service. It also is being published for comment as a means of providing full public participation in the rulemaking process.

DATES: Interim rule effective November 28, 1982; comments must be received on or before January 28, 1983.

ADDRESS: Written comments may be mailed to David K. Hallett, Chief, Meat Grading and Certification Branch; Livestock, Meat, Grain, and Seed Division; Agricultural Marketing Service; USDA: Room M-1, Annex Building; Washington, D.C. 20250. (For further information regarding comments, see "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: David K. Hallett (202/382-1246).

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This action was reviewed under U.S. Department of Agriculture procedures established to implement Executive Order 12291 and was classified as a nonmajor rule pursuant to Section 1(b)

(1), (2), and (3) of that order.

Accordingly, a regulatory impact analysis is not required. This action also was reviewed under the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*). Vern F. Highley, Administrator, Agricultural Marketing Service, determined that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule increases fees to cover escalating costs of providing voluntary Federal meat grading and certification services. The fees merely reflect a minimal increase in the cost-per-unit graded and/or certified currently borne by all entities using the services. The increased fees, therefore, will not have a significant economic effect on meatpackers, processors, or consumers and will not affect normal competition in the marketplace.

Comments

Interested persons are invited to submit written comments concerning these interim amendments. Comments must be sent in duplicate to the Washington, D.C., Meat Grading and Certification Branch office and should bear a reference to the date and page number of this issue of the **Federal Register**. Comments submitted pursuant to this document will be made available for public inspection during regular business hours.

Background

The Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 *et seq.*, authorizes the Secretary of Agriculture to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meats and meat products and to enable consumers to obtain the quality of meat which they desire. It also provides for the collection of fees from users of Federal meat grading and certification services which are approximately equal to the costs of providing services. The hourly fees for services are established in accordance with the salaries and fringe benefits of meat graders, the costs of supervision, travel, training, and other administrative costs.

Since the last fee increase on November 29, 1981, program costs have continued to rise. Federal employees recently were granted a 4 percent salary increase under the provisions of the Federal Pay Comparability Act of 1970.

There have been other significant increases in the costs of travel, training, communications, personnel benefits, and other associated administrative costs. For example, effective January 1, 1983, Federal Agencies will begin paying an amount equivalent to 1.3 percent of each employee's salary for the Medicare program. Additionally, a recent litigation settlement made by the Department of Justice with the American Federation of Government Employees resulted in the approval of backpay claims to meat graders of approximately \$875,000 under the Fair Labor Standards Act. These payments will be made to meat graders during fiscal year 1983 and must be recovered through increased fee rates.

As an alternative to increasing fees, the Agency considered the option of significantly reducing the amount of supervision and training of meat grading and certification personnel. This option, however, could result in inaccurate and nonuniform application of U.S. grade standards and specifications causing gross economic inequities among segments of the meat industry. The uniform and accurate application of grade standards and specifications nationwide is essential to maintaining the effectiveness, integrity, and creditability of grading and certification services, and to facilitating interstate marketing of meat and meat products. Any decline in the accuracy and uniformity of services could result in an adverse impact on the orderly marketing of red meat and on the identification of the quality of meat and meat products available to consumers.

In view of the situations described above, the base hourly rate for voluntary Federal meat grading and certification services performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on Federal legal holidays, is increased from \$23.20 to \$25.00 per hour. For work performed on Saturday or Sunday and before 6 a.m. or after 6 p.m., Monday through Friday, except on Federal legal holidays, the hourly rate is increased from \$28.20 to \$30.00 per hour. For all work performed on Federal legal holidays, the hourly rate is increased from \$46.40 to \$50.00 per hour.

Pursuant to the authority in 5 U.S.C. 553, it is found that other public procedure and notice with respect to these amendments are impracticable

and unnecessary, and good cause is found for making these amendments effective November 23, 1982, on an interim basis. A final rule will be promulgated after evaluation of comments received in response to this notice.

Accordingly, the section of the regulations appearing in 7 CFR Part 54, relating to hourly fees for Federal grading and certification of meats, prepared meats, and meat products, is revised as set forth below.

List of Subjects in 7 CFR Part 54

Meat and meat products, Grading and certification, Beef, Veal, Lamb, Pork.

PART 54—MEAT, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for Part 54 reads as follows:

Authority: Agricultural Marketing Act of 1946, Sec. 203, 205, as amended; 60 stat. 1087, 1090, as amended (7 U.S.C. 1622 and 1624).

2. 7 CFR 54.27(a) is revised to read as follows:

§ 54.27 Fees and other charges for service.

(a) *Fees Based on Hourly Rates.* Except as otherwise provided in this section, fees for service shall be based on the time required to render the service, calculated to the nearest 15-minute period, including time required for the preparation of certificates and travel of the official grader in connection with the performance of service. A minimum charge for one-half hour shall be made for service pursuant to each request notwithstanding that the time required to perform service may be less than 30 minutes. The base hourly rate shall be \$25.00 per hour for work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on Federal legal holidays; \$30.00 per hour for work performed before 6 a.m. or after 6 p.m., Monday through Friday, and anytime Saturday or Sunday except on Federal legal holidays; and \$50.00 per hour for all work performed on Federal legal holidays.

Done at Washington, D.C. November 17, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-32106 Filed 11-22-82; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Part 273

[Amdt. No. 213]

Food Stamp Program; Wage Matching

Correction

In FR Doc. 82-30204 beginning on page 50180 in the issue of Friday, November 5, 1982, make the following correction:

On page 50184, middle column, first paragraph, "(iv)" should read "(vi)".

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R-0424]

Reserve Requirements of Depository Institutions; Transaction Accounts

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Amendment to temporary rule.

SUMMARY: Effective October 5, 1982, the Board of Governors adopted a temporary amendment to Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) to define as transaction accounts, time deposits issued in connection with an agreement that permits the depositor to obtain credit by check or similar devices for the purpose of making payments or transfers to third persons or others. Under the amendment, time deposits subject to such arrangements established prior to October 5, 1982, are not regarded as transaction accounts until the deposit is extended, or matures and is renewed. The Board has determined that it is appropriate to expand these grandfather provisions by exempting from the definition of transaction accounts such time deposits that will automatically renew on or before December 31, 1982. This action is being taken because some institutions offering such arrangements have been unable to exercise options to terminate such arrangements. This exemption will insure that these institutions will not be adversely affected pending consideration of the permanent rule.

EFFECTIVE DATE: October 5, 1982.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625), Paul S. Pilecki, Senior Attorney (202/452-3281), or Beverly A. Belcamino, Legal Assistant (202/452-3623), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Effective October 5, 1982, the Board amended Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) to define as transaction accounts, time deposits issued in connection with an arrangement that permits the depositor to obtain credit, directly or indirectly, through the drawing of a check, draft or similar device that can be used for the purpose of making payments or transfers to third persons or others. (47 FR 44992, Oct. 13, 1982). In this connection, the Board also determined that it would be appropriate to grandfather time deposits subject to such arrangements established prior to October 5, 1982. However, the amendment provides that if the deposit maintained in connection with the line of credit is extended, or matures and is renewed, the funds will become subject to transaction account reserve requirements. The amendment was adopted on a temporary basis and the Board is requesting comment until December 3, 1982, on whether any additional arrangements should be covered by this amendment and whether any arrangements should be eliminated from the scope of the amendment before it is adopted in final form.

Since the date of the Board's action, the Board has been advised that some institutions offering such arrangements have been unable to exercise options to terminate such arrangements. In order to insure that these institutions will not be adversely affected pending the Board's consideration of whether or not to adopt the temporary amendment in permanent form, the Board has determined to expand the grandfather provisions of the amendment by exempting from the definition of transaction accounts time deposits subject to such arrangements that are scheduled to mature and automatically renew on or before December 31, 1982. This will provide institutions with sufficient time to notify depositors that the related credit arrangements will be terminated, if an institution so chooses. Expansion of this provision also will allow institutions to offer the money market time deposit mandated by the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320; 96 Stat. 1469) as an alternative to their existing arrangements.

Because this action modifies a temporary amendment for which public comment is being received until December 3, 1982, the Board finds good cause exists for dispensing with the notice and public participation provisions of 5 U.S.C. 553(b). Because this action relieves a restriction the

Board finds good cause for making this action effective immediately.

Lists of Subjects in 12 CFR Part 204.

Banks, banking, Currency, Federal Reserve System, Penalties, Reporting requirements.

PART 204—[AMENDED]

Pursuant to its authority under section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b)), effective October 5, 1982, the Board amends Regulation D (12 CFR Part 204) by revising paragraph (e) of § 204.2 to read as follows:

§ 204.2 Definitions.

(e) * * *

(7) deposits or accounts maintained in connection with an arrangement that permits the depositor to obtain credit directly or indirectly through the drawing of a negotiable or nonnegotiable check, draft, order or instruction or other similar device (including telephone or electronic order or instruction) on the issuing institution that can be used for the purpose of making payments or transfers to third persons or others, or to a deposit account of the depositor. Deposits that are subject to arrangements established before October 5, 1982, will not be regarded as transaction accounts (i) until the deposit issued in connection with the line of credit is extended, or matures and is renewed, or (ii) if the deposit issued in connection with the line of credit matures and is automatically renewed on or before December 31, 1982.

By order of the Board of Governors,
November 16, 1982.
William W. Wiles,
Secretary of the Board.

[FR Doc. 82-31882 Filed 11-22-82; 8:45 am]
BILLING CODE 6210-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 382

[Reg. SPR-192; Special Regs. Amdt. No. 2 to Part 382]

Nondiscrimination on the Basis of Handicap; Notice of Approval by the Office of Management and Budget

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule gives notice that the Office of Management and Budget (OMB) has approved the reporting requirements contained in new Part 382 of the Board's Special

Regulations, "Nondiscrimination on the Basis of Handicap." This approval has been granted through June 30, 1984. OMB approval is required under the Paperwork Reduction Act of 1980.

DATES: Adopted: November 17, 1982. Effective: November 1, 1982.

FOR FURTHER INFORMATION CONTACT:

Linda K. Koman, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-6042.

Accordingly, the Civil Aeronautics Board amends Part 382 of its Special Regulations (14 CFR Part 382) by adding a note at the end of the table of contents to Part 382 to read:

Note.—The reporting requirements contained in §§ 382.21, 382.22 and 382.23 have been approved by the Office of Management and Budget under number 3024-0056.

This amendment is issued by the undersigned pursuant to delegation of authority from the Board to the Secretary in 14 CFR 385.24(b).

(Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324).

By the Civil Aeronautics Board,

Phyllis T. Kaylor,
Secretary.

[FR Doc. 82-32105 Filed 11-22-82; 8:45 am]
BILLING CODE 6320-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-12678; 57-907]

Adoption of Permanent Exemptions From Certain Provisions of the Investment Company Act of 1940 for Registered Separate Accounts and Other Persons

Correction

In FR Doc. 82-26630, beginning on page 42553, Tuesday, September 28, 1982 make the following corrections:

1. On page 42554, in the second column, in the first paragraph, in the twenty-third line, "a annuity" should read "an annuity".

2. On page 42555, in the third column, in the second line from the top, "or course," should read "of course,".

3. On page 42556, in the second column, in the ninth line from the bottom of the text, "company," should read "company;".

4. On page 42557, in the first column, the second line from the bottom of the text, "paragraph (1)" should read "paragraph (l)".

5. Also on page 42557, in the second column, in footnote 22, in the sixth line "[35]" should read "[36]".

6. On page 42559, in the second column, in the first paragraph, in the first line, "paragraph (1)" should read "paragraph (l)".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Federal Old Age, Survivors and Disability Insurance Benefits

AGENCY: Social Security Administration, HHS.

ACTION: Correction of a final regulation.

SUMMARY: This document corrects a citation to the Code of Federal Regulations that appears several times throughout final regulations implementing section 301 of Pub. L. 96-265 which were published July 21, 1982 (47 FR 31539). Section 301 provides that, in certain cases, a disabled person who has medically recovered will not have his or her disability benefits terminated if he or she is participating in an approved vocational rehabilitation program. In the preparation of these regulations several references were made to the Education Department regulations. With the creation of the Education Department, the regulations appearing in 45 CFR Part 1361 were transferred and redesignated to Title 34 of the Code of Federal Regulations, therefore making the citation to 45 CFR Part 1361 incorrect (45 FR 77368, November 21, 1980).

FOR FURTHER INFORMATION CONTACT: Mr. Harry J. Short, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, Telephone (301) 594-7337.

1. On page 31539, under Supplementary Information, the reference to 45 CFR 1361.2 and 1361.39 is corrected to 34 CFR Part 361.

2. On page 31542, in the middle column, in § 404.316(c)(1)(ii), the reference to 45 CFR 1361.39 is corrected to read 34 CFR Part 361.

3. On page 31543, in the third column, in § 404.1586(f)(1)(ii) the reference to 45 CFR 1361.39 is corrected to read 34 CFR Part 361.

4. On page 31544, in the first, middle, and third columns, in §§ 404.1596(c)(4), 416.1321(d), and 416.1338(a)(2) the references to 45 CFR 1361.39 are corrected to read 34 CFR Part 361.

Dated: November 14, 1982.

Robert F. Sermier,
Deputy Assistant Secretary for Management
Analysis and Systems.

[FR Doc. 82-32010 Filed 11-22-82; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Parts 74, 81 and 82

[Docket No. 82N-0268]

D&C Orange No. 5; Correction

AGENCY: Food and Drug Administration.
ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the effective date and the date for submittal of objections for a document that permanently listed D&C Orange No. 5 for use in lipsticks or other lip cosmetics and in drug and cosmetic mouthwashes and dentifrices.

DATES: The effective date for the rule published at 47 FR 49632 is December 3, 1982; objections by December 2, 1982.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In FR Doc. 82-30082 appearing at page 49632 in the issue for Tuesday, November 2, 1982, the following corrections are made:

1. On page 49632, in the third column under "DATES", the words "Effective November 30, 1982; objections by November 29, 1982;" are corrected to read "Effective December 3, 1982; objections by December 2, 1982;"

2. On page 49636, in the second column, first line, the words "November 29" are corrected to read "December 2" and in the second line of the first full paragraph, the words "November 30" are corrected to read "December 3".

Dated: November 18, 1982.

William F. Randolph,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 82-32129 Filed 11-19-82; 12:55 pm]

BILLING CODE 4160-01-M

21 CFR Part 146

[Docket No. 76P-0163]

Identity and Quality Standard for Canned Pineapple Juice; Amendment and Ending of Stay After Commissioner's Final Decision

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is ending the stay of effectiveness of the provision establishing the 13.5° Brix pineapple juice soluble solids requirement in § 146.185(b)(1)(i) (21 CFR 146.185(b)(1)(i)) and is setting a new Brix level, 12.8°. FDA is taking this action consistent with the Commissioner's Final Decision in the rulemaking proceeding that resulted in the stay. The Commissioner's Final Decision appears in the "Notices" section of this Federal Register.

EFFECTIVE DATE: May 23, 1983.

FOR FURTHER INFORMATION CONTACT: Ted Herman, Regulations Policy Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: FDA issued in the Federal Register of May 28, 1976 (41 FR 21768) an amendment to § 146.185(b)(1)(i) setting the minimum Brix level for pineapple juice from concentrate at 13.5°. FDA received an objection and a request for hearing on this provision. In the Federal Register of March 14, 1978 (43 FR 10552), FDA stayed the effectiveness of this Brix requirement, pending further notice. The Commissioner of Food and Drugs has issued his Final Decision on this matter—see the Final Decision in the "Notices" section of this Federal Register.

List of Subjects in 21 CFR Part 146

Canned fruit juice, Food standards, Fruit juices.

PART 145—CANNED FRUIT JUICES

§ 146.185 [Amended]

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))), under authority delegated to the Commissioner (21 CFR 5.10), and in accordance with the Commissioner's Final Decision, the stay of the provision establishing the 13.5° Brix requirement in § 146.185(b)(1)(i) is ended and § 146.185 *Canned pineapple juice* is amended in the second sentence of paragraph (b)(1)(i) by changing "13.5" to "12.8".

Effective date. Effective May 23, 1983, for affected products initially introduced or initially delivered for introduction into interstate commerce.

Dated: November 15, 1982.
Arthur Hull Hayes, Jr.,
Commissioner of Food and Drugs.

[FR Doc. 82-32044 Filed 11-22-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Dichlorophene and Toluene Capsules

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Natchez Animal Supply Co. providing for safe and effective use of dichlorophene and toluene capsules for treating dogs and cats for certain helminth infections, and to add Natchez Animal Supply Co. to the list of sponsors of approved NADA's.

EFFECTIVE DATE: November 23, 1983.

FOR FURTHER INFORMATION CONTACT:

Bob G. Griffith, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Natchez Animal Supply Co., 201 John R. Junkin Dr., Natchez, MS 39120, filed an NADA (121-557) providing for use of dichlorophene and toluene capsules for treating dogs and cats for infections of certain ascarids, hookworms, and tapeworms. This product is the generic equivalent of a product that was the subject of a National Academy of Sciences/National Research Council (NAS/NRC) notice published in the Federal Register of February 1, 1969 (34 FR 1613) and reflected in 21 CFR 520.580. Approval of Natchez's product does not require submission of data to demonstrate bioequivalency because it is to be manufactured by the firms currently manufacturing the NAS/NRC-reviewed product. In addition, Natchez Animal Supply Co. was not included in the list of sponsors of approved applications found in 21 CFR 510.600(c). The NADA is approved and the regulations are amended to include this sponsor and the approval.

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

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11,

1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

21 CFR Part 520

Animal drugs, Oral use.

PART 510—[AMENDED]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 510 and 520 are amended as follows:

1. In Part 510, § 510.600 is amended by adding a new sponsor alphabetically to paragraph (c)(1) and numerically to paragraph (c)(2), to read as follows:

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

* * * * *

(c) ***

(1) ***

Firm name and address	Drug labeler code
Natchez Animal Supply Co., 201 John R. Junkin Dr., Natchez, MS 39120	049968

(2) * * *

Drug labeler code	Firm name and address
049968	Natchez Animal Supply Co., 201 John R. Junkin Dr., Natchez, MS 39120

PART 520—[AMENDED]

2. In Part 520, § 520.580 is amended by revising paragraph (b)(1), to read as follows:

§ 520.580 Dichlorophene and toluene capsules.

* * * * *

(b) *Sponsor.* (1) For single dose only, see 000010, 000298, 000842, 000856, 010290, 010888, 011519, 011536, 011614, 015563, 017135, 023851, 049968, and 050906 in § 510.600(c) of this chapter.

* * * * *

Effective date. November 23, 1982.

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

Dated: November 17, 1982.

Lester M. Crawford,
Director, Bureau of Veterinary Medicine.

[FR Doc. 82-32034 Filed 11-22-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 558

New Animal Drugs for Use in Animal Feeds; Tylosin; Sponsors of Approved NADA's

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing those portions of the regulations reflecting approval of a new animal drug application (NADA) providing for use of an 0.8-gram-per-pound tylosin (as tylosin phosphate) premix in making complete swine feeds used for increased rate of weight gain and improved feed efficiency. The sponsor, International Multifoods' Dixie Mills Co., requested the withdrawal of approval. Dixie Mills Co. is being removed from the list of sponsors of approved NADA's.

EFFECTIVE DATE: December 3, 1982.

FOR FURTHER INFORMATION CONTACT:

Howard Meyers, Bureau of Veterinary Medicine (HFV-218), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, approval of NADA 100-744 for Dixie Booster Pak-Tylan 1600 Medicated sponsored by International Multifoods' Dixie Mills Co. is withdrawn. This document amends the regulations to remove those portions of 21 CFR 510.600 and 558.625 which reflect approval of the NADA.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(2) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), Parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

§ 510.600 [Amended]

1. Part 510 is amended in § 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* by removing the entry for "Dixie Mills Co." from paragraph (c)(1) and removing the entry for "025066" from paragraph (c)(2).

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.625 [Amended]

2. Part 558 is amended in § 558.625 *Tylosin* by removing the text of paragraph (b)(41) and marking it "[Reserved]."

Effective date. December 3, 1982.

(Sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e)))

Dated: November 17, 1982.

Lester M. Crawford,
Director, Bureau of Veterinary Medicine.

[FR Doc. 82-32043 Filed 11-22-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs not Subject to Certification; Dithiazanine Iodide and Piperazine Citrate Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to codify a previously approved new animal drug

application (NADA) sponsored by Elanco Products Co. which provides for use in horses of dithiazanine iodide/piperazine citrate suspension as an anthelmintic. The regulations are also amended to indicate those conditions of use which were found effective as a result of a National Academy of Sciences/National Research Council (NAS/NRC) evaluation of the product.

EFFECTIVE DATE: November 23, 1982.

FOR FURTHER INFORMATION CONTACT: Terence Harvey, Bureau of Veterinary Medicine (HFV-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Elanco Products Co., Division of Eli Lilly & Co., Indianapolis, IN 46206, is sponsor of NADA 12-469 providing for use in horses of the anthelmintic Dizan Suspension. The product contains 69 milligrams (mg) of dithiazanine iodide and 83 mg of piperazine base (as piperazine citrate) per milliliter (mL). It was the subject of a Drug Efficacy Study Implementation (DESI) notice published in the Federal Register of February 15, 1969 (34 FR 2276). In the notice, NAS/NRC concluded that Dizan Suspension was probably not effective as an anthelmintic for horses since pertinent data to support effectiveness claims were very limited, especially for stomach worms of *Habronema spp.* NAS/NRC further stated that definitive data obtained with the specific formulation of the commercial product should be provided by the sponsor. FDA concurred with the NAS/NRC evaluation to the extent that the submitted data were inadequate to substantiate the claim for *Habronema spp.* FDA further concluded that the data generated for large strongyles was adequate to show effectiveness for *Strongylus vulgaris* but not for *Strongylus edentatus*. Additionally, based on data available to its Bureau of Veterinary Medicine (BVM), FDA concluded that the NADA had demonstrated product effectiveness against *Parascaris equorum*, small strongyles, and *Oxyuris equi*.

Supplemental NADA's were invited to provide revised labeling, limiting the conditions of use as stated in the notice.

Elanco responded to the DESI notice by submitting a supplemental NADA which removed from the label claims for *Habronema spp.* and *Strongylus edentatus* and expanded dosage and administration directions to include directions for use of the drug as a drench. By letter of August 7, 1969, BVM informed the firm that the supplement was approved because it provided labeling in compliance with NAS/NRC

recommendations. This supported changing the drug's evaluation from probably not effective to effective. At the time, such approvals were not codified. Accordingly, the regulations are now amended to codify Elanco's approved NADA and to specify the NAS/NRC approved conditions of use.

This action, reflecting an approved NADA, does not constitute reaffirmation of the safety and effectiveness data supporting this approval. Since the NADA was approved before July 1, 1975, the sponsor has not been required to submit a summary of the safety and effectiveness data and information in accordance with the freedom of information provisions of

§ 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)).

For identical or similar products having the same conditions of use, applications need not include effectiveness data as specified by §§ 514.1(b)(8)(ii) or 514.11(a)(5)(ii)(a)(4) (21 CFR 514.1(b)(8)(ii) or 514.11(a)(5)(ii)(a)(4)) of the animal drug regulations, but approval may require bioequivalency or similar data as suggested in the guidelines for submitting NADA's for NAS/NRC-reviewed generic drugs, available in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

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

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

List of Subjects in 21 CFR Part 520

Animal drugs, oral use.

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

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.763c to read as follows:

§ 520.763c Dithiazanine iodide and piperazine citrate suspension.

(a) *Specifications.* Each milliliter of the drug contains 69 milligrams of dithiazanine iodide and 83 milligrams of piperazine base (as piperazine citrate).

(b) *Sponsor.* See 000986 in § 510.600(c) of this chapter.

(c) *NAS/NRC status.* The conditions of use are NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

(d) *Conditions of use—(1) Amount.* 1 ounce (30 milliliters) per 100 pounds of body weight for the first 500 pounds; ¼ ounce for each 100 pounds thereafter, up to 1,200 pounds; 10¼ ounces to animals over 1,200 pounds.

(2) *Indications for use.* For control of large roundworms, *Parascaris equorum*; small strongyles; large strongyles, *Strongylus vulgaris*; and pinworms, *Oxyuris equi*.

(3) *Limitations.* Administer by drench or mixed with the daily ration as a single dose. Treatment is recommended in spring and fall. In a heavily infested environment, treatment may be repeated every 30 days. Not for use in horses intended for food purposes. Severely debilitated animals should not be wormed except on the advice of a veterinarian. If the drug is for administration by stomach tube, it shall be labeled: "Federal law restricts this drug to use by or on the order of a licensed veterinarian."

Effective date: November 23, 1982.

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

Dated: November 17, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-32041 Filed 11-22-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs not Subject to Certification; Methylprednisolone Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to codify a previously approved new animal drug application (NADA) sponsored by the Upjohn Co. The NADA provides for safe and effective use of methylprednisolone tablets as an anti-inflammatory agent in dogs and cats. FDA is further amending the regulations to specify those conditions of use for which approval of

applications for identical or similar products need not include effectiveness data as required by the animal drug regulations. The National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Group reviewed the NADA and found the drug to be effective.

FOR FURTHER INFORMATION CONTACT:

Terence Harvey, Bureau of Veterinary Medicine (HFV-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, is sponsor of NADA 11-403 providing for oral use of a tablet containing 1 milligram (Mg) of methylprednisolone as an anti-inflammatory agent in dogs and cats. The NADA was originally approved on July 30, 1958. The firm's product was among several adrenocortical-steroid-type preparations that were subjects of the Drug Efficacy Study Implementation notice in the Federal Register of April 12, 1969 (34 FR 6447). The notice stated that the NAS/NRC concluded that these drugs are effective as anti-inflammatory agents for dogs and cats. In addition, the notice stated that the products may be used as supportive therapy for certain other conditions. The agency concurred with these conclusions. Supplemental NADA's were invited to provide revised labeling, limiting the conditions of use as stated in the report. Upjohn's methylprednisolone tablet labeling was in agreement with recommendations made by NAS/NRC and the agency. In addition, the agency has approved supplemental NADA's which update product manufacturing controls. Accordingly, the regulations are amended to codify Upjohn's approved NADA and to specify the NAS/NRC-approved conditions of use.

This action, reflecting an approved NADA, does not constitute reaffirmation of the safety and effectiveness data supporting this approval. Since the NADA was approved before July 1, 1975, the sponsor has not been required to submit a summary of the safety and effectiveness data and information in accordance with the freedom of information provisions of

§ 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)). For identical or similar products having the same conditions of use, applications need not include efficacy data as specified by § 514.1(b)(8)(ii) or § 514.111(a)(5)(vi) of the animal drug regulations (21 CFR 514.1(b)(8)(ii) or 514.111(a)(5)(vi)), but approval may require bioequivalency or similar data as suggested in the guidelines for submitting NADA's for NAS/NRC-

reviewed generic drugs, available in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

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

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

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

PART 520—[AMENDED]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.1408, to read as follows:

§ 520.1408 Methylprednisolone tablets.

(a) *Specifications.* Each tablet contains 1 milligram of methylprednisolone.

(b) *Sponsor.* See 000009 in § 510.600(c) of this chapter.

(c) *NAS/NRC status.* The conditions of use have been NAS/NRC reviewed and found effective. NADA's for approval of drugs for these conditions of use need not include effectiveness data specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

(d) *Special consideration.* (1) Clinical and experimental data have demonstrated that corticosteroids administered orally or parenterally to animals may induce the first stage of parturition when administered during the last trimester of pregnancy and may precipitate premature parturition followed by dystocia, fetal death, retained placenta, and metritis.

(2) Systemic therapy with methylprednisolone is contraindicated in animals with arrested tuberculosis, peptic ulcer, acute psychoses, or cushingoid syndrome. The presence of active tuberculosis, diabetes, osteoporosis, chronic psychotic reactions, predisposition to thrombophlebitis, hypertension,

congestive heart failure, or renal insufficiency necessitates carefully controlled use of corticosteroids. Some of these conditions occur only rarely in dogs and cats but should be kept in mind.

(3) Anti-inflammatory action of corticosteroids may mask signs of infection.

(e) *Conditions of use—(1) Amount.* Dogs and cats: 5 to 15 pounds, 2 milligrams; 15 to 40 pounds, 2 to 4 milligrams; 40 to 80 pounds, 4 to 8 milligrams.

(2) *Indications for use.* For use in dogs and cats as an anti-inflammatory agent.

(3) *Limitations.* Administer total daily dose in equally divided doses 6 to 10 hours apart until response is noted or 7 days have elapsed. When response is attained, dosage should be gradually reduced until maintenance level is achieved. Hazardous for human use. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. November 23, 1981.

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

Dated: November 17, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-32042 Filed 11-22-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 236

[Docket No. R-82-1006]

Requirements for Section 101 (Rent Supplement) and Section 236 Programs; Correction

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

ACTION: Interim rule; correction.

SUMMARY: This document corrects an interim rule on rent requirements for Section 101 and Section 236 programs that appeared at page 36814 in the Federal Register of Tuesday, August 24, 1982 (47 FR 36814), as previously corrected in a document published in the Federal Register of Friday, October 22, 1982 (47 FR 47006). The correction inserts asterisks in § 236.55 inadvertently omitted which would have had the effect of eliminating § 236.55 (c)

and (d), and adds several words to the first sentence of § 236.735(a) which were inadvertently omitted.

FOR FURTHER INFORMATION CONTACT:

James Tahash, Director, Program Planning Division, Office of Multifamily Housing, (202) 755-5654.

Accordingly, the Department of Housing and Urban Development is correcting FR Doc. 82-23031 appearing on page 36814 in the issue of August 24, 1982, as follows:

On page 36817, column three, the following is to be inserted after the substance of § 236.55(b)(3) and immediately before "7. Section 236.60 is revised . . .":

"* * *

On page 36818, column one, the following words are to be inserted after the first nine words of § 236.735(a):

"On behalf of an eligible tenant shall not exceed (1) That amount".

Dated: November 12, 1982.

Philip Abrams,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 82-32102 Filed 11-22-82; 8:45 am]

BILLING CODE 4210-27-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Handling of Employment Discrimination Charges

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies (706 Agencies) so that they may handle employment discrimination charges, within their jurisdictions, filed with the Commission. Publication of this amendment effectuates the designation of Michigan City (IN) Human Rights Commission and Richmond County (GA) Human Rights Commission as 706 Agencies.

DATE: Effective November 23, 1982.

FOR FURTHER INFORMATION CONTACT:

Hollis Larkins, Equal Employment Opportunity Commission, Office of Program Operations, Special Services Staff, 2401 E Street NW., Washington, D.C. 20506, telephone 202/634-6850.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment

opportunity, Intergovernmental relations.

PART 1601—PROCEDURAL REGULATIONS

In Title 29, Chapter XIV of the Code of Federal Regulations, § 1601.74(a) is amended by adding in alphabetical order the following agencies:

§ 1601.74 Designated and notice agencies.

(a) * * * Michigan City (IN) Human Rights Commission, Richmond County (GA) Human Rights Commission.

* * *

(Sec. 713(a) 78 Stat. 265 (42 U.S.C. 2000e 12(a))

Signed at Washington, D.C., this 18th day of November, 1982.

For the Commission.

Odessa M. Shannon,

Director, Office of Program Operations.

[FR Doc. 82-32103 Filed 11-22-82; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Approval of Program Amendment from the State of Illinois 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 913 by adding the permanent program amendment concerning prime farmland fragipan soil replacement submitted by the State of Illinois 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 amendment, the Director of OSM has determined that the modification to the Illinois program meets the requirements of SMCRA and the Federal regulations. Accordingly, the Director has approved the Illinois program amendment.

Part 913 of 30 CFR Chapter VII is being amended to implement this decision.

EFFECTIVE DATE: This approval is effective November 23, 1982.

ADDRESSES: Copies of the Illinois program, the amendment being approved today, and the administrative record for this rulemaking are available

for public inspection and copying during regular business hours at:

Office of Surface Mining, Illinois Field Office, No. 4 Old Capitol Plaza North, Springfield, Illinois 62701

Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, N.W., Washington, D.C. 20240

Illinois Department of Mines and Minerals, Land Reclamation Division, 227 South 7th Street, Springfield, Illinois 62706

FOR FURTHER INFORMATION CONTACT:

Mr. Daniel Jones, Field Office Director, Illinois Field Office, Office of Surface Mining, No. 4 Old Capitol Plaza North, Springfield, Illinois 62701, Telephone: (217) 492-4486.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1980, OSM received a proposed regulatory program from the State of Illinois. On October 31, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary of the Interior approved in part and disapproved in part the proposed program (45 FR 72468-72505). The State was enjoined on December 11, 1980, from resubmitting its program. On December 11, 1981, the injunction was lifted and on December 22, 1981, Illinois resubmitted its program. The Secretary of the Interior approved the program subject to the correction of five minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the June 1, 1982, *Federal Register* (47 FR 23858-23883).

By letter dated August 6, 1982, Illinois submitted a proposed program amendment consisting of a rule passed on an emergency basis to amend its Rule 1823.14 regarding soil replacement on prime farmland fragipan soils.

OSM published a notice in the September 1, 1982, *Federal Register* announcing receipt of the provision and inviting public comment on whether the proposed amendment is consistent with SMCRA and the Federal regulations. The public comment period ended September 27, 1982. A public hearing scheduled for September 23, 1982, was cancelled because no one expressed a desire to present testimony. A notice announcing cancellation of the hearing was published on September 21, 1982 (47 FR 41581).

Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendment submitted by Illinois on August 6, 1982, consisting of enacted regulations (Rule 1823.14)

which amend the prime farmland soil replacement standards in the Illinois program, meets the requirements of Section 515 of SMCRA and 30 CFR Parts 816 and 823.

The Illinois amendment provides that prime farmland soils that are underlain by a "fragipan" layer shall be reconstructed after mining in accordance with the standards for high capability lands, rather than the standards for normal prime farmland soils. A fragipan layer is a subsurface horizon generally rich in silt, sand, or both, and very compacted which restricts root penetration and thus inhibits soil productivity and revegetation. The existing Illinois rule, which is identical to its Federal counterpart, 30 CFR 823.14(a), provided that "the minimum depth of soil and soil material to be reconstructed for prime farmland shall be 48 inches or a depth equal to the depth of a subsurface horizon in the natural soil that inhibits root penetration, whichever is shallower."

Prime farmland soils containing an underlying fragipan layer at a depth of less than four feet are commonly found in southern Illinois mining areas. The existing Illinois and Federal rules thus require soil replacement limited to the distance from the surface to the horizon containing the fragipan. In some cases, this depth may be as little as 8-10 inches and is typically between 10-36 inches. The Illinois Department of Mines and Minerals (IDMM) believes a full 48 inches of soil should be replaced even if an underlying fragipan layer exists. IDMM has therefore proposed an amendment to require reconstruction in accordance with Rule 1825.14, the standard for high capability lands. Rule 1825.14 requires soil replacement to a minimum depth of four feet.

The Director finds that this amendment requiring soil replacement for prime farmland fragipan soils to a minimum depth of four feet, is no less effective than the Federal rule, which requires replacement only to the depth of a subsurface horizon that inhibits root penetration.

Disposition of Comments

1. The Illinois South Project, Inc. (ISP) commented on two procedural issues related to submission of the proposed program amendment. First, ISP stated that Illinois put the rule into effect prior to approval by OSM as a program amendment, which violates 30 CFR 732.17. ISP noted in support of its allegations that the Illinois August 6, 1982 letter to OSM submitting the amendment stated that "the rule is currently in effect as a matter of Illinois

law," and that on August 2, 1982, Illinois told coal operators to consider the rule in effect and to apply the rule in developing permanent program permit applications.

As ISP points out, however, 30 CFR 732.17 does not prevent adoption of a regulation without OSM approval. Instead, it provides that the regulation shall not take effect for purposes of a State program until approved by OSM as a program amendment.

Illinois is fully aware that changes to permanent program rules cannot take effect until OSM approves them as program amendments. The August 6, 1982, letter to OSM states.

Pursuant to 30 CFR 732.17 (as amended January 23, 1981 and June 14 [sic], 1982), the State of Illinois Department of Mines and Minerals is hereby notifying you of a proposed change to § 1823.14 of its permanent program rules and regulations. (emphasis added)

The letter requests initiation of procedures for Federal approval of the amendment, as the rule is currently in effect as a matter of Illinois law. OSM understands the phrase "currently in effect" to mean that the rule has been promulgated in accordance with State administrative procedures. In addition, the rule in question is a performance standard which does not take effect until a permanent program permit is issued. The fact that Illinois notified operators to submit permanent program permit applications containing reclamation plans in accordance with the proposed amendment indicates only that Illinois wished to give operators ample notice to avoid any unnecessary delay in issuing permits.

The second procedural objection raised by ISP is that the rule was issued as an emergency rule rather than as a promulgated final rule. Illinois' stated intention in issuing the rule as an emergency rule was to give operators early notification that the amended rule would likely be a required part of the permit application. Illinois provided the required public participation on the proposed rule, including holding a public hearing. The rule was filed as a final rule in the *Illinois Register* on August 4, 1982, with an effective date of September 3, 1982. The rule thus has been promulgated in final form and will take effect for purposes of the Illinois program upon approval by the Director.

2. ISP commented that the proposed amendment provides a blanket exemption from the prime farmland performance standards for all prime farmlands underlain by a fragipan by wrongly assuming that all fragipans are root inhibiting.

The Illinois amendment to Rule 1823.14(a) provides that all prime farmlands underlain by a fragipan as identified by the Soil Conservation Service (SCS) are to be reconstructed to a 48 inch depth rather than to the depth of the root inhibiting fragipan. According to the SCS, all fragipan soils are root inhibiting. Prime farmland soil productivity for these fragipan soils reflect root obstruction thereby decreasing the full potential of these prime farmland soils. The physical process of mining will destroy the fragipan layer. The Director thus finds that Illinois has proposed a reasonable alternative in requiring reconstruction of these prime farmland soils to a 48 inch depth using quality rooting materials.

3. ISP commented that the proposed amendment relieves the operator of the burden of proof for demonstrating that soil substitution is " * * * both texturally and chemically suitable for plant growth and * * * can be shown to be equally or more favorable for plant growth than the B horizon * * *." ISP contends that the blanket imposition of Rule 1825.14 texture requirements on prime farmland soils with little root inhibiting characteristics would allow an operator to use soil materials that are less favorable for plant growth than the B horizon and would allow these substitute soil materials to be used without first having met the operator's burden of proof for demonstrating suitability required by Section 515(b)(7)(B) of SMCRA.

The proposed amendment to section 1823.14(a) does not relieve the operator of any responsibility with respect to the burden of proof for demonstrating soil suitability required by Section 515(b)(7)(B). Section 510(d)(1) of SMCRA requires the permit applicant to demonstrate and the regulatory authority to find in writing that the operator can meet the soil reconstruction standards in Section 515(b)(7). This requirement is incorporated in Illinois Rules 1785.17 and 1823. Illinois has proposed applying certain minimum soil texture standards to prime farmland fragipan soils which the operator must meet. The operator is still required to: (1) Establish a suitable rooting medium (Rule 1825.14(a)); (2) replace the A horizon or other suitable soil materials as the final surface soil layer (Rule 1823.14(e)); and (3) meet soil productivity standards (Rule 1823.15).

The Federal rule, 30 CFR 823.14(a), requires soil replacement only to the depth of a subsurface horizon that inhibits root penetration. The Illinois amendment, by contrast, requires soil replacement to a depth of four feet and

specific minimum soil texture requirements to assure a proper rooting medium. In addition, the SCS, which must consult with the regulatory authority on soil reconstruction for each permit application, has approved this proposed amendment as an effective method of addressing a problem specific to the type of prime farmlands commonly encountered in Illinois. OSM finds that the Illinois amendment thus provides a standard for prime farmland fragipan soils that is consistent with SMCRA and as effective as the Federal rule.

4. ISP commented that the proposed amendment specifically allows the operator to use rocks and rock fragments in reconstructing the mined soils. This could, over time, affect the management of prime farmland soils. ISP noted that SMCRA does not authorize such a blanket variance from the performance standards of Section 515(b)(7)(B). ISP also noted that Section 519(c)(2) provides that no part of the bond shall be released until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices. ISP contends that equivalent management practices will become difficult, if not impossible, if rocks are allowed to be included in the soil materials. In support of its contention, ISP cites a recent study of soil reconstruction which states that coarse fragments should be absent or make up only a small portion of the total soil volume because rocks tend to move upward and interfere with farm machinery.

There is no provision in SMCRA or the Federal rule which prohibits the inclusion of rocks or other coarse material in soil material. The key question is whether the soil material is suitable to establish vegetative growth. Illinois has established, in Rule 1825.14, certain texture standards which contain maximum acceptable levels for coarse material. Therefore, OSM finds that the proposed amendment provides a greater rooting depth for prime farmland fragipan soils than does the Federal rule and reasonable texture standards.

Also, as noted above under comment number 3, the proposed amendment does not change the soil productivity standard nor the burden on the operator to demonstrate that the land will be returned to equivalent levels of yield as nonmined land of the same soil type in

the surrounding area under equivalent management practices. Therefore, OSM finds that the proposed Illinois amendment is no less effective than the Federal rule.

Additional Determinations

Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), this rule is not a major Federal action and therefore, no environmental impact statement, environmental assessment, or FONSI need be prepared on this rulemaking.

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 the requirement to prepare a Regulatory Impact Analysis and regulatory review by OMB.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* I have certified that this rule will not have a significant economic impact on a substantial number of small entities.

The Secretary of Agriculture, acting through the Soil Conservation Service, has reviewed the Illinois rule and concurred in its adoption as a program amendment.

On May 13, 1982, the Administrator of the Environmental Protection Agency transmitted her written concurrence on the Illinois permanent program. The amended regulatory provisions approved in this document are not aspects of the Illinois permanent program which relate to air or water quality standards promulgated under the authority of the 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 913

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

Dated: November 17, 1982.

J. R. Harris,
Director, Office of Surface Mining.

Therefore, Part 913 of 30 CFR Chapter VII is amended as set forth herein.

PART 913—ILLINOIS

Part 913 of Title 30 is amended by adding a new § 913.15 as set forth below.

§ 913.15 Approval of regulatory program amendments.

The Illinois program amendment of August 6, 1982, is approved effective November 23, 1982.

[FR Doc. 82-32118 Filed 11-22-82; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 71

[DoD Directive 1342.13]

Eligibility Requirements for Education of Minor Dependents in Overseas Areas

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule implements the Defense Dependents' Education Act of 1978, as amended, by effectuating the provisions of that statute dealing with eligibility to attend the DoD Dependents Schools. This rule provides guidance on enrollment in the DoD Dependents Schools on a space-required and space-available basis. This rule is being published in the *Federal Register* to clarify for other than DoD federal employees the statutory requirements for enrollment in the DoD Dependents Schools.

EFFECTIVE DATE: This part was approved and signed by the Deputy Secretary of Defense on July 8, 1982, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. Earl Sorenson, Chief, Fiscal Division, DoD Dependents Schools, 2461 Eisenhower Avenue, Alexandria, Virginia 22331, telephone 202-325-0110.

SUPPLEMENTARY INFORMATION: The Department of Defense is not required to publish this rule in the *Federal Register*, and this publication is not intended to create any benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

List of Subjects in 32 CFR Part 71

Elementary and secondary education, Minor dependents of Government employees and military personnel.

Accordingly, Chapter 1, 32 CFR is revised by adding a new Part 71, reading as follows:

PART 71—ELIGIBILITY REQUIREMENTS FOR EDUCATION OF MINOR DEPENDENTS IN OVERSEAS AREAS

Sec.

- 71.1 Purpose.
- 71.2 Applicability.
- 71.3 Definitions.
- 71.4 Policy.
- 71.5 Eligibility Requirements.
- 71.6 Responsibilities.
- 71.7 Eligibility requirements for education of minor dependents and other persons in the Republic of Panama.

Authority: 10 U.S.C. 921-932 (Supp. IV 1980).

§ 71.1 Purpose.

This part replaces DoD Instruction 1342.10 and DoD Instruction 1342.4, and implements 20 U.S.C., Sections 921-932, to:

(a) Update the policy and eligibility requirements for education of DoD dependent students in overseas areas.

(b) Authorize the enrollment of other minor dependents in DoD dependents schools conditioned upon available space and payment of tuition.

§ 71.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 71.3 Definitions.

The terms used in this part are defined below.

(a) *Approved Non-DoD Dependents Schools.* Schools, including dormitory facilities, other than DoD dependents schools, that provide suitable educational programs, usually on a tuition basis. The term includes residence facilities operated by approved non-DoD dependents schools to provide room and board for eligible handicapped dependents when DoD dependents schools cannot provide an appropriate education.

(b) *Commuting Area.* A designated geographical area surrounding a DoD dependents school within which pupil transportation at U.S. Government expense is provided for DoD dependent students, except for those living within walking distance of the school (See DoD 4500.36-R).

(c) *Correspondence Courses.* Home or supplemental instruction courses for DoD dependent students who live in areas where there are no suitable

facilities, for handicapped DoD dependent students who cannot attend school, and for the supplementation of course offerings at DoD dependents schools or approved non-DoD dependents schools.

(d) *DoD Dependents Schools.* Schools established by the Department of Defense in overseas areas to provide primary and secondary education for minor dependents of DoD sponsors.

(e) *DoD Dependents Schools with Dormitories.* Residence facilities operated at certain DoDDS schools, usually at the high school level and primarily but not exclusively to provide room and board for DoD dependent students who are authorized to accompany their DoD sponsors to locations where there are no appropriate educational facilities available locally.

(f) *DoD Dependent Student.* A minor dependent who:

(1) Is the child, stepchild, adopted child, ward, or spouse of a DoD sponsor, or who is a resident in the household of a DoD sponsor who stands in loco parentis to such individual and who receives one-half or more of his or her support from such sponsor; and

(2) Has not completed secondary school and who will reach his or her 5th but not 21st birthday by December 31 of the current school year; or

(3) Is handicapped, and is between 3 and 5 years of age by December 31 of the current school year, provided that the Director, DoDDS, or designee, in his or her sole discretion, determines that adequate staff and facilities are available to serve such a handicapped child.

(g) *DoD Sponsor.* A Military Service member serving on active duty and stationed overseas or a civilian employee of the Department of Defense who is employed on a full-time basis, paid from appropriated funds, and stationed overseas, and who is either a U.S. citizen or a person lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the United States immigration laws (8 U.S.C. "Aliens and Nationality").

(h) *Full-Time Students.* Panama Canal College students enrolled in courses for 12 or more credit hours during the fall and spring semesters of one school year.

(i) *Overseas Area.* Any area situated outside the United States (the states, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (excluding the Trust Territory of the Pacific Islands and Midway Island))

(j) *Part-Time Students.* Panama Canal College students enrolled in courses for 11 or fewer credit hours during the fall

and spring semesters of one school year, and all students enrolled during the summer session.

(k) *Space-Required.* Pupil accommodations that must be provided by the DoD dependents schools.

(l) *Space-Available.* Pupil accommodations that may be made available in DoD dependents schools if the Director, DoDDS, or designee, determines that a school operated by DoDDS has adequate staff and other resources to permit the enrollment of nonspace-required students.

§ 71.4 Policy.

(a) It is the policy of the Department of Defense:

(1) That, while overseas, DoD dependent students may be enrolled in DoD dependents schools or approved non-DoD dependents schools, or may take correspondence courses at U.S. Government expenses, under the conditions prescribed in § 71.5.

(2) To allow the enrollment of other minor dependents in DoD dependents schools, provided that space is available and that tuition is paid.

(b) Section 57 of this title provides guidance concerning the education of handicapped children.

§ 71.5 Eligibility requirements.

Students may be enrolled in the DoD dependents schools pursuant to § 71.5(a) through § 71.5(d) below, and in that priority, and pursuant to § 71.5(e), below.

(a) *Space-Required, Tuition-Free.*

(1) Command-sponsored DoD dependent students shall, upon the request of their DoD sponsor, be enrolled in DoD dependents schools on a space-required, tuition-free basis. However, costs for the education of minor dependents of DoD sponsors working for the DoD Security Assistance Program shall be paid from DoD Security Assistance Program funds.

(2) If, as determined by the Director, DoD Dependents Schools (DoDDS), or designee, no DoD dependents school is available within the commuting area, command-sponsored DoD dependent students are eligible for education in approved non-DoD dependents schools at U.S. Government expense, usually in that same foreign country, or in DoD dependents schools with dormitories; or through correspondence courses at U.S. Government expense.

(3) DoD dependent students may be provided education in approved non-DoD dependents schools or may receive correspondence courses at U.S. Government expense only at locations where DoD dependents schools are not

available or are operating at maximum capacity. Only those non-DoD dependents schools with programs considered satisfactory by the Director, DoDDS, or designee, shall be approved to provide education at U.S. Government expense to DoD dependent students. In all cases, the payment of tuition in approved non-DoD dependents schools by the U.S. Government is limited to those DoD dependent students who are authorized transportation at U.S. Government expense to or from an overseas area, if their DoD sponsor is military, and to those DoD dependent students whose DoD sponsor, if civilian, is eligible for a living quarters allowance, as authorized by the Department of State Standardized Regulations and DoD 1400.25-M.

(4) If adequate housing is available within the commuting area of a DoD dependents school and an appropriate educational program is available at that school, tuition will not be authorized for the attendance of DoD dependent students in an approved non-DoD dependents school in that same locality, except as authorized in § 71.5(a)(3), above. DoD dependent students who currently are enrolled in an approved non-DoD dependents school and who would be adversely affected by this limitation may, at the discretion of the Director, DoDDS, or designee, be authorized to continue in attendance in that approved non-DoD dependents school through the 1984-85 school year, or until the rotation of the DoD sponsor out of the command, whichever is earlier.

(5) Approved non-DoD dependents schools that are available free of charge and that offer instructional programs in English should be used, if feasible, before contracting for education in approved non-DoD dependents schools that charge tuition.

(6) If no DoD dependents school within the commuting area of a handicapped DoD dependent student is able to provide an appropriate education to that student, DoDDS may place the student in another DoD dependents school. If no appropriate DoD dependents school is reasonably available, DoDDS then may place the student at U.S. Government expense in an approved non-DoD dependents school overseas. DoDDS may place a handicapped DoD dependent student in an approved non-DoD dependents school in the United States only if no appropriate school is reasonably available overseas. DoDDS may not place a non-DoD dependent student in a non-DoD dependents school at U.S. Government expense.

(7) DoD dependent students who are the dependents of a DoD sponsor who is detained by a foreign power or is declared missing in action or otherwise unlawfully detained may remain in a DoD dependents school, or in an approved non-DoD dependents school, at U.S. Government expense for as long as the detention or missing status exists, subject to the approval of the Director, DoDDS, or designee.

(8) DoD dependent students who are authorized attendance in a DoD dependents school or an approved non-DoD dependents school may complete the current school year if the DoD sponsor is transferred, dies, or retires during the school year, but subsequently shall lose their eligibility to attend, except on a space-available, tuition-free basis in a DoD dependents school as prescribed in § 71.5(c)(2), below.

(9) If DoD dependent students are authorized to accompany their DoD sponsor to the country of the sponsor's assignment, such dependent students ordinarily will not be entitled to space-required, tuition-free education in a DoD dependents school in a different overseas country or to education in a non-DoD dependents school at U.S. Government expense in that different country. Any exceptions to this policy must be approved by the Director, DoDDS, or designee.

(b) *Space-Available, Tuition-Paying (Federally Connected)*. Under Section 1404(c) of the "Defense Dependents' Education Act of 1978", if the Director, DoDDS, or designee, determines that space is available, consistent with the local military commander's policy concerning access to the installation and agreements with the host nation, other minor dependents in the categories specified in this subsection may be enrolled in a DoD dependents school upon payment of tuition. The amount of tuition shall be determined by the Director, DoDDS, or designee, and may not be less than the rate necessary to cover the average cost of enrollment of children in the DoD dependents schools. Clarification on how tuition rates are determined is contained in DoD Directive 4000.19 and DoD Instruction 7230.7. Minor dependents in this category may be enrolled in the following priority:

(1) Minor dependents of other U.S. Government agency employees stationed overseas.

(2) Minor dependents of U.S. citizens who have executed contracts or who are employed by parent organizations that have executed contracts or other agreements with the Department of Defense when the applicable contract or

agreement authorizes dependent education on a tuition basis in the DoD dependents schools. A copy of the document authorizing attendance shall be presented to the appropriate DoD dependents school official at the time of enrollment. Examples of individuals whose minor dependents are covered by this paragraph include:

(i) Nonappropriated fund instrumentalities (universal annual) employees.

(ii) Defense contractor personnel.

(iii) United Services Organizations, Inc., personnel.

(iv) American Red Cross personnel.

(3) Minor dependents of host-nation or third-country national military or civilian personnel accompanying or serving with the Military Services overseas, when recommended by the major overseas commander and when approved by the Director, DoDDS, or designee.

(4) Minor dependents of other sponsors who are serving the national defense interest, as determined by the Director, DoDDS, or designee.

(c) *Space-Available, Tuition-Free*. Under Section 1404(c) of the "Defense Dependents' Education Act of 1978", the following classes of DoD dependent students may be enrolled, in the priority given below, in DoD dependents schools on a space-available, tuition-free basis:

(1) Minor dependents of military DoD sponsors who are stationed in overseas areas to which their dependents are not authorized transportation at U.S. Government expense or minor dependents of civilian DoD sponsors who are not entitled to a living quarters allowance as authorized by the Department of State Standardized Regulations and DoD 1400.25-M, when the sponsors elect to transport these dependents at their own expense to overseas areas in which the sponsors are stationed (noncommand-sponsored dependents). If at any time during a DoD sponsor's overseas assignment that sponsor's minor noncommand-sponsored dependents become command-sponsored or the sponsor acquires minor, command-sponsored dependents, those dependents shall be authorized "space-required, tuition-free" status.

(2) DoD dependent students who are dependents of DoD sponsors who die while intitled to compensation or active duty pay at the time of the sponsor's death, provided that the surviving spouse either was residing in an overseas area when the sponsor died or has been a citizen of a foreign country and returns to that country. The DoD dependent student must be enrolled in a

DoD dependents school either within 1 year of the DoD sponsor's death or, if the dependent is below school age when the sponsor dies, within 1 year of the dependent's becoming eligible to enroll.

(3) Noncommand-sponsored DoD dependents who are enrolled in a DoD dependents school may remain in a DoD dependents school if their sponsor is declared missing in action or otherwise unlawfully detained for as long as the detention or missing status exists, subject to the approval of the Director, DoDDS, or designee.

(d) *Space-Available, Tuition-Paying (Nonfederally Connected)*. Under Section 1404(c) of the "Defense Dependents' Education Act of 1978", the following minor dependents may be enrolled in a DoD dependents school upon payment of tuition if the Director, DoDDS, or designee, determines that space is available:

(1) Dependents of U.S. citizens residing in overseas areas, including dependents of retired personnel, or of deceased personnel not covered in § 71.5(c)(2), above.

(2) Dependents of foreign nationals, when there is no objection from the host nation and when such inclusion does not displace or prevent inclusion of U.S. citizen-sponsored minor dependents seeking admission on the same basis at the same time.

(e) *Education in the Republic of Panama*. Eligibility requirements for education in the Republic of Panama are prescribed in § 71.7.

§ 71.6 Responsibilities.

(a) The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) shall monitor compliance with this part.

(b) The Heads of DoD Components shall comply with this part.

(c) The Director, DoD Dependents Schools, or designee, shall:

(1) Authorize the attendance of DoD dependent students in DoD dependents schools or approved non-DoD dependents schools, or provide correspondence courses at U.S. Government expense, in accordance with this part.

(2) Authorize the enrollment of other minor dependents in DoD dependents schools, in accordance with this part, and establish priorities among those dependents within an eligibility category.

(3) Provide information and guidance to DoD sponsor regarding enrollment in DoD dependents schools, residence in DoD dependents school dormitories or approved non-DoD dependents schools dormitories, enrollment in approved

non-DoD dependents schools, and receipt of correspondence courses.

(4) Establish, in coordination with the supporting installation or community commander, commuting areas around DoD dependents schools for the purpose of determining eligibility for transportation of DoD dependent students. (See DoD 4500.36-R.)

(5) Periodically review the educational programs in approved non-DoD dependents schools that are used to educate DoD dependent students to ensure that these programs are satisfactory.

(d) *Commanders of overseas installations, military communities, or activities* shall:

(1) Advise incoming and newly assigned personnel about the DoD dependent schools' commuting areas and the extent of pupil transportation service supporting the local DoD dependents schools.

(2) Assist incoming and newly assigned personnel in obtaining housing within the commuting area of the local DoD dependents school, if feasible.

(3) Advise incoming and newly assigned personnel that, if adequate housing is available within the commuting area of a DoD dependents school and if the DoD sponsor's place of employment is also reasonably accessible from that commuting area, tuition assistance will not be available to provide education in approved non-DoD dependents schools for minor dependents of DoD sponsors who elect to reside beyond the commuting area of a DoD dependents school. (see DoD 4500.36)

(4) Inform incoming and newly assigned personnel that they will not be reimbursed for unauthorized enrollments in non-DoD dependents schools.

§ 71.7 Eligibility requirements for education of minor dependents and other persons in the Republic of Panama.

(a) The "Panama Canal Act of 1979" authorizes the extension of primary, secondary, and postsecondary educational services to DoD dependent students and other categories of dependents. Basic eligibility policy is described in § 71.5 of this part. Exceptional eligibility requirements for education for dependents in the Republic of Panama are addressed below.

(b) Minor dependents may be enrolled in DoD dependents schools or approved non-DoD dependents schools in the Republic of Panama or may receive correspondence courses at U.S. Government expense under the

conditions and in the priority indicated below.

(1) *Space Required, Tuition-Free Education and Education in Approved Non-DoD Dependents Schools*. In addition to DoD dependent students entitled to receive space-required, tuition-free education from DoDDS under § 71.5 of this part, the following minor dependents in the Republic of Panama are authorized "space-required tuition-free" status:

(i) Minor dependents of host-nation or third-country citizens employed by the Department of Defense and paid from appropriated funds, provided that such dependents were enrolled on a tuition-free basis in schools operated by the former Canal Zone Government on September 30, 1979, as then authorized for residents of the former Canal Zone. This provision applies only for uninterrupted enrollments.

(ii) Minor dependents of host-nation or third-country citizen employees transferred to the Department of Defense on October 1, 1979, and paid from appropriated funds may attend approved non-DoD dependents schools in the Republic of Panama at U.S. Government expense when such dependents were enrolled in a non-DoD dependents school under the authority and at the expense of the former Canal Zone Government/Panama Canal Company on September 30, 1979. This provision applies only for uninterrupted enrollments.

(2) *Space-Required, Tuition-Paying Education*. Dependents not specifically authorized tuition-free education in § 71.7(b)(1), above, or in § 71.5 of this part, when such dependents were enrolled in schools operated by the former Canal Zone Government on September 30, 1979, regardless of affiliation or citizenship of sponsors. This provision applies only for uninterrupted enrollments.

(c) Persons may be enrolled in the Panama Canal College under the conditions and in the priority listed below:

(1) *Tuition-Paying, DoD-Sponsored Education*. All students at the Panama Canal College attend on a tuition-paying basis. The Department of Defense may assume a portion of the tuition cost for full-time students who are minor dependents of:

(i) Military DoD sponsors who are on active duty and stationed in the Republic of Panama.

(ii) Civilian DoD sponsors stationed in the Republic of Panama who are paid from appropriated funds and who have been lawfully accorded the privilege of residing permanently in the United

States as immigrants in accordance with the United States immigration laws (8 U.S.C. "Aliens and Nationality").

(iii) Members of the Military Services who are detained by a foreign power or declared missing in action or otherwise unlawfully detained for as long as the detention or missing status continues to exist. Under these circumstances, authorization for the dependents to remain in the College with DoD tuition assistance must be obtained from DoDDS officials and the local military commander.

(iv) If a sponsor discussed in § 71.7(c)(1) (i), (ii), or (iii) above, is transferred, retires, or dies during the college semester, the sponsor's dependents may complete the current semester, but subsequently shall lose their eligibility to attend the Panama Canal College.

(2) *Tuition-Paying—Other.* At the discretion of the Director, DoDDS, or designee, and when consistent with the local military commander's policy concerning access to the area of military coordination and agreements with the Republic of Panama, the following categories of persons may be enrolled at the Panama Canal College on a full- or part-time basis, in the priority given below provided the applicant meets academic admissions requirements.

(i) Active duty members of the Military Services who are stationed in Panama and family members living with them (unless authorized DoD-sponsored education under § 71.7(c)(1), above).

(ii) U.S.-citizens employees of the Department of Defense and other U.S. Government agencies, including the Panama Canal Commission, and family members living with them (unless authorized DoD-sponsored education under § 71.7(c)(1), above).

(iii) Host-nation or third-country citizen employees of the Panama Canal Commission or other U.S. Government agency, district dentists, religious workers, and family members living with them, when such persons were enrolled in a Canal Zone school on a tuition-free basis or under the sponsorship of the former Canal Zone Government/Panama Canal Company on September 30, 1979, as was then authorized for residents of the former Canal Zone.

(iv) Minor dependents of Canal Zone Government/Panama Canal Company host-nation or third-country citizen employees separated through reduction in force action and not reemployed by another U.S. Government agency, when such dependents were enrolled in the former Canal Zone school system on September 30, 1979.

(v) U.S. citizens not specifically addressed above who reside in the Republic of Panama.

(vi) Host-nation and third-country citizens not specifically addressed above who reside in the Republic of Panama when there is no objection from the government of Panama and when such inclusion does not displace or prevent inclusion of U.S. citizens seeking admission on the same basis at the same time.

November 17, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 82-32090 Filed 11-22-82; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-2-FRL 2241-1]

Approval and Promulgation of Implementation Plans; Sulfur-in-Fuel Revision for the Northeast Petroleum Corporation, Chelsea, Massachusetts

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving a revision to the Massachusetts State Implementation Plan (SIP) submitted by the Commissioner of the Massachusetts Department of Environmental Quality Engineering (the Massachusetts Department) on September 29, 1982. The revision will allow the Northeast Petroleum Corporation, 295 Eastern Avenue, Chelsea, Massachusetts, to increase the sulfur content of its residual fuel oil. The burning of less expensive, higher sulfur content fuel oil will be concurrent with the implementation of permanent energy conservation measures such that the total amount of sulfur oxide emissions from this source will at no time be greater than before approval under this Final Rule.

EFFECTIVE DATE: November 23, 1982.

FOR FURTHER INFORMATION CONTACT: Margaret McDonough, State Air Programs Section, EPA Region I, Room 2111, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5130.

ADDRESSES: Copies of the Massachusetts submittal which is incorporated by reference are available for public inspection during regular business hours at the Environmental Protection Agency, Region I, Room 2111, JFK Federal Building, Boston, Massachusetts 02203; Public Information

Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460; Office of the Federal Register, 1100 L Street, N.W., Room 9401, Washington, D.C. 20408; and the Department of Environmental Quality Engineering, One Winter Street, Boston, Massachusetts 02108.

SUPPLEMENTARY INFORMATION: EPA is approving a sulfur-in-fuel relaxation for the Northeast Petroleum Corporation, Chelsea, Massachusetts. The revision will allow the Northeast Petroleum Corporation to increase the sulfur content of its residual fuel oil from 0.28 pounds to 0.55 pounds per million Btu heat release potential (approximately equivalent to 0.5% and 1.0% sulfur content by weight, respectively) following the implementation of measures to permanently reduce its energy consumption by greater than 50%. Fuel consumption is being reduced by the insulation of fuel storage tanks. The burning of the higher sulfur content fuel will be concurrent with the implementation of permanent energy conservation measures; therefore, the sulfur oxide emissions from this source will at no time be greater than before approval under this Final Rule.

This sulfur-in-fuel revision is being approved pursuant to the provisions of Regulation 310 CMR 7.19, "Interim Sulfur-in-Fuel Limitation for Fossil Fuel Utilization Facilities Pending Conversion to an Alternate Fuel or Implementation of Permanent Energy Conservation Measures." EPA approved the addition of this regulation to the Massachusetts SIP on March 19, 1981 (46 FR 17551). Regulation 7.19 specifies the requirements and conditions which sources must meet in order to qualify for sulfur-in-fuel relaxations and the procedures which the Massachusetts Department must use in screening the sources to determine that their emissions will not violate air quality standards. Facilities rated at less than 250 million Btu per hour heat input, which are currently burning residual fuel oil and have implemented conservation measures, are eligible to increase their sulfur-in-fuel content from 0.28 to 0.55 pounds per million Btu permanently if their consumption of fuel oil is reduced by at least 50 percent. Applications under Regulation 7.19 are reviewed by the Massachusetts Department for compliance with air quality standards. A State public comment period is held on each application.

Further details on Regulation 7.19 and EPA's reasons for approving it were discussed in the Notice of Proposed Rulemaking (NPR) published on December 16, 1980 (45 FR 82675). In the

NPR, EPA also proposed approval of all individual sources which are later determined to meet the eligibility requirements of this new regulation. No comments were received on the proposed approval of individual sources. EPA has determined that the Massachusetts Department has approved the Northeast Petroleum Corporation's request to burn higher sulfur fuel oil in accordance with the provisions of Regulation 310 CMR 7.19, and agrees that no air quality standards will be violated by the burning of 1.0% sulfur fuel oil at this facility.

EPA finds good cause for making this action effective immediately because the implementation plan is already in effect under State law and imposes no additional regulatory burden.

As noted above, EPA published a Notice of Proposed Rulemaking on December 16, 1980, approving both Regulation 7.19 and all individual sources later determined to be eligible for a sulfur-in-fuel relaxation pursuant to the new regulation. In addition, the Massachusetts Department published a notice and held a comment period to receive comments on its proposed approval of the sulfur-in-fuel relaxation at the Northeast Petroleum Corporation. Since the public has had these other opportunities to comment and since the Northeast Petroleum Corporation is a small source (45 million Btu per hour heat input), EPA is taking final action today to approve this SIP revision without first publishing a new proposed rulemaking. EPA believes that publishing a new NPR is unnecessary.

Action: Approve the SIP revision to allow Northeast Petroleum Corporation to increase the sulfur content of its fuel oil.

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

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

List of Subjects in 40 CFR Part 52

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

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

Note.—Incorporation by reference of the State Implementation Plan for the State of

Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 19, 1982.

Anne M. Gorsuch,
Administrator.

PART 52—[AMENDED]

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

Subpart W—Massachusetts

1. Section 52.1120, paragraph (c) is amended by adding subparagraph (51) as follows:

§ 52.1120 Identification of plan.

(c) * * *

(51) A revision submitted on September 29, 1982 by the Commissioner of the Massachusetts Department of Environmental Quality Engineering allowing the burning of fuel oil having a sulfur content of 0.55 pounds per million Btu heat release potential at the Northeast Petroleum Corporation, Chelsea, Massachusetts.

[FR Doc. 82-32094 Filed 11-22-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 123

[W-2-FRL 2241-8]

Massachusetts Department of Environmental Quality Engineering; Underground Injection Control Program; Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of Massachusetts 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 December 23, 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.

SUPPLEMENTARY 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 Massachusetts was listed as needing a UIC program on March 19, 1980 (45 FR 17632). The State of Massachusetts submitted an application under Section 1422 on August 16, 1982, for the approval of a UIC program governing Classes I, II, III, IV, and V injection wells to be administered by the Massachusetts Department of Environmental Quality Engineering (MDEQE). On September 3, 1982 (47 FR 38922), EPA published notice of its receipt of the application, requested public comments, and scheduled a public hearing on the Massachusetts UIC program submitted by the MDEQE. 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 September 21, 1982 because of expressed lack of sufficient public interest.

After careful review of the application I have determined that the Massachusetts UIC program submitted by the MDEQE meets the requirements established by Federal regulations pursuant to Section 1422 of the SDWA, and hereby approve it.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 123 which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection Control program is a part; and may not all apply to this particular notice:

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 Massachusetts Department of Environmental Quality Engineering 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: November 15, 1982.

Anne M. Gorsuch,
Administrator.

[FR Doc. 82-32095 Filed 11-22-82; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 101

[FPMR Temp. Reg. A-21]

Federal Facility Ridesharing Program

AGENCY: General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This regulation implements Executive Order 12191, dated February 1, 1980. It prescribes policy and procedures to be followed by executive agencies in promoting ridesharing among Federal employees and reporting program achievements. The intent of this regulation is to promote ridesharing as a means of conserving fuel, reducing pollutants, reducing traffic congestion, providing an economical way for employees to commute to work, and reducing the need for parking at Federal facilities.

DATES: Effective date: November 23, 1982. Expiration date: December 31, 1983.

FOR FURTHER INFORMATION CONTACT: Larry Frisbee, Federal Fleet Management Division, Transportation and Public Utilities Service (202-275-1021).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a

major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or to others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

**General Services Administration,
Washington, DC 20405**

November 15, 1982.

Federal Property Management Regulations Temporary Regulation A-21

To: Heads of Federal agencies.

Subject: Federal Facility Ridesharing Program.

1. **Purpose.** This regulation establishes policy and prescribes procedures for the Federal Facility Ridesharing Program.

2. **Effective date.** The regulation is effective upon publication in the Federal Register.

3. **Expiration date.** The regulation expires December 31, 1983, unless revised or superseded.

4. **Applicability.** The provisions of this temporary regulation apply to executive agencies and Federal facilities of such agencies located in the United States.

5. Background.

a. Executive Order 12191, dated February 1, 1980, established the Federal Facility Ridesharing Program. The Executive Order assigned primary responsibility for program development and implementation to the General Services Administration (GSA) in consultation with the Department of Transportation (DOT). The objectives of the program are to conserve fuel, reduce congestion, improve air quality, provide an economical way for employees to commute to work, and reduce the need for parking at Federal facilities. The primary role of executive agencies is to actively promote ridesharing at each Federal facility.

b. A Presidential memorandum for heads of executive departments and agencies was issued on February 1, 1980, instructing agencies to take all feasible

actions under current law to provide ridesharing incentives.

c. To implement the provisions of Executive Order 12191, GSA issued Federal Property Management Regulation (FPMR) Temporary Regulation A-16, dated October 14, 1980, which established policy and prescribed procedures for the implementation of the Federal Facility Ridesharing Program.

d. GSA issued FPMR Temporary Regulation A-16, Supplement 1, which extended the expiration date of FPMR Temporary Regulation A-16 through December 31, 1981.

e. This temporary regulation contains significant changes to the establishment of goals, objectives, and reporting requirements contained in FPMR Temporary Regulation A-16. These provisions have been modified to reduce the need for extensive recordkeeping and to eliminate the use of GSA Form 3261 for reporting facility ridesharing progress.

6. Definitions.

a. **Ridesharing.** "Ridesharing" means commuting in groups of two or more using a single vehicle; i.e., carpools, vanpools, buspools, mass transit, or other multi-occupancy modes of travel.

b. **Ridematching.** "Ridematching" means any system for mapping and matching home and work locations of interested commuters to identify prospects for ridesharing.

c. **Facility.** "Facility" means either a single building or a group of buildings or work locations at a common site.

d. **Third party operator.** "Third party operator" means an organization, firm, or individual, other than an employer or employee, who owns or leases vans or buses.

7. **Policy.** It is the policy of the Federal Government to promote the use of ridesharing at all Federal facilities. This promotion will include active cooperation with local and State ridesharing agencies where such agencies exist. In the process of promoting ridesharing, the Government shall not favor or endorse one commercial firm or nonprofit organization to the exclusion of other commercial firms or nonprofit organizations.

8. **Employee transportation coordinators.** An employee transportation coordinator shall be designated at each Federal facility with 100 or more full-time employees on one shift. (Agencies are encouraged to appoint coordinators at facilities with less than 100 full-time employees where such a coordinator can provide significant benefits to the ridesharing program.) At a facility occupied by more

than one Federal agency, the executive agency having the largest number of employees shall have the lead responsibility for program coordination and implementation for all the Federal agencies at the facility and will provide the employee transportation coordinator. Should a smaller agency volunteer to provide the facility employee transportation coordinator, the lead agency may transfer this responsibility to the smaller agency. The employee transportation coordinator shall:

a. Promote ridesharing at the facility by:

(1) Publicizing the availability of public transportation;

(2) Communicating employee transportation needs to local public transportation authorities and other organizations (such as private bus companies) furnishing multipassenger modes of transportation;

(3) Assisting employees in joining or forming carpools or vanpools employee-owned or -leased, directly or through a third party operator or non-profit employee organization);

(4) Utilizing ridesharing resources provided by State and local ridesharing agencies and participating in special ridesharing events;

(5) Aiding employee participation in ridematching programs (Where ridematching programs do not exist, action should be taken to establish these programs.);

(6) Publicizing the name, location, and telephone number of the employee transportation coordinator, utilizing bulletin boards, memoranda, newsletters, etc., and;

(7) Establishing ridesharing orientation for new and transferring employees.

b. Maintain an employee transportation profile showing the distribution of employee transportation modes; and

c. Prepare a facility report for annual submission to the agency coordinator.

9. *Ridesharing goals.* Ridesharing goals and objectives shall be established by each facility employee transportation coordinator. This will assist the employee transportation coordinator in evaluating the effectiveness of the facility ridesharing program.

10. *Reporting procedures.*

a. *Facility reports.* Each executive agency shall issue such instructions as may be necessary to obtain ridesharing program information at those facilities where the agency provides an employee transportation coordinator. The information obtained should include methods used to promote ridesharing

and any notable achievements or significant barriers encountered. Each executive agency shall maintain a current record of the names, addresses, and telephone numbers of their facility employee transportation coordinators.

b. *Agency reports.* The head of each agency shall submit to GSA by April 1st of each year a report which shall include:

(1) The name, address, and telephone number of the agency-wide employee transportation coordinator; and

(2) A narrative on actions taken and barriers encountered in promoting ridesharing within the agency; and

(3) Information on any notable facility achievements.

(4) Reports shall be submitted to: Federal Facility Ridesharing Program, Federal Fleet Management Division, Office of Personal Property, General Services Administration, Washington, DC 20406.

The report prescribed by this regulation has been cleared in accordance with Subpart 101-11.11 and has been assigned interagency report control number 0258-GSA-AN.

11. *Exemptions.* Facilities with less than 100 full-time employees or less than 100 full-time employees on the largest shift are not required to submit an annual report. Agencies shall not subdivide buildings, groups of buildings, or worksites for the purpose of meeting the exemption standards.

12. *Ridematching systems.* Whenever possible, agencies shall use and promote existing ridematching services. Where ridematching services do not exist, they shall be established, preferably in conjunction with nearby facilities. Ridematching systems may be manual (e.g. bulletin board, locator board) or computerized. All systems must be in compliance with the Privacy Act of 1974.

13. *Local ridesharing agencies.* Ridesharing management assistance is available from local ridesharing agencies found in most cities throughout the country. These agencies may be sponsored by State of local governments, public transportation authorities, universities, Chambers of Commerce, Councils of Governments, etc. In addition to providing commuter matching services, these agencies have experience in local ridesharing promotion activities, vanpool and buspool programs, and are able to manage commuter disruptions such as transit strikes, bridge closings, and air pollution alerts. Federal facilities are encouraged to utilize the services of the local ridesharing agencies to the greatest extent possible.

14. *Assistance to agencies.* Because of the large number of Federal, State, local,

and private sector groups involved in the promotion of ridesharing, there are many different resources available to Federal agencies interested in technical assistance and promotional materials for use in their ridesharing programs. To aid agencies in identifying these resources, GSA has designated ridesharing coordinators at each of its regional offices. A list of these coordinators and information concerning the national program can be obtained by contacting the office listed in paragraph 10(b).

15. *Effect on other directives.*

a. *Clean Air Act.* In jurisdictions where State or local implementation plans for air quality approved or promulgated by the Environmental Protection Agency (EPA) have placed employers under more stringent guidelines in promoting or reporting ridesharing efforts, the requirements in the air quality plans shall take precedence over this regulation.

b. *Federal Standby Conservation Program.* If Federal standby conservation measures are enacted under the Emergency Energy Conservation Act, those measures relating to employer efforts in promoting and reporting ridesharing projects shall take precedence over this regulation.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 82-32040 Filed 11-22-82; 8:45 am]

BILLING CODE 6820-AM-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

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:

Dr. Brian R. Mrazik, National Flood Insurance Program, (202) 287-0237, 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 flood-prone 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)
Alabama	City of Gadsden, Etowah County (FEMA-6015)	Coosa River	Just downstream of confluence of Big Willis Creek Just upstream of confluence of Big Willis Creek Confluence of Nowlin Branch Confluence of Town Creek	*519 *520 *520 *521
		Big Willis Creek	Just downstream of Brooke Avenue	*528
		Little Willis Creek	Just upstream of southern corporate limits (approximately 2,100 feet upstream Southern Railway Crossing).	*536
		Black Creek	Just upstream of Chestnut Street Just upstream of Tuscaloosa Avenue	*525 *531
			Just downstream of Nockalula Road Just upstream of Nockalula Road	*694 *699
		Town Creek	Just upstream of Tuscaloosa Avenue	*527
		Nowlin Branch	Just upstream of Elmwood Avenue Just upstream from North 7th Street	*524 *532
			Just upstream of Doyle Street	*540
		Greenway Creek	Just downstream of Springfield Avenue	*530
Maps available for inspection at City Hall, 90 Broad Street, Gadsden, Alabama 35999.				
California	Arcata (City), Humboldt County, FEMA-6121	Jolly Giant Creek	Intersection of K Street and 7th Street Southern Pacific Railroad Crossing of 17th Street	*14 *20
		Janes Creek	Intersection of Q Street and Zehndner Avenue	*13
		Mad River	Intersection of Madrone Way and Maple Lane Approximately 800 feet west along Guintoli Lane from the crossing of U.S. Highway 101.	*30 *30
Maps available for inspection at Department of Planning, 736 F Street, Arcata, California.				
Florida	North Palm Beach (Village) Palm Beach County, FEMA-6246.	Atlantic Ocean-Open Coast	Approximately 550 feet east of the point where State Road No. A1A crosses the southern corporate limits.	*10
		Atlantic Ocean-Lake Worth	Eastern end of Wetlaw Lane Eastern end of Golfview Road	*7 *7
Maps available for inspection at Public Services Department, 645 Prosperity Farms Road, North Palm Beach, Florida.				
Florida	Volusia County (Unincorporated Areas), FEMA-6246	Atlantic Ocean—Open Coast	Approximately 150 feet east of intersection of Sea Bridge Drive and State Highway A1A. Approximately 500 feet east of intersection of Allard Street and South Atlantic Avenue. Approximately 500 feet northeast of intersection of 17th Street and Central Avenue.	*9 *11 *11
		Atlantic Ocean-Halifax Creek/Intra-coastal Waterway.	Approximately 200 feet west of intersection of Dolphin Avenue and John Anderson Drive.	*4
			Approximately 3,000 feet west along Highbridge Road from its intersection with John Anderson Drive.	*5
		Atlantic Ocean-Halifax River/Intra-coastal Waterway.	Approximately 100 feet west of intersection of Capistrano Drive and John Anderson Drive.	*4
			Intersection of Egret Street and Peninsula Drive Intersection of Ridgewood Avenue and Katherine Street.	*7 *9
			Sleepy Hollow Drive	*7
		Atlantic Ocean-Indian River North/Intracoastal Waterway.	Pelican Drive Intersection of Watts Drive and South Atlantic Avenue Approximately 1,000 feet southwest of intersection of 17th Street and Central Avenue.	*7 *7 *8
			Eastern end of Myrtle Avenue	*8

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)
		Atlantic Ocean-Mosquito Lagoon/ Intracoastal Waterway.	Intersection of Canal Avenue and River Drive Approximately 1,000 feet southeast along dirt road extending from the intersection of Canal Avenue and River Drive, at Oak Hill Dock.	*6 *7
		Atlantic Ocean-Indian River	Approximately 1,000 feet east of intersection of County Line Road and U.S. Highway 1. Approximately 1,000 feet east of intersection of Florida East Coast Railroad and the southern county limits.	*4 *5
Maps available for inspection at Public Works Department, 136 N. Florida Avenue, DeLand, Florida.				
New York.....	Cicero, Town, Onondaga County (Docket No. FEMA- 6130).	Oneida Lake..... Chittenango Creek	Entire shoreline within community..... Confluence with Oneida Lake..... Upstream State Route 31..... Upstream corporate limits..... Downstream corporate limits..... Upstream Interstate 81..... Downstream South Bay Road.....	*373 *373 *385 *392 *375 *384 *387
Maps available for inspection at the Town Hall, Main Street, Cicero, New York.				

(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: November 4, 1982.

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 82-31738 Filed 11-22-82; 9:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

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: Dr. Brian R. Mrázik, National Flood

Insurance Program, (202) 287-0237, 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. No appeals of the proposed base flood elevations were received from 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 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)
Connecticut	Torrington, City, Litchfield County (Docket No. FEMA-6356).	Naugatuck River	Downstream corporate limits	*515
			Bogue Road (upstream side)	*519
			Palmer Street (upstream side)	*525
		East Branch Naugatuck River	Confluence of East Branch Naugatuck River and West Branch Naugatuck River	*532
			Confluence with Naugatuck River	*532
			East Pearl Street (upstream side)	*532
			State Route 4 (upstream side)	*557
			State Route 4 (upstream side)	*597
			Duggan Road (upstream side)	*656
			Approximately 2,565 feet upstream of Duggan road	*718
			Approximately 1,030 feet downstream of East Branch Dam	*775
		West Branch Naugatuck River	Confluence with Naugatuck River	*532
			Prospect Street (upstream side)	*554
			Church Street (upstream side)	*586
			Wolcott Avenue (upstream side)	*603
			Union Hardware Dam (upstream side)	*631
			Approximately 2,760 feet downstream of Hodges Hill Road	*675
			Confluence of Drake Pond Brook	*741
			Confluence of Hart Brook	*786
		Still River	Hall Meadow Brook Dam (downstream side)	*843
			Downstream corporate limits	*709
			Greenwood Road (upstream side)	*717
			Harris Drive (upstream side)	*729
		Nicol Mine Brook	Upstream of Winsted Road	*734
			Confluence with West Branch Naugatuck River	*641
			Crystal Pond Dam (upstream side)	*726
		Gulf Stream	Town Farm Road (upstream side)	*770
			Allen Dam (upstream side)	*787
			Confluence with Naugatuck River	*527
			Conrail (upstream side)	*568
			Bellview Avenue (upstream side)	*605
			U.S. Route 202 and State Route 25 (upstream side) (downstream crossing)	*641
			U.S. Route 202 and State Route 25 (upstream side) (upstream crossing)	*788
			Approximately 100 feet upstream of Peck Road	*860
Maps available for inspection at the Building Department, Municipal Building, 140 Main Street, Torrington, Connecticut.				
Florida	Town of Callahan, Nassau County (FEMA-6376)	Alligator Creek	Just upstream of U.S. Highway 1 Bridge	*16
			Just upstream of Seaboard Coastline Railroad Bridge	*18
Maps available for inspection at Town Hall, 119 South Kings Road, Callahan, Florida 32011.				
Florida	City of Fernandina Beach, Nassau County (FEMA-6376).	Atlantic Ocean	State Highway 200 extended to Atlantic Ocean	*16
		Atlantic Ocean/Amelia River	State Highway 108 extended to Atlantic Ocean	*15
			Dade Street extended to Amelia River	*12
			Alachua Street extended to Amelia River	*11
Maps available for inspection at City Hall, 204 Ash Street, Fernandina Beach, Florida 32034.				
Iowa	(C) Creston, Union County (Docket No. FEMA-6356)	Hurley Creek	Just upstream of Adams Street	*1,245
			Just downstream of Spruce Street	*1,254
			Just upstream of Spruce Street	*1,257
			Just upstream of Division Street	*1,260
			Just downstream of Townline Road Dam	*1,275
		Hurley Creek Tributary	At confluence with Hurley Creek	*1,250
			Just upstream of Spencer Street	*1,256
			Just upstream of Prairie Street	*1,271
			About 880 feet upstream of Prairie Street	*1,274
		Lake McKinley	Shoreline	*1,244
		Hurley Creek Reservoir	Shoreline	*1,286
Maps available for inspection at the City Clerk's Office, City Hall, 116 West Adams, Creston, Iowa.				
Iowa	(C) Harlan, Shelby County (Docket No. FEMA-6376)	West Nishnabotna River	About 1.25 miles downstream of State Route 44	*1,187
			Just upstream of State Route 44	*1,191
			About 1.1 miles upstream of State Route 44	*1,195
		West Fork West Nishnabotna River	About 0.67 mile downstream of Plumb Street	*1,197
			About 0.08 mile upstream of Plumb Street	*1,200
Maps available for inspection at the City Clerk's Office, City Hall, Harlan, Iowa.				
Iowa	(C) Pacific Junction, Mills County (Docket No. FEMA-6376).	Missouri River	About 4,400 feet upstream of U.S. Highway 34	*961
			About 9,100 feet upstream of U.S. Highway 34	*984
		Pony Creek	About 1,400 feet downstream of Burlington Northern Railroad	*961
			About 2,700 feet upstream of Burlington Northern Railroad	*967
Maps available for inspection at City Hall, Pacific Junction, Iowa.				
Iowa	(Uninc.) Pottawattamie County (Docket No. FEMA-6356).	Keg Creek	About 1.1 miles downstream of County Road L-66	*1,179
			About 0.38 mile upstream of County Road L-66	*1,186
		West Nishnabotna River	About 1,300 feet upstream of U.S. Highway 6	*1,076
			About 2.7 miles upstream of U.S. Highway 6	*1,066

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)
			About 0.5 mile downstream of County Road G30.....	*1,106
			About 1.4 miles upstream of County Road G30.....	*1,112
			About 0.5 mile downstream of State Highway 83.....	*1,130
			Just downstream of Interstate 80.....	*1,137
		East Branch West Nishnabotna River.....	About 0.9 mile downstream of State Highway 83.....	*1,134
			About 0.5 mile upstream of State Highway 83.....	*1,141
		Missouri River.....	At downstream county boundary.....	*972
			About 6,800 feet upstream of north county boundary.....	*1,002
		Pony Creek.....	About 800 feet upstream of confluence with Missouri River.....	*975
			Just upstream of U.S. Highway 275.....	*1,003
			About 1.1 miles upstream of County Highway G66.....	*1,029
		Mosquito Creek.....	About 0.8 mile downstream of Chicago, Rock Island and Pacific Railroad.....	*991
			Just upstream of Chicago, Rock Island and Pacific Railroad.....	*998
			About 3.0 miles downstream of State Highway 191 (downstream crossing).....	*1,021
			Just upstream of County Road G30.....	*1,057
			About 0.7 mile upstream of State Highway 191 (near City of Neola).....	*1,099
		Mosquito Creek Bypass.....	About 0.8 mile downstream of divergence with Mosquito Creek.....	*1,066
			At divergence with Mosquito Creek.....	*1,068
		Neola Creek.....	Mouth at Mosquito Creek.....	*1,088
			About 0.8 mile upstream of mouth.....	*1,101
		Shallow Flooding (Overflow from Boyer River).....	Intersection of County Road G14 and County Road L19.....	#3
			Area just east of Boyer River and west of Interstate 29 and Interstate 80 Interchange.....	#3
			Area just east of Interstate 29, west of Illinois Central Gulf Railroad and about 3,500 feet north of Interstate 80.....	#3
			Area about 1,500 feet north of intersection between Illinois Central Gulf Railroad and Chicago and North Western Railroad.....	#3
		Shallow Flooding (Overflow from Pigeon Creek).....	At the Chicago and North Western Railroad crossing over.....	#3

Maps available for inspection at the County Auditor's Office, Pottawattamie County Courthouse, 227 South Sixth Street, Council Bluffs, Iowa.

Kansas.....	(Uninc.) McPherson County (Docket No. FEMA-6376).....	Black Kettle Creek.....	About 0.8 mile downstream of Old U.S. Highway 81 Bypass.....	*1,463
			Just upstream of Old U.S. Highway 81 Bypass.....	*1,469
			Just upstream of Missouri Pacific Railroad.....	*1,473
		Black Kettle Creek Tributary No. 1.....	About 0.95 mile upstream of Durst Street.....	*1,477
			At confluence with Black Kettle Creek.....	*1,475
			About 1,650 feet upstream of confluence with Black Kettle Creek.....	*1,477
		Galva Drain.....	About 430 feet downstream of City of Galva corporate limit.....	*1,533
			At City of Galva corporate limit.....	*1,535
		Smoky Hill River.....	Just downstream of Union Pacific Railroad.....	*1,325
			About 0.14 mile upstream of First Street.....	*1,326
			About 1.2 miles downstream of Washington Street.....	*1,373
			Just upstream of Washington Street.....	*1,377
			About 0.74 mile upstream of Washington Street.....	*1,379
		Smoky Hill River Tributary No. 1.....	About 100 feet downstream of Fifth Street.....	*1,388
			Just upstream of Missouri Pacific Railroad (upstream crossing).....	*1,392
			About 100 feet downstream of State Highway 4.....	*1,408

Maps available for inspection at the County Courthouse, Box 945, McPherson, Kansas.

Louisiana.....	City of Bossier City, Bossier Parish (FEMA-6356).....	Alligator Bayou.....	Just upstream of U.S. Highway 79-80 Westbound.....	*163
		Benoit Bayou.....	Approximately 400 feet downstream of Greenacres Boulevard.....	*170
		Bossier City Ditch.....	Just downstream of Bailey Drive.....	*164
			Just upstream of Airline Drive.....	*166
			Just upstream of Waller Avenue.....	*167
		Herndon Ditch.....	Confluence of Herndon Ditch and Macks Bayou Segment B.....	*158
		Lateral B-1.....	Just downstream of Illinois Central Gulf Railroad.....	*167
			Just upstream of Shed Road.....	*168
		Lateral B-4.....	Just downstream of Airline Drive.....	*168
		Lateral C-18.....	Gail Street extended.....	*168
		Macks Bayou Segment A.....	Just upstream of Golden Meadow Drive.....	*157
		Macks Bayou Segment B.....	Just downstream of Farm Road 1.....	*159
		Mack's Bayou Segment D.....	Just upstream of Third Street South.....	*164
			Just upstream of North Gale Road.....	*167
		Mack's Bayou Segment E.....	Just downstream of Industrial Drive Gate.....	*160
		Macks Bayou Segment F.....	Just upstream of Industrial Drive.....	*161
			Just upstream of Westbound U.S. Highways 79-80.....	*164
			Just downstream of Swan Lake Road.....	*165
		Macks Bayou Segment G.....	Just upstream of Profit Lane Bridge.....	*166
		Macks Bayou Segment H.....	Just upstream of Interstate Highway 220.....	*166

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)
		Macks Bayou Lateral	Golden Meadow Drive extended	*159
		New High School Ditch	Just downstream of Benton Road	*169
		Red Chute Bayou (upstream)	Just upstream of Illinois Central Gulf Railroad	*161
			Just downstream of Kansas City Southern Railroad	*163
		Red River	Just downstream of Long-Allen Bridge (Texas Street)	*166
		Shady Grove Ditch and Macks Bayou Segment C	Just upstream of Shady Grove Drive	*159
		Shallow Flooding	Intersection of Malvern Street and Shiloh Lane	*167
			Intersection of Belle Grove Drive and North Side Drive	*168
Maps available for inspection at City Hall, 635 Barksdale Boulevard, Bossier City, Louisiana 71111.				
Louisiana	Town of Delcambre Vermilion and Iberia Parishes (FEMA-6356)	Vermilion Bay/Delcambre Canal	Just upstream of Southern Pacific Railroad	*12
Maps available for inspection at Town Hall, 107 North Railroad, Delcambre, Louisiana 70528.				
Louisiana	Town of Erath Vermilion Parish (FEMA-6356)	Vermilion Bay/Tigre-Bay	At the intersection of Broadway (Highway 685) and Highway 14	*11
Maps available for inspection at Town Hall, 115 West Edwards, Erath, Louisiana 70533.				
Louisiana	Town of Mandeville, St. Tammany Parish (FEMA-6356)	Lake Pontchartrain	Along the seawall	*16
			Along Illinois Central Gulf Railroad	*12
Maps available for inspection at Town Hall, 3101 East Causeway Approach, Mandeville, Louisiana 70448.				
Louisiana	Town of Scott, Lafayette Parish (FEMA-6356)	Lateral F2	Approximately 650 feet upstream from Provost Drive	*33
		Lateral F	Approximately 310 feet downstream from GL Landry Road	*36
		West Coulee Mine	At the intersection of Wheat Circle and Mills Street	*38
Maps available for inspection at Town Hall, Lions Club Road, Scott, Louisiana 70583.				
Maryland	Cecil County (Docket No. FEMA-6356)	Chesapeake Bay	Shoreline from confluence of the Sassafras River to Rocky Point	*11
			Shoreline from Rocky Point to confluence of the Susquehanna River	*12
		Northeast River	Entire shoreline within corporate limits	*12
		Elk River	Shoreline from Turkey Point to Greenbush Point	*11
			Shoreline from Stony Point to confluence of Little Elk Creek	*12
		Bohemia River	Entire shoreline within corporate limits	*12
		Back Creek	Entire shoreline within corporate limits	*12
		Susquehanna River	Shoreline from confluence with Chesapeake Bay to State Route 276 (extended)	*12
			Town of Port Deposit northern corporate limits (extended)	*15
			Canal Road (extended)	*18
			Private Road (extended)	*27
			Confluence of Octoraro Creek	*30
			Conowingo Road (downstream side)	*38
		Big Elk Creek	Town of Elkton northern corporate limits	*27
			State Route 279 (upstream side)	*36
			Ricketts Mill Road (upstream side)	*41
			Private Road (extended)	*52
			Interstate Route 95 (downstream side)	*64
		Northeast Creek	Town of Northeast northern corporate limits	*17
			Confluence of Little Northeast Creek	*37
			U.S. Route 40 (downstream side)	*38
			Chessie System (downstream side)	*72
		Little Northeast Creek	Confluence with Northeast Creek	*37
			Mechanics Valley Road (upstream side)	*52
			Chessie System (downstream side)	*80
		Little Elk Creek	From confluence with the Elk River to CONRAIL (upstream side)	*12
			Wood Trestle Bridge (upstream side)	*16
			Confluence of Dogwood Run	*22
		Stone Run Tributary 1	Confluence with Stone Run	*275
			Mount Street (upstream side)	*303
			Town of Rising Sun downstream corporate limits	*316
			State Route 273 (downstream side)	*340
		Mill Creek	Town of Perryville corporate limits	*74
			U.S. Route 40 (upstream side)	*105
			Reservoir Road (upstream side)	*163
			Jackson Station Road (upstream side)	*222
			Principio Road (upstream side)	*284
		West Branch	State Boundary	*107
			Chestnut Drive (upstream side)	*125
			Chessie System (upstream side)	*153
		Stone Run Tributary 2	Confluence with Stone Run	*275
			State Route 273 (upstream side)	*311
Maps available for inspection at the Cecil County Courthouse, Room 210, Elkton, Maryland.				
Michigan	(C) Battle Creek, Calhoun County (Docket No. FEMA-6356)	Kalamazoo River	At downstream corporate limits	*804
			About 1,200 feet upstream of Kendall Street	*812
			About 2,650 feet downstream of Columbia Avenue	*832
			About 8,475 feet upstream of Columbia Avenue	*837
		Battle Creek River	At confluence with Kalamazoo River	*812
			Just upstream of Conrail (near Division Street)	*825

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)
			Just upstream of Verona Dam.....	*828
			At upstream corporate limits.....	*830
		Sperry Drain.....	At mouth.....	*808
			Just downstream of Michigan Avenue.....	*811
			Just upstream of Michigan Avenue.....	*819
			Just upstream of Limit Street.....	*824
			Just upstream of Waubascon Road.....	*849
			At upstream corporate limit.....	*850
		Sperry Drain—West Channel.....	At mouth.....	*807
			At divergence with Sperry Drain.....	*810
		Waubascon Creek.....	At downstream corporate limit.....	*812
			At upstream corporate limit.....	*818
Maps available for inspection at the City Hall, East Michigan Avenue at East Division Street, Battle Creek, Michigan.				
Michigan.....	(Twp.) Battle Creek, Calhoun County (Docket No. FEMA-6356).	Minges Brook.....	Just upstream of Interstate 94.....	*864
			About 50 feet upstream of Riverside Drive.....	*873
			About 50 feet upstream of Capitol Avenue, S.W.	*888
			Just downstream of S. Minges Road.....	*906
			Just upstream of S. Minges Road.....	*912
			Just downstream of Watkins Road.....	*920
		Goguac Lake.....	Shoreline.....	*912
Maps available for inspection at the Town Hall, 359 W. Territorial Road, Battle Creek, Michigan.				
Nebraska.....	(V) Yutan Saunders County (Docket No. FEMA-6356).	Clear Creek.....	About 400 feet downstream of County Road (at southern extraterritorial limit).....	*1,141
			Just downstream of State Highway 92.....	*1,146
			Just upstream of State Highway 792.....	*1,152
			Just upstream of Union Pacific Railroad.....	*1,163
			Just downstream of County Road (at western extraterritorial limit).....	*1,180
		Upper Clear Creek.....	At mouth.....	*1,143
			Just upstream of Burlington Northern Railroad.....	*1,148
			Just downstream of County Road (at northern extraterritorial limit).....	*1,173
		Platte River (Riverward of Levee).....	Just south of Hillside Avenue at eastern extraterritorial limit.....	*1,126
			About 3,000 feet north of Hillside Avenue at eastern extraterritorial limit.....	*1,130
		Platte River (Landward of Levee).....	About 3,000 feet north of Hillside Avenue at eastern extraterritorial limit.....	*1,130
			Just south of County Road at northeastern extraterritorial limit.....	*1,132
Maps available for inspection at the Village Hall, Yutan, Nebraska.				
New Hampshire.....	Hancock, Town; Hillsborough County (Docket No. FEMA-6356).	Contoocook River.....	Downstream corporate limits.....	683*
			At Forest Road.....	*685
			Upstream corporate limits.....	*690
		Moose Brook.....	Approximately 100 feet downstream of Dirt Road.....	*824
			Upstream of Longview Road.....	*835
		Ferguson Brook.....	Approximately 3,000 feet upstream of Longview Road.....	*836
			Approximately 7,600 feet downstream of State Road 137.....	*724
			Downstream of State Route 137 (Sand Hill Road).....	*737
			Approximately 700 feet upstream of State Route 137.....	*753
		Hosley Brook.....	Approximately 1,200 feet downstream of Hunts Pond Road.....	*1,169
			Upstream Hunts Pond Road.....	*1,194
			Approximately 900 feet upstream of Hunts Pond Road.....	*1,198
Maps available for inspection at the Selectmen's Office, Hancock, New Hampshire.				
New Jersey.....	Bass River, Township; Burlington County (Docket No. FEMA-6356).	Great Bay.....	Mullica River shoreline.....	*9
Maps available for inspection at the Municipal Building, New Gretna, New Jersey.				
New Jersey.....	Freehold, Township; Monmouth County (Docket No. FEMA-6376).	Manasquan River.....	Corporate limits.....	*78
			Downstream of Georgia Road.....	*88
			Confluence with Tributary A to Manasquan River.....	*93
		Tributary A to Manasquan River.....	Confluence with Manasquan River.....	*93
			Downstream of Elton Adelphia Road.....	*106
			Approximately 1,950 feet upstream of Elton Adelphia Road.....	*118
		Tributary B to Manasquan River.....	Confluence with Manasquan River.....	*84
			Downstream of Elton Adelphia Road.....	*106
			Downstream of Buckingham Way.....	*115
			Upstream of Winchester Drive.....	*130
		Tributary C to Manasquan River.....	Confluence with Manasquan River.....	*80
			Downstream of Elton Adelphia Road.....	*101
			Upstream of Old Post Road.....	*110
		Debois Creek.....	Confluence with Manasquan River.....	*78
			Upstream of Elton Adelphia Road.....	*89
			Downstream of Three Brooks Road.....	*102
			Downstream of Willow Brook Road.....	*113
			Approximately 120 feet upstream of Park Avenue.....	*122

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)
		Tributary to Debois Creek	Upstream of Center Street	*138
			Confluence with Debois Creek	*94
		Downstream of Three Brooks Road		*106
		Burkes Creek	Confluence with Debois Creek	*91
		Applegate Creek	Approximately 3,000 feet upstream of Halls Mill Road	*102
			Confluence with Debois Creek	*93
			Downstream of Three Brooks Road	*102
			Upstream of Willow Brook Road	*116
		Yellow Brook	Corporate limits	*99
			Downstream of Camille Lane	*106
			Upstream of Randolph Road	*115
		Tributary to Yellow Brook	Confluence with Yellow Brook	*102
			Upstream of Paulett Drive	*108
		Wemrock Brook	Corporate limits	*104
			Upstream of Wemrock Road	*109
			Upstream of State Route 33	*116
		Weamaconk Creek	Corporate limits	*108
			Downstream of Interstate Route 9	*121
			Upstream of Waterworks Road	*135
			Upstream of Gordons Corner Road	*140
		McGellairs Brook	Corporate limits	*102
			Upstream of Waterworks Road	*111
			Upstream of Gordons Corner Road	*114
		South Branch Tepehemus	Corporate limits	*105
		Brook	Upstream of Silvers Road	*113
			Approximately 75 feet downstream of Robertsville Road	*119
Maps available for inspection at the Municipal Plaza, Schank Road, Freehold, New Jersey.				
New York	Village of Asharoken, Suffolk County (FEMA-6333)	Long Island Sound	From Eaton's Neck Point to 600 feet east of Eaton's Neck Lighthouse	*15
			From 600 feet east of Eaton's Neck Lighthouse to the southern corporate limit	*16
			East of the intersection of Asharoken Avenue and Bevin Road	*13
Maps are available for inspection at the Village Hall, One Asharoken Avenue, Asharoken-Northport, New York.				
New York	Belle Terre, Village, Suffolk County (Docket No. FEMA-6356)	Long Island Sound	Entire shoreline	*16
		Port Jefferson Harbor	Entire shoreline	*11
Maps available for inspection at the Village Hall, Belle Terre, New York.				
New York	Conquest, Town, Cayuga County (Docket No. FEMA-6376)	Seneca River	Downstream corporate limits	*384
			Confluence with Barge Canal	*384
		Barge Canal	Confluence with New York State Barge Canal	*384
			Confluence with Seneca River	*384
Maps available for inspection at the Office of the Town Clerk, Fuller Road, Port Byron, New York.				
New York	City of Glen Cove, Nassau County (FEMA-6333)	Hempstead Harbor	From Matincock Point to eastern corporate limits	*20
			From Soundbeach Drive extended to Southland Drive extended	*17
			From Glen Cove Landing to southern corporate limits	*14
		Dospris Pond	From Birch Lane extended to eastern corporate limits	*16
			From Danas Island Road to Birch Lane extended	*15
			From Lattingtown Road to 1,100 feet north of Lattingtown Road	*15
Maps are available for inspection at the City Hall, Bridge Street, Glen Cove, New York.				
New York	Jewett, Town, Greene County (Docket No. FEMA-6376)	Schoharie Creek	Upstream corporate limits	*1,544
			Approximately 6,000 feet downstream of Deming Road	*1,506
			Carr Road (upstream)	*1,468
			Approximately 6,100 feet upstream of confluence with East Kill	*1,434
			Confluence with East Kill	*1,403
			Downstream corporate limits	*1,374
		East Kill	Scribner Hollow Road (downstream)	*1,816
			Approximately 6,700 feet downstream of Scribner Hollow Road	*1,722
			Approximately 2,400 feet upstream of Beechers Corner's Road	*1,678
			State Route 296 (upstream)	*1,649
			Approximately 5,000 feet downstream State Route 296	*1,610
Maps available for inspection at the Town House, Route 23C, Jewett, New York.				
New York	Little Falls, City, Herkimer County (Docket No. FEMA-6356)	Mohawk River	At downstream corporate limits	*330
			Downstream of Dam	*339
			Upstream of South Ann Street	*360
			Upstream corporate limits	*373
			Approximately 4,000 feet upstream of upstream corporate limits	*374
		Right Channel of Mohawk River	At downstream confluence with Mohawk River	*364
			Upstream confluence with Mohawk River	*373
		Nydot Canal	At Lock 17E	*368
			Confluence with Mohawk River	*373
Maps available for inspection at City Hall, East Main Street, Little Falls, New York.				

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)
New York	Village of North Haven, Suffolk County (FEMA 6333)	Shelter Island Sound	From Gleason Point to the confluence with Stock Farm Creek.	*11
			From Tyndal Point to Farnum Pond	*9
			From 500 feet northwest of Corwin Road extended to South Ferry Road.	*11
			At Manor Drive extended	*9
			At Fresh Pond	*9
			Northeast of the intersection of South Ferry Road and Fresh Pond Road.	*9
		Noyack Bay	From Gleason Point to Short Beach Road	*10
		Sag Harbor Cove	From Short Beach Road to South Ferry Road	*9
Maps are available for inspection at the Village Hall, Main Street, Sag Harbor, New York.				
North Dakota	Flasher (City) Morton County FEMA-6356	Louse Creek	Intersection of College Street and 1st Street	*1906
Maps are available for inspection at the City Hall, Flasher, North Dakota.				
Pennsylvania	Manheim, Township, York County (Docket No. FEMA-6356).	Codorus Creek	Confluence with West Branch Codorus Creek	*520
			Legislative Route 66154 (upstream)	*529
			Sinsheim Road (upstream)	*542
			Kitzmiller Road (upstream)	*553
			Pentland Road (2nd crossing) (upstream)	*576
			Snyder Mill Road (upstream)	*598
			Pennsylvania Route 216	*649
			Wool Mill Road (upstream)	*663
			Glennville Road (upstream)	*692
			Wolfgang School Road (upstream)	*709
		Tributary No. 1	Confluence with Codorus Creek	*656
			Farm Road (upstream)	*674
			Approximately 1,550 feet downstream of Wool Mill Road.	*700
			Wool Mill Road (upstream)	*728
Maps are available for inspection at the Township Municipal Building, Manheim, Pennsylvania.				
South Carolina	Town of Edisto Beach Colleton County (FEMA-6376)	Atlantic Ocean	Intersection of Louise Street and McConkey Boulevard.	*11
			Intersection of Point Street and Edisto Street.	*12
			Intersection of McConkey Boulevard and Osceola Street.	*13
Maps are available for inspection at the Town Hall, White Cap and Lee Street, Edisto Beach, South Carolina 29438.				
Texas	City of Clear Lake Shores, Galveston County (FEMA-6356).	Clear Lake	At intersection of Ivy Road and Clear Lake Road	*11
			20 feet west of intersection of Forest Road and Oak Road.	*11
			At intersection of Maple Road and Ivy Road	*11
Maps available for inspection at City Hall, 931 Cedar Street, Clear Lake Shores, Texas 77565.				
Texas	Galena Park, City Harris County (Docket No. FEMA-6384).	Hunting Bayou	Downstream corporate limits to Port Terminal Railroad	*12
			Upstream corporate limits	*15
		Panther Creek	Downstream corporate limits to upstream side of Holland Street.	*12
Maps available for inspection at the City Hall, Galena Park, Texas.				
Texas	City of Hitchcock, Galveston County (FEMA-6356)	Lower Highland Bayou	Just upstream of Fairwood Road	*12
			Just upstream of Delaney Road	*12
		Upper Highland Bayou (flooding on this stream due to Galveston Bay).	Just upstream of Rural Road	*12
		Marchand Bayou	Just upstream of Main Street	*12
		Unnamed Tributary 3	Just upstream of Delaney Road	*12
			Approximately 160 feet downstream of Temple Drive	*13
Maps available for inspection at City Hall, 7423 Highway 6, Hitchcock, Texas 77563.				
Texas	Village of Jamaica Beach, Galveston County (FEMA-6356).	Gulf of Mexico	Intersection of Beach Comber Road and Jamaica Beach Road.	*16
			Intersection of San Luis Pass Road and Buccaneer Drive.	*15
			Intersection of John Davis Road and Buccaneer Drive	*14
			Intersection of Jamaica Cove Road and Bahama Way	*13
			Intersection of Tortuga Way and Spanish Main	*12
Maps available for inspection at Village Hall, 16628 San Luis Road, Jamaica Beach, Texas 77551.				

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)
Texas	City of Kemah, Galveston County (FEMA-6356)	Galveston Bay	At corner of Kipp and East 3rd Street	*13
			At corner of Bradford and East 6th Street	*11
		Clear Lake	At Harbor Lane extension and Clear Creek	*13
Maps available for inspection at City Hall, 602 Bradford Street, Kemah, Texas 77565. Send comments to Mayor James A. Foster or Maude Cloakey, City Clerk, P.O. Box 817, Kemah, Texas 77565.				
Vermont	Highgate, Town Franklin County (Docket No. FEMA-6356)	Lake Champlain	Flooding affecting the Mississippi River	*102
		Missisquoi River	At Mississippi National Wildlife Refuge Boundary	*102
			Approximately 6,800 feet upstream Mississippi National Wildlife Refuge Boundary	*107
			At confluence of Hungerford Brook	*124
			Downstream New County Route 2	*150
			Upstream Highgate Falls Dam	*181
			Approximately 5,000 feet upstream Highgate Falls Dam	*182
			Approximately 10,000 feet upstream Highgate Falls Dam	*192
			Approximately 17,000 feet upstream Highgate Falls Dam	*195
			Upstream County Route 6	*212
			Approximately 5,000 feet upstream County Route 6	*217
			At upstream corporate limits	*219
Maps available for inspection at the Town Clerk's Office, Municipal Building, R.F.D. 1, Highgate, Vermont.				
Virginia	Cedar Bluff, Town Tazewell County (Docket No. FEMA-6376)	Clinch River	Downstream corporate limits	*1,939
			Upstream 3rd crossing Norfolk and Western Railroad	*1,947
			Downstream City Street	*1,951
			Downstream 6th crossing Norfolk and Western Railroad	*1,976
			Upstream corporate limits	*1,998
		Middle Creek	Downstream State Route 631	*1,951
			Upstream corporate limits	*1,992
		Indian Creek	Downstream State Route 631	*1,954
			Upstream corporate limits	*1,969
Maps available for inspection at the Town Hall, Cedar Bluff, Virginia.				
Virginia	Richlands, Town Tazewell County (Docket No. FEMA-6376)	Clinch River	Downstream corporate limits	*1,920
			Upstream of U.S. Route 460 (downstream crossing)	*1,924
			Upstream of Second Street	*1,930
			Upstream of Virginia Avenue	*1,934
			Upstream corporate limits	*1,940
		Tributary to Clinch River	Confluence with Clinch River	*1,922
			Downstream of Burnett Street	*1,932
		Town Hall	Confluence with Clinch River	*1,920
			Upstream of City Street	*1,925
			Upstream of Lake Park Drive	*1,954
			Upstream of Hill Creek Road	*1,969
			Upstream corporate limits	*1,983
		Big Creek	Confluence with Clinch River	*1,929
			Upstream of Fifth Street	*1,930
			Upstream Norfolk and Western Railroad	*1,944
			Upstream of State Route 67	*1,972
			Upstream corporate limits	*1,996
Maps available for inspection at the Town Hall, 217 Railroad Avenue, Richlands, Virginia.				
West Virginia	Ohio County (Docket NO. FEMA-6376)	Ohio River	Downstream corporate limits	*662
			Upstream corporate limits	*663
		Wheeling Creek	At Shafer Avenue	*693
			Upstream corporate limits	*699
Maps available for inspection at the City County Building, Room 215, Wheeling, West Virginia.				
West Virginia	Wetzel County (Docket No. FEMA-6376)	Ohio River	At downstream county boundary	*634
			Confluence of Fishing Creek	*636
			Confluence of William Run	*637
			Upstream of Hannibal Lock and Dam	*638
			Downstream of upstream county boundary	*640
		Doolin Run	Confluence with Fishing Creek	*636
			Approximately 2,400 feet upstream State Routes 7 and 20	*636
			Approximately 4,300 feet upstream State Routes 7 and 20	*653

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)
		Fishing Creek.....	Approximately 7,300 feet upstream State Routes 7 and 20. Downstream of downstream corporate limits..... Upstream of upstream corporate limits (extended).....	*679 *636 *636

Maps available for inspection at the Wetzel County Courthouse, New Martinsville, West Virginia.

(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: November 4, 1982.

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 82-31739 Filed 11-22-82; 8:45 am]

BILLING CODE 6718-03-M

Proposed Rules

Federal Register

Vol. 47, No. 226

Tuesday, November 23, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 720

Affirmative Employment Programs

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: This proposed revised regulation eliminates from regulation the requirements on the data and method to be used for making determinations of underrepresentation which must be included in Federal Equal Opportunity Recruitment Program (FEORP) plans. It directs the user to consult the Federal Personnel Manual for guidance on making the determinations of underrepresentation.

DATES: Written comments must be received by December 23, 1982.

ADDRESSES: Send or deliver comments to: Assistant Director, Office of Affirmative Employment Programs, Workforce Effectiveness and Development Group, Office of Personnel Management, Room 7528, 1900 E Street N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Curttestine M. Boardley, Office of Affirmative Employment Programs, (202) 632-6256.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 7201 requires the establishment of a recruitment program aimed at eliminating the underrepresentation of minorities in the various categories of civil service employment. It defines underrepresentation as a "situation in which the number of members of a minority group designation within a category of civil service employment (i.e., occupation groupings within general schedule grades and prevailing rate schedule pay categories) constitutes a lower percentage of the total number of employees within the employment category than of the percentage that the minority constituted within the labor

force of the United States, as determined under the most recent decennial or mid-decade census, or current population survey."

Under the law, the Equal Employment Opportunity Commission (EEOC) had initial responsibility to issue program guidelines prior to the Office of Personnel Management's (OPM) publication of implementing regulations. Those "Guidelines for the Development of a Federal Recruitment Program to Implement 5 U.S.C. 7201, as amended," which were transmitted to OPM on December 12, 1978, included a requirement for agencies to use local civilian labor force (CLF) data in making determinations of underrepresentation if the local percentage for a particular minority group was higher than the group's representation in the national CLF. In addition, these guidelines added women to the coverage of the recruitment program. On April 13, 1979, OPM published regulations at 5 CFR 720 (44 FR 22029-22036) which included provisions on determining underrepresentation identical to those included in EEOC's guidelines.

In December 1979, the EEOC issued Management Directive 702, "Instructions for Affirmative Action Program Plans for Minorities and Women," which reiterated the requirements for determining underrepresentation under the Federal Equal Opportunity Recruitment Program (FEORP). In January 1981, after experience with the application of its instructions, EEOC revised its affirmative action guidance in Management Directive 707, "Instructions for Affirmative Action (Equal Employment Opportunity) Program Plans for Minorities and Women for Fiscal Years 1982-1986." MD-707, among other things, changed the instructions to eliminate the requirement for use of CLF data with the higher percentage of minorities and women. It also superseded the requirement for FEORP to use the data with the higher percentage. To avoid confusion and to eliminate duplication, EEOC and OPM had agreed that the same data for determinations of underrepresentation will be used for both FEORP and the Equal Employment Opportunity Plans required under Section 717 of Title VII of the Civil Rights Act of 1964, as amended.

Since EEOC's requested clearance for MD-707's new interagency reporting

requirements was denied by the National Archives and Records Service (NARS) on May 6, 1981, OPM published plans in its regulatory agenda of July 31, 1981 (46 FR 39150-39153), which proposed to revise 5 CFR Part 720 to simplify data requirements relating to FEORP, in that OPM would provide all data, including calculations of underrepresentation, that agencies needed to implement the program. However, on August 12, 1981, NARS gave an interim conditional clearance to EEOC's instructions (MD-707) as amended by the flexibility provided in EEOC's memorandum to all heads of Federal agencies of June 15, 1981. Therefore, OPM is now proposing to revise its regulations to eliminate duplication and conflict between OPM requirements and EEOC instructions on determining and calculating underrepresentation, and upon issuance of final rule, OPM will issue new Federal Personnel Manual (FPM) guidance.

The Director finds that because (1) this change is the result of an agreement between OPM and the Equal Employment Opportunity Commission (EEOC) to reduce paperwork and calculation burdens on agencies and (2) the EEOC has already acted on that agreement by issuing supportive guidance to affected agencies, good cause exists for setting the comment period on this proposed rulemaking at 30 days.

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

I certify that, within the scope of the Regulatory Flexibility Act, this regulation will not have a significant economic impact on a substantial number of small entities because this regulation applies to the internal management of Federal agencies and is intended to help agencies reduce paperwork and calculation burdens in determining underrepresentation.

List of Subjects in 1 CFR Part 18

Equal employment opportunity, Government employees, Reporting requirements.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

PART 720—[AMENDED]

Accordingly, OPM is proposing to amend 5 CFR 720.205 as follows:

1. Paragraph (b) is revised to read as follows:

§ 720.205 Agency plans.

(b) Agency plans must include determinations of underrepresentation for each group. The plans must be reviewed annually and revised as appropriate. The Office will issue additional instructions in the Federal Personnel Manual System on the method that must be followed in conducting those determinations.

2. Paragraphs (c), (d) and (g) are hereby removed and paragraphs (e) and (f) are redesignated as (c) and (d) respectively.

3. The introductory material to paragraph (c) is revised to read as follows:

(c) In addition to the determinations of underrepresentation described in paragraph (b) of this section, agency plans must, at a minimum, include:

(5 U.S.C. 7201)

[FR Doc. 82-31896 Filed 11-22-82; 8:45 am]

BILLING CODE 6325-01-M

NUCLEAR REGULATORY COMMISSION**10 CFR Part 32****Consumer Products Containing Small Quantities of Radioactive Material; Modified Recordkeeping and Transfer Reporting Requirements**

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering amending its regulations to modify the recordkeeping and annual reporting requirements imposed on persons specifically licensed to distribute consumer products containing small quantities of byproduct material. The proposed amendment would replace the annual reporting requirements by requirements that reports be submitted every five years or at time of application for renewal of the specific license or at time of notification of the Commission of a decision to discontinue distribution of consumer products. The proposed amendment is intended to reduce the number of reports submitted to the Commission. The proposed amendment pertains only

to recordkeeping and the submission of reports and would have no effect on safety properties of the products that are distributed.

DATES: Comment period expires December 23, 1982. Comments received after December 23, 1982 will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before that date.

ADDRESS: All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendment should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments on the proposed amendment may be examined at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Donovan A. Smith, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (301-443-5825).

SUPPLEMENTARY INFORMATION: Sections 32.12, 32.16, 32.20, 32.25, and 32.29 of the Nuclear Regulatory Commission's regulations in 10 CFR Part 32, "Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material," include certain reporting requirements applicable to licensees who transfer byproduct material for use under the exemptions from Commission licensing requirements set in §§ 30.14, 30.15, 30.16, 30.18, 30.19 and 30.20.

The licensees are required to report annually to NRC the total quantity of each byproduct material transferred in each type of exempt item, and the total number of each exempt item transferred during the reporting period. An annual report is required even if no transfers were made during the reporting period.

The Commission recently reviewed the reporting requirements and is considering a minor change that would reduce administrative burdens for the Commission without greatly changing the value of the reports to the regulatory program.

The reporting requirements are used to collect information about the extent of use of products for which NRC has exempted the user from regulatory controls. That information has been used in estimating exposure of the general public. For example, over 30,000,000 smoke detectors, each containing a small amount of byproduct material, have been distributed; and the

estimated annual radiation dose to the U.S. population from smoke detectors is about 1,000 person-rem.

Upon consideration of (1) The relative values to the regulatory program of approximate numbers and of relatively current and exact numbers of exempt items (also called "consumer products") transferred to the general public and (2) a desire to reduce unnecessary paperwork, the Commission is proposing to require that the reports be submitted at approximately five-year intervals. Since the specific licenses authorizing distribution of consumer products usually are issued for a period of five years, the report of the numbers of products and the quantities of radioactive materials transferred can be submitted as a part of the application for renewal of the license.

At the present time, persons specifically licensed to distribute consumer products containing byproduct material are required to maintain records of transfers for periods of two or five years (§§ 32.20 and 30.51(c)(3)). Since the proposed amendments would require summary reports of transfers over periods of five years, the length of time for maintaining a record of a transfer would be changed to facilitate the licensee's preparation of summary reports and to allow verification of the accuracy of the reports. As modified, a record of a transfer would have to be maintained until one year after that record was used in preparation of the summary report submitted to the Commission. Thus, records maintained by the licensee could reflect transfers which occurred up to six years ago and, assuming a uniform rate of distribution, the average record would be three years old.

The effects of the proposed changes in recordkeeping requirements would be the following. The approximately 25 specific licensees now required by § 32.20 to maintain records of transfers of material for a period of two years after any transfer would be required to maintain records of transfers for one to six years and the average period would be three years. These 25 specific licensees would have an increased recordkeeping burden. The other approximately 175 specific licensees affected by the proposed rule and now required by § 30.51(c)(3) to maintain records of transfers for a period of five years, would need to maintain records for one to six years and the average period would be three years. These 175 specific licensees would have a reduction in recordkeeping burden. Thus, collectively, the proposed

amendments should cause a slight reduction in the number of records maintained by the specifically licensed distributors of consumer products containing byproduct material.

During the review of the present reporting requirement and the preparation of the proposed amendment, the staff also considered two other alternative actions. These alternative actions were (1) completely eliminating the reporting requirements, and (2) establishing a threshold number for submission of annual reports so that a report would be required only if the distributor transferred more than 1,000 units (e.g., 1,000 smoke detectors) during the year. These two alternative actions are briefly discussed below.

The alternative action of completely eliminating the reporting requirements could be justified by the extensive data collected during the last ten years. These data indicate that the total contribution to the exposure of the general public to radiation from the use of byproduct material in consumer products is less than 0.001 if background radiation or of limits recommended for exposure to radiation from all sources. In the absence of major changes in the Commission's regulation of consumer products and in the public's acceptance of consumer products containing radioactive material, their contribution to future exposure of the public is unlikely to be significantly greater than during the past ten years.

If the reporting requirements were eliminated and a need developed for information about the extent of distribution of consumer products containing byproduct material, that information could be obtained in the same manner as is used now for obtaining information about products containing source material.

Although Commission regulations have required annual reports from distributors of consumer products containing byproduct material (smoke detectors, self-luminous timepieces, etc.), no similar requirement has been imposed on distributors of consumer products containing source material (gas mantles, welding rods, etc.). The absence of a reporting requirement for source material is a result of specific provision in Section 65 of the Atomic Energy Act of 1954, as amended, that the Commission shall not require reports with respect to unimportant quantities of source material.

Absence of regulatory reporting requirements for consumer products containing source material has not prevented the staff from developing estimates of exposures to the public from these products. Approximately

25,000,000 gas mantles, each containing a very small amount of source material, are distributed annually in the U.S., and their use results in an annual population dose of about 1,280 person-rems.

The staff has developed estimates of the number of distributed consumer products containing source material by literature searches and by discussions with manufacturers. The same approach can be used in the future for consumer products containing byproduct material without decreasing the protection afforded the public health and safety.

The alternative action of establishing a threshold number for submission of annual reports would relieve the small-volume distributor of paperwork but would not significantly affect the reported total number of products distributed. Under this alternative, if a licensee distributes less than 1,000 units during the reporting period, the annual report would not be required. If the licensee distributes more than 1,000 units during the reporting period, a report would be required.

A review of 1,500 reports which were submitted during the last ten years showed that, if a 1,000-unit threshold had been in effect, there would have been a one-third reduction in the number of reports submitted and less than a one-tenth reduction in the total number of units that were reported transferred.

Interested persons are encouraged to comment on the proposed amendment and also on the alternative actions of (1) eliminating the reporting requirements and (2) establishing a threshold number for submission of annual reports. Either of the alternative actions may be adopted by the Commission instead of the proposed amendment.

Paperwork Reduction Act Statement

This proposed amendment would modify the requirement for certain specific licensees to file an annual report with the Commission about products and byproduct material transferred for exempt use. As modified, reports covering five-year periods would be required and there would be a reduction in the number of reports submitted to the Commission. The proposed amendment also would provide a net reduction in the number of records required to be maintained by those specific licensees.

Pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96-511), this proposed rule will be submitted to the Office of Management and Budget for clearance of the net reduction in recordkeeping and information collection requirements.

Regulatory Flexibility Certification

Since these amendments generally would reduce present recordkeeping and reporting requirements, the Commission, in accordance with sec. 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Persons specifically licensed to distribute consumer products containing byproduct material would no longer be required to submit an annual report to the Commission but would be required to submit reports covering periods of approximately five years. NRC estimates that the average licensee would require about one hour to prepare and submit a report. An estimated reduction of about 80 percent of the approximately 200 reports currently submitted annually would be expected.

List of Subjects in 10 CFR Part 32

Byproduct materials, Labeling, Nuclear materials, Penalty, Radiation protection, Reporting requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 32 is contemplated.

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

1. The authority citation for Part 32 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 32.13, 32.15 (a), (c) and (d), 32.19, 32.25 (a) and (b), 32.29 (a) and (b), 32.54, 32.55 (a), (b) and (d), 32.58, 32.59, and 32.62 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201 (b)); and §§ 32.12, 32.16, 32.20, 32.25(c), 32.29(c), 32.51a, 32.52 and 32.56 are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201 (o)).

2. The authority citations at the end of the following sections in Part 32 are removed: §§ 32.1, 32.14, 32.15, 32.16, 32.17, 32.18, 32.22, 32.25, 32.26, 32.29, 32.40, 32.51, 32.52, 32.53, 32.54, 32.56, 32.57, 32.61, 32.62, 32.71 and 32.110.

3. Section 32.12 is revised to read as follows:

§ 32.12 Same: Records and material transfer reports.

(a) Each person licensed under § 32.11 shall maintain records of transfer of material and file a report with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the appropriate NRC Regional Office listed in Appendix D of Part 20 of this chapter.

(b) The report must identify the—

(1) Type and quantity of each product or material into which byproduct material has been introduced during the reporting period;

(2) Name and address of the person who owned or possessed the product or material, into which byproduct material has been introduced, at the time of introduction;

(3) The type and quantity of radionuclide introduced into each product or material; and

(4) The initial concentrations of the radionuclide in the product or material at time of transfer of the byproduct material by the licensee.

(c) The licensee shall file the report within 30 days following—

(1) Five years after filing the preceding report; or

(2) Filing an application for renewal of the license under § 30.37; or

(3) Notifying the Commission under § 30.34(f) of the licensee's decision to permanently discontinue activities authorized under the license issued under § 32.11.

(d) The report must cover the period between the filing of the preceding report and the occurrence specified in paragraphs (c) (1), (2), or (3) of this section. If no transfers of byproduct material have been made under § 32.11 during the reporting period, the report must so indicate.

(e) The licensee shall maintain the record of a transfer for a period of one year after the event is included in a report to the Commission.

4. Section 32.16 is revised to read as follows:

§ 32.16 Certain items containing byproduct material: records and reports of transfer.

(a) Each person licensed under § 32.14 or § 32.17 shall maintain records of transfer of material and report to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the appropriate NRC Regional Office listed in appendix D of Part 20 of this chapter.

(b) The report must include the following information on items transferred to other persons for use

under § 30.16 of this chapter or equivalent regulations of an Agreement State—

(1) A description or identification of the type of each product;

(2) For each radionuclide in each type of product, the total quantity of the radionuclide; and

(3) The number of units of each type of product transferred during the reporting period.

(c) The licensee shall file the report within 30 days after—

(1) Five years after filing the preceding report; or

(2) Filing an application for renewal of the license under § 30.37; or

(3) Notifying the Commission under § 30.34(f) of the licensee's decision to permanently discontinue activities authorized under the license issued under § 32.14 or § 32.17.

(d) The report must cover the period between the filing of the preceding report and the occurrence specified in paragraphs (c)(1), (2), or (3) of this section. If no transfers of byproduct material have been made under § 32.14 or § 32.17 during the reporting period, the report must so indicate.

(e) The licensee shall maintain the record of a transfer for a period of one year after the event is included in a report to the Commission.

5. Section 32.20 is revised to read as follows:

§ 32.20 Same: Records and material transfer reports.

(a) Each person licensed under § 32.18 of this part shall maintain records of transfer of material identifying, by name and address, each person to whom byproduct material is transferred for use under § 30.18 of this chapter or the equivalent regulations of an Agreement State and stating the kinds and quantities of byproduct material transferred. The licensee shall maintain the record of a transfer for a period of one year after the event is included in a summary report to the Commission.

(b) The licensee shall file a summary report stating the total quantity of each isotope transferred under the specific license with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the appropriate NRC Regional Office listed in Appendix D of Part 20 of this chapter.

(c) The licensee shall file the summary report within 30 days following—

(1) Five years after filing the preceding report; or

(2) Filing an application for renewal of the license under § 30.37; or

(3) Notifying the Commission under § 30.34(f) of the licensee's decision to permanently discontinue activities authorized under the license issued under § 32.18.

(d) The report must cover the period between the filing of the preceding report and the occurrence specified in paragraphs (c)(1), (2), or (3) of this section. If no transfers of byproduct material have been made under § 32.18 during the reporting period, the report must so indicate.

6. In § 32.25, paragraph (c) is revised to read as follows:

§ 32.25 Conditions of licenses issued under § 32.22: quality control, labeling, records, and reports of transfer.

Each person licensed under § 32.22 shall:

* * * * *

(c) Maintain records and file reports with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with copies to the appropriate NRC Regional Office listed in Appendix D of Part 20 of this chapter.

(1) The report must include the following information on products transferred to other persons for use under § 30.19 of this chapter or equivalent regulations of an Agreement State—

(i) A description or identification of the type of each product;

(ii) For each radionuclide in each type of product, the total quantity of the radionuclide; and

(iii) The number of units of each type of product transferred during the reporting period.

(2) The licensee shall file the report within 30 days following—

(i) Five years after filing the preceding report; or

(ii) Filing an application for renewal of the license under § 30.37; or

(iii) Notifying the Commission under § 30.34(f) of the licensee's decision to permanently discontinue activities authorized under the license issued under § 32.22.

(3) The report must cover the period between the filing of the preceding report and the occurrence specified in paragraphs (c)(2)(i), (ii), or (iii) of this section. If no transfers of byproduct material have been made under § 32.22 during the reporting period, the report must so indicate.

(4) The licensee shall maintain the record of a transfer for a period of one year after the event is included in a report to the Commission.

7. In § 32.29, paragraph (c) is revised to read as follows:

§ 32.29 Conditions of licenses issued under § 32.26: quality control, labeling, records, and reports of transfer.

Each person licensed under § 32.26 shall:

(c) Maintain records and file a report with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with copies to the appropriate NRC Regional Office listed in Appendix D of Part 20 of this chapter.

(1) The report must include the following information on products transferred to other persons for use under § 30.20 of this chapter or equivalent regulations of an Agreement State—

(i) A description or identification of the type of each product;

(ii) For each radionuclide in each type of products, the total quantity of the radionuclide; and

(iii) The number of units of each type of product transferred during the reporting period.

(2) The licensee shall file the report within 30 days following—

(i) Five years after filing the preceding report; or

(ii) Filing an application for renewal of the license under § 30.37; or

(iii) Notifying the Commission under § 30.34(f) of the licensee's decision to permanently discontinue activities authorized pursuant to the license issued under § 32.26.

(3) The report must cover the period between the filing of the preceding report and the occurrence specified in paragraphs (c)(2)(i), (ii), or (iii) of this section. If no transfers of byproduct material have been made under § 32.26 during the reporting period, the report must so indicate.

(4) The licensee shall maintain the record of a transfer for a period of one year after the event is included in a report to the Commission.

Dated at Washington, D.C., this 17th day of November, 1982.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 82-32064 Filed 11-22-82; 8:45 am]

BILLING CODE 7590-01-M

SUMMARY: The Nuclear Regulatory Commission is publishing for public comment a notice of receipt of a petition for rulemaking submitted by the Chicago Bridge and Iron Company. The petitioner requests that the NRC amend its regulations to require that a radiation survey be made at a point on the surface of a radiographic exposure device when the device is stored following use. The petitioner believes that the amendment is necessary to provide a recorded survey that would determine that the radiographic exposure device is stored with the sealed source in its safe location in the device.

DATE: Submit comments by January 24, 1983. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Hand deliver comments to: Room 1121, 1717 H Street, NW, Washington, DC between 8:15 a.m. and 5:00 p.m.

For a copy of the petition write: The Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Inspect and copy comments received on the petition at: The NRC Public Document Room, 1717 H Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John D. Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-7086 or call toll free (800) 368-5642.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission received a petition for rulemaking from the Chicago Bridge and Iron Company. This petition has been assigned Docket No. PRM-34-3. The petitioner suggests an amendment to § 34.43(c) that would specify additional requirements for the last survey of a radiographic exposure device that is made after the device has been used. This survey would be made by a radiation survey instrument at a point on the surface of the device when the device is stored. This last survey would occur at or near the place of storage. The intent of the petitioner is to provide a recorded survey that would be useful in determining that the radiographic exposure device is stored with the sealed source in a safe location in the device.

Currently, the text of § 34.43(c) reads as follows:

"(c) A record of the survey required in paragraph (b) shall be maintained for two years when the survey is the last survey prior to locking the radiographic exposure device and ending direct surveillance of the operation."

Paragraph (b) of § 34.43 requires that a survey of the exposure device be made after each exposure period. The petitioner believes that using the last survey as the recorded survey is not a sufficient method of determining that the exposure device is stored with its sealed source in the proper position.

The petitioner believes that a radiation survey of the radiographic exposure device at the time of storage is essential to safe operation. This is not currently required by the regulations in § 34.43(b) and (c). Therefore, the petitioner requests that § 34.43(c) be revised to specify that the last survey be made at the time of storage. In addition, the petitioner would require this survey to be made at a point on the surface of the device and at or near the place of storage. The language suggested by the petitioner for the revised § 34.43(c) is as follows:

"(c) A survey with a radiation survey instrument shall be made at a point on the surface of the radiographic exposure device, specified by the licensee, at or within the storage area when storing. This survey shall be recorded and maintained for two years from the date of the survey."

The petitioner presents the following arguments in support of the suggested amendment.

1. The petitioner asserts that because the exposure device may be subject to rough handling in transferring it from the work area to the storage area, there have been instances where the sealed source was in the radiographic exposure device after the final exposure but outside the device when the device was stored. The petitioner contends that by requiring the final survey at the time and place of storage, a recorded survey would indicate whether the sealed source had been dislodged from its proper place in the exposure device.

2. The petitioner contends that, as currently required by § 34.43 (b) and (c), the reading recorded from the final survey could be between 0 MR and 200 MR, and there would be no assurance that the radiographer had made an accurate reading. By requiring that the survey be made at a specified point on the exposure device, the petitioner believes that the recorded survey becomes more meaningful in that it provides a check on the decay of the sealed source and indicates that the survey instrument is working properly.

10 CFR Part 34

Receipt of Petition for Rulemaking From the Chicago Bridge and Iron Company

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking.

3. The petitioner implies that because much radiography is performed off-shift and occasionally under adverse conditions, the currently recorded final survey may not be an accurate record. The petitioner believes that requiring the final survey at the time and place of storage would result in a more accurate record and increased assurance of safe storage.

The Commission would like to receive public comment on the specific items addressed in PRM-34-3. Those who intend to submit comments on the petition may obtain a complete copy of the petition from the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Washington, DC, this 17th day of November 1982.

For the Nuclear Regulatory Commission,
John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 82-32093 Filed 11-22-82; 8:45 am]

BILLING CODE 7590-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Protection of Commodity Customers; Risk Disclosure by Futures Commission Merchants to Customers

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to amend § 1.55 of its regulations by adding a paragraph thereto which would provide that compliance with the specific disclosure requirements of that rule, that is, the bold face risk disclosure statement prescribed by § 1.55(b), does not relieve a futures commission merchant ("FCM") from any obligation under the Commodity Exchange Act, as amended (the "Act") or the Commission's regulations thereunder, including the obligation to disclose all material information to existing or prospective customers. (Rule 1.55 basically prohibits an FCM from opening a commodity futures account for any customer unless the FCM first provides the customer with the prescribed risk disclosure statement and receives a signed acknowledgment from the customer that he received and understood its contents.) The proposed amendment would make explicit the existing fiduciary obligations of an FCM to its customers. As such, it would confirm

that the prescribed risk disclosures are not the exclusive disclosures required from an FCM to its futures customers and also that an FCM's obligation to disclose all other material information in the case of futures transactions is no different from those cases where the Commission has already made such an obligation express by rule.

DATE: Comments on the proposed rule amendment must be received by January 24, 1983.

ADDRESS: Send comments to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: David S. Mitchell, Esq., Legal Section, Division of Trading and Markets, at the above address. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: Rule 1.55(a), 17 CFR 1.55(a) (1982), requires an FCM to provide each new customer with a risk disclosure statement containing the language prescribed in paragraph (b). The customer must sign and date an acknowledgment that he has received and understood the disclosure statement and this acknowledgment must be received by the FCM before he opens a commodity futures account for the customer. Rule 1.55(c) requires the FCM to retain the acknowledgment in accordance with Rule 1.31, 17 CFR 1.31 (1982).

The Commission adopted Rule 1.55 in connection with the implementation of its customer protection rules. 43 FR 31886 (July 24, 1978). As explained by the Commission, Rule 1.55 generally is intended to: "advise new customers of the substantial risk of loss inherent in trading commodity futures." Additionally, "the statement is * * * intended to alert prospective customers to the possibility that futures trading may not be suitable for them in light of their financial condition." *Id.* at 31888. At that time the Commission made clear that the prescribed disclosure statement was not meant to be an exhaustive explanation of the mechanics and risks of futures trading or of particular transactions, but rather was designed to highlight some of the inherent risks of futures trading for new customers. Therefore, the Commission stressed that "by furnishing the statement required by § 1.55, an FCM will not be relieved of any obligation it may have to make disclosures to customers concerning facts and circumstances of particular transactions". *Id.* (Emphasis added.)¹

¹Similarly, in proposing the customer protection rules, the Commission emphasized that "a number

Thus, in the context of its original adoption, the Commission already has expressed the view that an FCM's disclosure obligations to its customers do not arise solely from Rule 1.55 and that under certain circumstances the statement required by that rule may not be sufficient to satisfy them fully. This view of the limited utility of any prescribed risk disclosure statement is premised on the Commission's cognizance of the fiduciary nature of the FCM's relationship with its customers and on the concurrence of Congress and the courts therein.²

In several important respects, Congress has recognized that the relationship of an FCM with its customers is that of a fiduciary. First, the Act's definition of FCM reflects Congress' understanding that FCMs do not perform merely ministerial functions such as order taking, but rather by seeking orders engender a special relationship with their customers such that their customers repose special trust and confidence in them.³ Second, the Act recognizes that advisory services are an integral part of an FCM's business. See Section 2(a)(1) of the Act, 7 U.S.C. 2 (Supp. V 1981).

Third, Congress' appreciation of the fiduciary nature of an FCM's business is indicated by its clear mandate that only FCM's meeting segregation requirements

of provisions in the proposed rules merely make explicit what is impliedly required of commodity trading professionals and others under the various antifraud provisions of the Act and the Commission's rules." 42 FR 44742, 44743 (September 6, 1977). In addition, shortly after its establishment the Commission observed that: "it fully appreciated[d] that a failure to disclose information may operate as a fraud or deceit with respect to commodity transactions in certain circumstances." 40 FR 26505 n.1 (June 24, 1975).

²The standard of conduct to be observed by one who stands in a fiduciary capacity with respect to another person has been definitively formulated by Justice (then Chief Judge) Cardozo: "Many forms of conduct permissible in a workday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate * * *. Only thus has the level of conduct for fiduciaries been kept at a level of conduct higher than that trodden by the crowd." (*Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. Court of Appeals 1928).)

³Section 2(a)(1) of the Act, 7 U.S.C. 2 (Supp. V 1981), defines the term FCM to mean and include: "individuals, associations, partnerships, corporations, and trusts engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom." (Emphasis added.)

may be permitted to solicit and accept customer funds. Specifically, Section 4d(2) of the Act, 7 U.S.C. 6d(2) (Supp. V 1981), requires that all money, securities and property received by an FCM to margin, guarantee or secure the trades or contracts of a customer, or accruing as the result of such trades or contracts, be treated as belonging to the customer and not to the recipient FCM. As such, that section and the related regulations prohibit the commingling of FCM funds and customer funds; require separate accounting with respect to each customer; and prohibit the use of one customer's funds to margin or secure the trades of another customer. Thus, customer deposits of margin must be treated as trust funds and the FCM, bound to segregate such funds by law, acts in a fiduciary capacity with respect to its customers.⁴

Fourth, the legislative history of the segregation requirement and of Section 4b of the Act, 7 U.S.C. 6b (1976), which prohibits any person from engaging in fraud in or in connection with any order to make or the making of any futures contract for or on behalf of any other person, also demonstrates Congressional awareness of the fiduciary nature of the FCM's relationship with its customers.⁵

Similarly, the Commission and the courts also have recognized that because an FCM through its associated persons and other agents engages for profit in the solicitation and acceptance of customers' orders, in the handling of customers' funds, and in the furnishing of trading advice, an FCM "thereby is placed in a position of trust and confidence vis-a-vis its customers. Undertaking such activities implicitly represents to customers that these persons possess at least minimal

⁴ In this connection, Section 4f(2) of the Act, 7 U.S.C. 6f(2) (1976), conditions the registration of FCMs upon their meeting such minimum financial requirements as may be prescribed by the Commission. Pursuant to this provision, the Commission has adopted minimum net capital rules for FCMs which ensure a threshold capital requirement for entry into the business and provide FCMs with a measure of financial capability to respond to customer claims arising from, among other things, alleged breaches of their fiduciary duty to customers.

⁵ See, e.g., 80 Cong. Rec. 7911 (1936) (remarks of Sen. Norris) ("The law has not always been such that [FCMs] could be punished for abuse and misuse of trust funds * * * The only purpose of the [segregation requirement] is to protect money that is really a trust fund, sent to a commission agent and kept on deposit with him; to protect the margins of the customer and to prevent illegal use of the money for some other purpose."); *id.* at 7871 (remarks of Sen. Robinson) ("A broker has the right to buy or sell for his clients. He has no right to do it in a way that will sacrifice the interests of one client for the benefit of another, or the interests of any client for his own personal advantage * * *").

knowledge and expertise in the esoteric commodity futures field." *Gordon v. Sherson Hayden Stone Inc.*, 2 Comm. Fut. L. Rep. ¶21,016 at 23,976 n.16 (CFTC 1980), *aff'd sub nom. Shearson Loeb Rhoades, Inc., et al., v. CFTC*, No. 80-7212 (9th Cir., February 12, 1982). In this regard, a short time after the adoption of Section 4b, an appellate court remarked that: "[o]n * * * commodity exchanges, the broker and his customer stand to each other as principal and agent. This relation, contemplating as it does the holding by the broker of the customer's money and other property, is primarily fiduciary in nature * * * and the Commodity Exchange Act of 1936 recognize[s] this fiduciary relationship and provide[s] against violations thereof." *In re Rosenbaum Grain Corp.*, 103F.2d 656, 660 (7th Cir. 1939).⁶

Under common law principles, it is well established that a person has an obligation to disclose material information to a party with respect to which it stands in a fiduciary capacity.⁷ Further, the Supreme Court has confirmed the applicability of such principles to the interpretation of Federal antifraud statutes. *Chiarella v. United States*, 445 U.S. 222 (1980). Specifically, the Court noted that: "[T]he duty to disclose arises when one party has information 'that the other [party] is entitled to know because of a fiduciary or other similar relation of trust and confidence between them.' " *Id.* at 228, quoting from the *Restatement (Second) of Torts* § 551(2)(a) (1976). It is clear then that as a fiduciary an FCM has a duty to disclose all material information to its customers. As the Commission expressly stated in the case of *Klatt v. International Trading Group, Ltd.*, *supra* at 22, 598: "[i]t is a well-settled principle of securities law that it is the duty of a person who holds a fiduciary relationship to another person to make full disclosure of all material facts regarding the transaction between the parties * * * In the Commission's view, this proposition is no less applicable to the commodities field."

The duty of an FCM to disclose all material information to existing or

⁶ See *Savage v. CFTC*, 548 F.2d 192, 196 (7th Cir. 1977); *Klatt v. International Trading Group, Ltd.*, CFTC Docket No. R 77-114, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,636 at 22, 596 (June 21, 1978); *In re Savage*, CFTC Docket No. 76-1 [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,139 (March 1, 1976). See also *McMann v. SEC*, 87 F.2d 377, 378 (2d Cir.) *Cert. denied sub nom. McMann v. Engle*, 301 U.S. 684 (1937); *Leib v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 461 F. Supp. 951, 952-53 (E.D. Mich. 1978); *Union Bank of Switzerland v. HS Equities, Inc.*, 457 F. Supp. 515, 522 (S.D.N.Y. 1978).

⁷ *Restatement (Second) of Torts* section 551(2)(a) (1976).

prospective customers therefore makes it evident that the information contained in the risk disclosure statement prescribed by § 1.55, or for that matter in any such prescribed statement, cannot be sufficient in all circumstances. The nature and extent of the disclosure which an FCM may be required to make to a customer and which gives rise to potential liabilities under Section 4b of the Act must by the very nature of the duty depend on the facts and circumstances of particular transactions and also on the precise nature of the FCM's relationship with his customers.⁸ For example, it seems clear that the scope of an FCM's disclosure obligations is substantially broader when acting in an advisory capacity for a customer than when simply transmitting a customer's orders to an exchange floor for execution. In this vein, the Commission has observed that: "[A]s the degree of trust and confidence reposed in [a commodity professional] and the duties he has undertaken to perform on behalf of his customer grows, so will his duty of care grow concomitantly." *Gordon v. Shearson Hayden Stone Inc.*, *supra* at 23,981 n.37. Similarly, where a public customer is engaging in futures transactions for the first time, disclosures as to the mechanics of the futures markets and the unpredictability and volatility of its price fluctuations obviously would be warranted. Further explanation and emphasis as to the degree of risk may also be required.⁹

The Commission notes further that this obligation of full disclosure is not unique to FCMs, nor does it depend on

⁸ See *Gordon v. Shearson Hayden Stone Inc.*, *supra* at 23,981; *Leib v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, *supra* note 6, at 952-54. Cf. *Sherson Hayden Stone, Inc. v. Leach*, 583 F.2d 367, 372 (7th Cir. 1978) and *Robinson v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 337 F. Supp. 107,111-14 (N.D. Ala.), *aff'd*, 514 F.2d 417 (5th Cir. 1972) (under the circumstances of each case, a commodity professional did not owe its customer the particular fiduciary duty which allegedly was breached).

⁹ In *Leib v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, *supra* note 6, at 953, the court distinguished discretionary and nondiscretionary securities accounts in delineating the scope of a stockbroker's fiduciary duty towards its customer and stated that: "The precise manner in which a broker performs these duties will depend to some degree upon the intelligence and personality of his customer. For example, where the customer is uneducated or generally unsophisticated with regard to financial matters, the broker will have to define the potential risks of a particular transaction carefully and cautiously. Conversely, where a customer fully understands the dynamics of the stock market or is personally familiar with a security, the broker's explanation of such risks may be merely perfunctory." *But cf. Union Bank of Switzerland v. HS Equities, Inc.*, *supra*, note 6, at 522 ("The duty owing from the broker is not diminished * * * because the customer is one of the largest banks in Switzerland.").

the type of commodity interest which is being offered, as it is owed by every commodity professional who is in a fiduciary relationship with a customer or a prospective customer. *Gordon v. Shearson Hayden Stone Inc.*, supra at 23,981; *Klatt v. International Trading Group, Ltd.*, supra at 22,598. Thus, this proposed amendment has existing counterparts in the Commission's regulations. Specifically, Rule 33.7(f), 17 CFR 33.7(f) (1982), provides that an FCM's duty to furnish each new option customer with a prescribed risk disclosure statement does not relieve it from the obligation to disclose all material information to existing or prospective option customers even if the information is not specifically required by the Commission's option rules. Similarly, Rules 4.21(h) and 4.31(g), 17 CFR 4.21(h), 4.31(g) (1982), provide that the extensive disclosure requirements for commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") do not relieve those commodity professionals from the obligation to disclose all material information to existing or prospective customers even if the information is not specifically required by the CPO/CTA rules. Accordingly, the proposed amendment would make the Commission's disclosure regulations for futures and options and for FCMs, CPOs and CTAs uniform in this respect. Such uniformity is desirable because commodity customers need to be informed of all information material to their investment, regardless of the category of commodity professional with whom they deal or the commodity interest they trade.

As explained above, the existing obligation of an FCM to disclose all material information to existing or prospective customers even if the information is not specifically required by Rule 1.55 would be made explicit by the amendment the Commission is proposing. This would be accomplished by adding a new paragraph (d) to Rule 1.55, without amending current paragraphs (a), (b) and (c) of that rule.

Certification Under Regulatory Flexibility Act

The Commission does not believe that the proposed rule amendment will have a significant economic impact on small entities. As discussed above, the only regulated entities which will be affected by the amendment are FCMs.¹⁰

¹⁰ The Commission has determined 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)]. See 47 FR 18618, 18619 (April 30, 1982).

Moreover, the proposed amendment simply would make explicit what is already required under the Act and at common law, and thus would not impose any new requirements on FCMs.

Accordingly, pursuant to Section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1168 [5 U.S.C. 605(b)], the Chairman, on behalf of the Commission, certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980, Pub. L. 96-511, 94 Stat. 2812 *et seq.* ("PRA") generally requires the Commission to submit to the Office of Information and Regulatory Affairs of the Office of Management and Budget a copy of any proposed rule which would require the collection or submission of any information. 44 U.S.C. 3504(h). Because proposed paragraph (d) of Rule 1.55 would not require the collection of submission of information within the meaning of the PRA, this requirement is not applicable thereto.

List of Subjects in 17 CFR Part 1

Customer protection, Risk disclosure statements.

PART 1—[AMENDED]

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, and in particular, Sections 2(a)(1), 4b, 3d, 4f and 8a of the Act, as amended, 7 U.S.C. 2, 6b, 6d, 6f and 12a (1976 & Supp. V 1918), the Commission here proposes to amend Chapter I of Title 17 of the Code of Federal Regulations by adding a paragraph (d) to § 1.55 as follows:

1. Section 1.55 is proposed to be amended by adding a new paragraph (d) to read as follows:

§ 1.55 Distribution of "Risk Disclosure Statement" by futures commission merchants.

(d) This section does not relieve a futures commission merchant from any obligation under the Act or the regulations thereunder, including the obligation to disclose all material information to existing or prospective customers even if the information is not specifically required by this section.

Issued in Washington, D.C. on November 17, 1982, by the Commission.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 82-32054 Filed 11-22-82; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Ch. V

Proposed Rules Under Titles I, II, and III of the Job Training Partnership Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Advance notice of proposed rulemaking; notice of availability of document.

SUMMARY: This advance notice alerts interested persons to forthcoming rulemaking and offers an opportunity to request informational, draft copies of proposed rules covering Titles I, II and III of the Job Training Partnership Act (Pub. L. 97-300). Release of the draft regulations is intended to alert interested persons to issues which will be submitted for public comment in the forthcoming proposed rules.

ADDRESS: Requests for draft copies, including self-addressed envelope and/or mailing label, should be addressed to the Assistant Secretary of Labor for Employment and Training, U.S. Department of Labor, 601 D Street, NW., Room 8400, Washington, D.C., 20213. Attention: Patrick J. O'Keefe, Director, Transition Task Force.

FOR FURTHER INFORMATION CONTACT: Patrick J. O'Keefe, Telephone: (202) 376-8444.

SUPPLEMENTARY INFORMATION: On October 13, 1982, the President signed the Job Training Partnership Act, Pub. L. 97-300 (JTPA or the Act). This statute replaces the Comprehensive Employment and Training Act with new job training programs and a new delivery system.

The Act establishes a regulatory timetable for the phased implementation of JTPA during fiscal year 1983. Two sets of regulations under Title I of the Act, governing the JTPA program planning structure, must be published in final form by January 1 and 15, 1983. The Department recently published proposed rules encompassing these Title I regulations. [47 FR 52197, November 19, 1982.] Final regulations covering basic training programs under Title II of the Act must be published by March 15, 1983. All other JTPA program regulations must take effect by October 1, 1983.

To provide basic program planning information as early as possible, the Department is making available to interested persons, upon written request, a preliminary draft of the proposed regulations implementing

Titles I, II and III of JTPA. Release of the draft regulations is intended to alert interested persons to issues which will be submitted for public comment in the forthcoming proposed rules.

Requests for copies of the draft regulations should include a self-addressed envelope and/or mailing label.

Signed this 19th day of November, 1982.

Raymond J. Donovan,

Secretary.

[FR Doc. 82-32197 Filed 11-22-82; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182, 184, and 186

[Docket No. 79N-0095]

GRAS Status of Sodium Dithionite and Zinc Dithionite

Correction

In FR Doc. 82-25643 beginning on page 41137 in the issue of Friday, September 17, 1982, make the following corrections:

1. On page 41138, column one, paragraph four, tenth line, "result" should read "request."
2. On page 41138, column three, paragraph three second line, "CFR 25.24 (d)(6)" should read "21 CFR 25.24(d)(6)."

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 1090

[Docket No. 76N-0050]

Accidental Radioactive Contamination of Human Foods and Animal Feeds; Recommendations for State and Local Agencies; Withdrawal of Proposal

Correction

In FR Doc. 82-28656 beginning on page 47021 of the issue for Friday, October 22, 1982, the Docket No. should read as set forth in the heading above.

BILLING CODE 1505-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 507

Foreign Press Centers; Eligibility for Admission

AGENCY: United States Information Agency.

ACTION: Proposed rule.

SUMMARY: These regulations establish procedures by which a journalist who meets the eligibility criteria may apply for, and gain, access to the Foreign Press Centers. Because of the ban on the domestic dissemination of Agency program materials (22 U.S.C. 1461) access can only be granted to those journalists who provide news and information exclusively for foreign distribution.

DATE: Effective Date: Deadline for comments is December 31, 1982.

ADDRESS: Richard H. Swan, United States Information Agency, 1750 Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Richard H. Swan, Assistant General Counsel (202) 724-9105.

SUPPLEMENTARY INFORMATION:

E.O. 12291 Federal Regulation

USIA has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investments, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 22 CFR Part 507

News media.

Accordingly, a new Part 507 is added to 22 CFR, Chapter V, to read as follows:

PART 507—PROCEDURES FOR ADMISSION TO THE FOREIGN PRESS CENTERS

Sec.

- 507.1 Purpose.
- 507.2 Eligibility.
- 507.3 Application.
- 507.4 Denial of application.
- 507.5 Revocation.

Authority: 22 U.S.C. 1461; 5 U.S.C. 301; E.O. 10477.

§ 507.1 Purpose.

The Foreign Press Centers in the United States are operated by the United States Information Agency and are authorized to assist foreign journalists while in America as a part of the U.S. commitment to the free flow of information across international borders. Because of the ban on the domestic dissemination of Agency program materials (22 U.S.C. 1461), access to these Foreign Press Centers, which are located in New York, Washington, D.C., and Los Angeles, can be granted only to those journalists who provide news and information exclusively for foreign distribution. These regulations establish the procedures by which a journalist who meets the eligibility criteria herein may apply for, and gain, access to the Foreign Press Centers. The regulations also establish procedures for revoking the accreditation of a foreign correspondent.

§ 507.7 Eligibility.

Only accredited press or other media representatives who provide news and information exclusively for foreign media organizations shall be eligible.

§ 507.3 Application.

An applicant for access to Foreign Press Center facilities shall apply in writing to: Director, Foreign Press Centers, United States Information Agency, Washington, D.C. 20547. Each application shall include:

- (a) A letter from the embassy or consulate of the country in which the applicant's employer or client news organization is located certifying that said employer or organization is a legitimate journalistic concern in that country; and
- (b) A letter on official stationery from a managing or supervising editor in the employing or client organization stating that the applicant is currently employed or under contract by that organization. In making application, the burden shall be on the applicant to establish that he/she meets the criteria for eligibility set forth in § 507.2. The names and photographs of all those applicants who are found to be eligible for access to the Foreign Press Centers shall be entered on a roster to be maintained at all Foreign Press Center locations.

§ 507.4 Denial of application.

(a) If, based on the materials submitted pursuant to § 507.3 the Director of the Foreign Press Centers determines that an applicant does not meet the criteria for eligibility set forth in § 507.2, the applicant shall be notified

in writing by that official of the basis of the proposed denial. This notification will be sent by registered mail.

(b) The notification of the proposed denial sent to the applicant will also contain a statement advising the applicant of his/her right to respond to the proposed denial and to rebut any factual basis supporting the proposed denial by writing to the Foreign Press Credential Review Committee, P/F, United States Information Agency, Washington, D.C. 20547.

(c) The applicant shall be allowed thirty days from the date of the mailing of the proposed denial notification to respond in writing. The response shall consist of any explanation or additional information deemed appropriate by the applicant and will be signed by the applicant under oath or affirmation.

(d) If the the applicant is unable to prepare a response within thirty days, an extension for a fifteen day period will be granted upon receipt of the applicant's written request showing good cause for such extension.

(e) At the time of the filing of the applicant's written response to the notification of the proposed denial the applicant may request, and will be granted, the opportunity to make a personal appearance before the Foreign Press Credential Review Committee for the purpose of personally supporting his/her eligibility for access to the Foreign Press Centers and to rebut or explain the factual basis for the proposed denial. This Committee shall exercise final review authority in the matter. The applicant may be represented by counsel during this appearance.

(f) The Foreign Press Credential Review Committee's membership shall include the Director of the Foreign Press Centers, or his designated representative, a representative from USIA's General Counsel's Office and a representative from the Public Liaison Office.

(1) On the basis of the applicant's written and personal response, and the factual basis for the proposed denial, the Credential Review Committee will determine whether or not further inquiry or investigation concerning the issues raised is necessary.

(2) If a decision is made that no such inquiry is necessary a final decision will be issued in conformity with paragraph (g) of this section.

(3) The Credential Review Committee will conduct such further inquiry as that Committee deems appropriate. At the Committee's discretion, the inquiry may consist of:

(i) The securing of documentary evidence;

- (ii) Personal interviews;
- (iii) An informal hearing;
- (iv) Any combination of paragraph (f)(3)(i) through (iii) of this section.

(g) On the basis of the applicant's written and personal response, the factual basis for the proposed denial and the additional inquiry provided for, if such inquiry is conducted, a final decision will promptly be made by the Credential Review Committee in accordance with the eligibility criteria set forth in § 507.2. If a final adverse decision is reached, the applicant will be notified of this final decision in writing. This notification will set forth, as precisely as practicable, the factual basis for the denial in relation to the eligibility standards set forth in § 507.2. This notification will be sent by registered mail and will be signed by the Chairman of the Credential Review Committee.

§507.5 Revocation:

An individual's right of access to Foreign Press Centers may be revoked whenever the Director of Foreign Press Centers determines that the individual no longer meets the eligibility criteria set forth in §507.2. In addition, right of access may be revoked for those individuals whose behavior the Director of Foreign Press Centers determines to be disruptive of the activities of the Foreign Press Center. An individual may appeal a revocation pursuant to the procedures set forth in paragraphs (b)-(e) of § 507.4 *Denial of application*.

Dated November 5, 1982.

Gilbert A. Robinson,
Acting Director.

[FR Doc 82-32127 filed 11-22-82; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Government National Mortgage Association

24 CFR Part 390

[Docket No. R-82-1027]

Growing Equity and 10-Year Graduated Payment Mortgage-Backed Securities

AGENCY: Government National Mortgage Association, HUD.

ACTION: Proposed rule.

SUMMARY: These proposed amendments will establish a new Mortgage-Backed Securities Program that provides for the guaranty by GNMA of securities based on and backed by pools of Growing Equity Mortgages (GEM's). GEM loans

are single family mortgages which provide for monthly installments to increase annually for a predetermined term extending up to the maturity of the loan. Only GEM's that are eligible to be and are insured under the National Housing Act or are eligible to be and are guaranteed under Chapter 37 of Title 38, United States Code, will be eligible for inclusion in GNMA pools. This rule will also amend the regulations governing the Graduated Payment Mortgage-Backed Securities Program to make eligible mortgages which provide for deferred payments of principal (and interest) and for monthly installments to increase for a period not to exceed the first ten years of the mortgages. Under existing regulations, only Graduated Payment Mortgages (GPM's) which provide for annually increasing monthly installments during the first five years may be included in GNMA pools. These amendments are intended to expand the secondary market in GEM's and GPM's and thereby make available additional mortgage money at reasonable interest rates particularly to first-time homebuyers.

DATE: Comments must be submitted on or before December 23, 1982.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication received will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Richard W. Dyas, Vice President, Office of Mortgage-Backed Securities, Government National Mortgage Association, U.S. Department of Housing and Urban Development, Washington, D.C. 20410, (202) 755-8772. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Under section 306(g) of the National Housing Act, as amended, the Government National Mortgage Association (GNMA) guarantees the timely payment of principal and interest on securities issued by approved private lenders. The securities are backed by federally insured or guaranteed mortgage loans. GNMA has customarily structured its programs to accommodate the parallel programs of the Department and the Veterans Administration (VA). Following this policy, GNMA established new single-family mortgage programs for 5-year Graduated Payment

Mortgages (GPM's) insured by HUD in 1979 and for GPM's guaranteed by the VA in March 1982.

These proposed amendments will establish a new Mortgage-Backed Securities Program for Growing Equity Mortgages (GEM's) and expand the Graduated Payment Mortgage-Backed Securities Program to include 10-year GPM's. The new program will accommodate the GEM's with increasing payments for 10 years at 2 or 3 percent each year which HUD has insured under section 245 of the National Housing Act since June 1982. This rule will also accommodate such other GEM or GPM programs as the Department, or the VA, may establish. To further facilitate the implementation of these programs, GNMA proposes to reduce the minimum size of GPM and GEM pools to \$500,000 from \$1 million. The eligibility of such loans for the securities issuances will substantially enhance their marketability. The Department specifically seeks to encourage pension plan investment in housing to thereby increase the availability of funds for mortgage lending and help maintain interest rates at reasonable levels.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule merely expands the class of mortgages

eligible to back securities guaranteed by GNMA.

This rule is listed as item GNMA-9-82 in the Department's Semiannual Agenda of Regulations published on October 28, 1982 (47 FR 48422) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

OMB Control Number

Information collection requirements contained in 24 CFR Part 390 have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control numbers 2503-0001, 2503-0004, 2503-0008, and 2503-0009.

GNMA's programs are not listed in the Catalog of Federal Domestic Assistance Programs.

List of Subjects in 24 CFR Part 390

Mortgages, Securities.

Accordingly, the Department proposes to amend 24 CFR Part 390 as follows:

1. Section 390.42 is revised to read as follows:

§ 390.42 Eligible Mortgages.

Each issue of guaranteed securities shall be based on and backed by a pool of Graduated Payment Mortgages which:

(a) Are insured under the National Housing Act or guaranteed under Chapter 37 of Title 38, United States Code: *Provided*, That all such pooled mortgages shall provide for equal (level) monthly installments beginning no later than the 121st scheduled monthly installment; and

(b) Have a date for the first scheduled monthly payment of principal (which may be negative) and interest, or date of purchase from an Association-approved auction, that is no more than 12 months prior to the date on which the Association makes its commitment to guarantee the issue of securities.

2. In § 390.43, paragraph (b) is revised to read as follows:

§ 390.43 Securities.

* * * * *

(b) *Issue Amount*. Each issue of securities shall be in an amount no less than \$500,000. The total face amount of any issue of securities shall not exceed the aggregate scheduled unpaid principal balances of the mortgages in the pool as of the issue date of the securities. The Association and issuers reserve the right to consolidate pools of mortgages backing the securities with other pools backed by similar mortgages bearing the same interest rate and maturity dates.

* * * * *

Subpart D—[Redesignated as Subpart E]

3. Subpart D is redesignated as "Subpart E—Marketing and Trading Requirements."

Subpart E—[Redesignated as Subpart F]

4. Subpart E is redesignated as "Subpart F—Miscellaneous Provisions."

5. A new Subpart D (Growing Equity Mortgage-Backed Securities) is added to read as follows:

Subpart D—Growing Equity Mortgage-Backed Securities

Sec.

390.48 General.

390.48a Eligible Issuers of Securities.

390.48b Eligible Mortgages.

390.48c Securities

390.48d Pool Administration.

390.48e Guaranty.

390.48f Default.

390.48g Fees.

Subpart D—Growing Equity Mortgage-Backed Securities

§ 390.48 General.

This subpart provides for the guaranty by the Association of timely payment of principal and interest on modified pass-through securities based on and backed by eligible mortgages, which mortgages provide for annually increasing monthly installments. The Association is authorized by section 306(g) of the National Housing Act to make such guarantees. Issuance of securities under this subpart is subject to the provisions that follow, to the further provisions contained in the Mortgage-Backed Securities Guide (GNMA 5500.1), as it shall exist and be amended or supplemented from time to time, and to the contracts entered into by the participating parties.

§ 390.48a Eligible Issuers of Securities.

To be eligible to issue Growing Equity Mortgage-Backed Securities, an applicant shall satisfy those requirements applicable to the issuance of modified pass-through securities based on and backed by mortgages on one- to four-family residences as provided in § 390.3 (Eligible issuers of Securities).

§ 390.48b Eligible Mortgages.

Each issue of guaranteed securities shall be based on and backed by a pool of Growing Equity Mortgages which:

(a) Provide for monthly installments to increase annually for a predetermined term extending up to the maturity of the loan, and are eligible to be and are insured under the National Housing Act

or are eligible to be and are guaranteed under Chapter 37 of Title 38, United States Code; and

(b) Have a date for the first scheduled monthly payment of principal and interest, or date of purchase from an Association-approved auction, that is no more than 12 months prior to the date on which the Association makes its commitment to guarantee the issue of securities.

§ 390.48c Securities.

(a) *Instruments.* Securities to be issued under the subpart shall be designated Growing Equity Mortgage-Backed Securities. They shall be issued in the form of modified pass-through type securities, which shall provide that each monthly installment payable to the holders shall consist of: (1) The interest due monthly on the securities computed as one-twelfth ($\frac{1}{12}$) of the annual rate provided for multiplied by the unpaid principal balance of the securities at the end of the prior month, and (2) the scheduled recoveries of principal due monthly on the pooled mortgages and apportioned to the holders by reason of the base and backing of these securities, such amounts of principal and interest to be remitted to the holders whether or not funds sufficient to pay an installment are collected by the issuer, together with (3) any apportioned prepayments or other unscheduled recoveries of principal on the pooled mortgages. Unscheduled recoveries of principal shall include amounts which an issuer must pay from its own funds to provide the holders with any principal that remains unrecovered after receipt of a final insurance claim settlement or other liquidation proceeds. At any time 90 days or more after default of any pooled mortgage the issuer may, at its option, repurchase such mortgage from the pool for an amount equal to the unpaid principal balance of the mortgage. The securities shall provide for specific maturity dates and dates upon which payments are to be made to the holders.

(b) *Issue Amount.* Each issue of securities shall be in an amount no less than \$500,000. The total face amount of any issue of securities shall not exceed the aggregate scheduled unpaid principal balances of the mortgages in the pool as of the issue date of the securities. The Association and issuers reserve the right to consolidate pools of mortgages backing the securities with other pools backed by similar mortgages bearing the same interest rate and maturity dates.

(c) *Face Amount.* The original face amount of any security shall not be less than \$25,000.

(d) *Transferability.* The securities are freely transferable and assignable, but only on the books and records of the Association and the issuer.

§ 390.48d Pool Administration.

Administration of the securities and the pooled mortgages shall be in accordance with the provisions of § 390.9 (Pool Administration).

§ 390.48e Guaranty.

With respect to Growing Equity Mortgage-Backed Securities, the Association guarantees the timely monthly payment, whether or not collected, of the scheduled interest and principal installments, and any prepayments or other early recoveries of principal on the mortgages, as undertaken in the Association's guaranty appearing on the face of the instruments. The Association's guaranty is backed by the full faith and credit of the United States.

§ 390.48f Default.

Any failure or inability of an issuer to make fixed or other payments to securities holders when due shall be deemed an event of default under the guaranty agreement entered into between the Association and the issuer. Such other failures or inability of the issuer to perform any function or duty provided for in the guaranty agreement may also be deemed an event of default. Upon any default by an issuer, and payment by the Association under its guaranty, or any failure of the issuer to comply with the terms of the guaranty transaction, the Association may institute a claim against the issuer's fidelity bond, or may extinguish all right, title, or other interest of the issuer in the pooled mortgages, subject only to unsatisfied rights therein of the securities holders, by letter to the issuer making the mortgages the absolute property of the Association, or the Association may do both.

§ 390.48g Fees.

The Association may impose application fees, guaranty fees, securities transfer fees, and such other fees as it may deem appropriate.

(Sec. 309(a), National Housing Act (12 U.S.C. 1723a(a)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Dated: September 20, 1982.

Robert W. Karpe,
President, Government National Mortgage Association.

[FR Doc. 82-31924 Filed 11-22-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-187-82]

Terminal Rental Adjustment Clauses in Certain Motor Vehicle Agreements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 210 of the Tax Equity and Fiscal Responsibility Act provides that a terminal rental adjustment clause in a qualified motor vehicle agreement cannot be taken into account by the Internal Revenue Service in determining whether the agreement is a lease in the absence of a regulation or law to the contrary.

This document contains proposed regulations relating to terminal rental adjustment clauses (TRAC clauses) in certain motor vehicle agreements. These regulations are being proposed in response to section 210 of the Tax Equity and Fiscal Responsibility Act. The proposed regulations would affect persons who have entered into certain motor vehicle agreements.

DATES: These regulations are proposed to apply to certain motor vehicle agreements entered into after November 23, 1982. Written comments and requests for a public hearing must be delivered or mailed by January 24, 1983.

ADDRESS: Send comments and a request for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-187-82), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Phoebe A. Mix of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224. Attention: CC:LR:T, 202-566-3288, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

Section 210 of the Tax Equity and Fiscal Responsibility Act provides that at a terminal rental adjustment clause in a qualified motor vehicle agreement cannot be taken into account by the Internal Revenue Service in determining whether the agreement is a lease in the absence of a regulation or law to the contrary.

Section 210 was intended to prevent the Service from recharacterizing certain agreements as sales contracts in the absence of a published regulation. The Service had raised that position in litigation, e.g., *Swift Dodge v.*

Commissioner, 76 T.C. 547 (1981), appeal docketed No. 81-7440 (9th Cir. July 2, 1981).

Scope of the Regulation

These proposed regulations would apply to certain motor vehicle agreements which contain terminal rental adjustment clauses. They would not apply to a motor vehicle agreement if the parties have properly elected to have the agreement characterized as a lease under section 168(f)(8). If the parties have properly elected to characterize their agreement as a lease under section 168(f)(8), then, so long as that election remains effective, the agreement would be treated as a lease in spite of the terminal rental adjustment clause.

Section 210 of the Act prevents the Service from asserting that the presence of a terminal rental adjustment clause in a motor vehicle agreement under which the customer will use the motor vehicle in a trade or business or for the production of income is a factor in determining whether the agreement is a lease if the agreement is entered into before the effective date of this regulation. Since the Act takes no position on motor vehicle agreements under which the user will use the motor vehicle for personal use, nothing in the proposed regulations is intended to prevent the Service from asserting that a terminal rental adjustment clause in such an agreement (even though entered into before November 23, 1982) indicates that the agreement is a sales contract.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven 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*.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 553

do not apply because the rules proposed are interpretative. Accordingly, a Regulatory Flexibility Analysis is not required.

Drafting Information

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

List of Subjects in 26 CFR 1.61-1-1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

Proposed amendments to the regulations

PART 1—[AMENDED]

The following amendments to 26 CFR Part 1 are proposed:

Paragraph 1. Section 1.168(f)(8)-12 is added to read as follows:

§ 1.168(f)(8)-12 Terminal rental adjustment clauses in certain motor vehicle agreements.

(a) *In general.* The presence of a terminal rental adjustment clause (as defined in paragraph (b)(2) of this section) will indicate that a motor vehicle agreement (as defined in paragraph (b)(1) of this section), under which the customer will use the motor vehicle in a trade or business or for the production of income, is not a lease, even though the agreement purports to be a lease.

(b) *Definitions.* For purposes of this section the following definitions shall apply:

(1) *Motor vehicle agreement.* The term "motor vehicle agreement" means any agreement between the provider and the customer with respect to a motor vehicle (including a trailer):

(i) With respect to which the provider under the agreement is personally liable for the repayment of, or has pledged property (other than property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement) as security for, all amounts borrowed to finance the acquisition of property subject to the agreement, and

(ii) For which an election under section 168(f)(8) is not in effect.

(2) *Terminal rental adjustment clause.* The term "terminal rental adjustment clause" means a provision of a motor vehicle agreement which permits or

requires an upward or downward adjustment of rent to make up for any difference between the projected value of the motor vehicle at the end of the agreement and the actual value of the motor vehicle upon termination of the agreement.

(c) *Examples.* The following examples illustrate the provisions of this section:

Example (1). A purchases automobiles, financing the purchases with amounts borrowed from C. A provides automobiles to customers who will use the automobiles in their trades or businesses. A enters into the following agreement with all of its customers. The agreement, which is labeled a lease, provides that the customer may use the automobile for a specified period of time in exchange for a specified monthly payment. The parties have not elected to treat these agreements as leases under section 168(f)(8). Under the agreement, the customer is responsible for all operating expenses, including maintenance and repair on the automobile, and is required to carry insurance indemnifying A against damage to or loss of the vehicle. The customer is also responsible for sales, use, excise and personal property taxes levied against the automobile. The agreement provides that at the end of the lease, or when the customer cancels the lease, or if the customer defaults on the lease, A will sell the vehicle within 30 days. Under a terminal rental adjustment clause, if the net sales proceeds (sales price less A's selling expenses) exceed the projected value of the automobile at the end of the lease (or a predetermined amount in the event of a cancellation or early termination of the lease), A will credit the customer with an amount equal to the excess. Correspondingly, if the net sales proceeds are less than that amount, the customer will pay an amount equal to the shortfall to A. Under these facts, A has not retained significant and genuine attributes of ownership. Therefore, the agreement between A and its customer is a conditional sales agreement, not a lease, and the customer, not A, is entitled to the cost recovery deductions and the investment tax credit with respect to the automobile.

Example (2). The facts are the same as example (1) except that upon termination of the agreement, A will solicit bids to purchase the automobile. A will use the highest bid to determine the actual value of the automobile for purposes of applying the terminal rental adjustment clause. Under these facts A has not retained significant and genuine attributes of ownership. Accordingly, the results will be the same as example (1).

Example (3). The facts are the same as example (1) except that the terminal rental adjustment clause only provides that the customer shall reimburse A if the sales proceeds fall below the projected value of the automobile at the end of the agreement. No credit is anticipated to be made to the customer if the sales proceeds exceed the projected value (or predetermined amount in the event of a cancellation or early termination of the agreement) of the automobile although A will, if the customer so requests, credit the customer with an

amount equal to the excess if the customer buys the automobile or obtains another automobile from A. Under these facts, A has not retained significant and genuine attributes of ownership. Therefore, the agreement will be characterized as a conditional sales contract, not a lease, with the same results as in example (1).

(d) *Effective date.* This section will apply to any motor vehicle agreement entered into after November 23, 1982.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 82-32097 Filed 11-16-82; 5:00 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Modifications

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

ACTION: Proposed rule; notice of receipt of permanent program modifications; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining (OSM) is announcing procedures for the public comment period and public hearing on the substantive adequacy of program amendments submitted by the State of West Virginia to remove certain program conditions imposed on the approval of the West Virginia Permanent Regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). In addition, based on a request by the State, OSM is considering modifying the deadline for West Virginia to meet certain other conditions of its program approval. The Secretary of the Interior is proposing to extend these deadlines until May 1, 1983, and is requesting comment on these extensions.

This notice sets forth the times and locations that the proposed amendments and request for extension 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 regarding the public hearing.

DATES: Written comments must be received on or before 4:00 p.m. December 23, 1982, to be considered. A public hearing on the proposals will be held from 7:00 p.m. to 9:00 p.m. on December 8, 1982, at the Charleston,

West Virginia OSM office listed below under "ADDRESSES".

Any person interested in making an oral or written presentation at the hearing should contact Mr. David H. Halsey at the Charleston, West Virginia address and phone number by the close of business on November 30, 1982. If no one has contacted Mr. Halsey to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Halsey, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Attention: West Virginia Administrative Record, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

Copies of the West Virginia program amendments and the West Virginia program are available for review at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158

West Virginia Department of Natural Resources, 1800 Washington Street, East, Room 630, Charleston, West Virginia 25305, Telephone: (304) 348-9160

Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Room 5315, 1100 "L" Street, N.W., Washington, D.C. 20240, Telephone: (202) 343-7896

FOR FURTHER INFORMATION CONTACT: David H. Halsey, Director, West Virginia Field Office, Office of Surface Mining, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION: Under 30 CFR 732.12(i), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set forth in the notice of conditional approval. The correction of each deficiency is a condition of the approval. The conditional approval terminates if the conditions are not met according to the schedule. The dates are established in consultation with the

State based on regulatory and administrative needs of the State's permanent program, the time required for changes to be adopted under State procedures or legislative schedules, and the impact on SMCRA implementation.

The West Virginia program was conditionally approved on January 21, 1981 (46 FR 5915-5956). In the notice of approval the Secretary published the schedule for West Virginia to resolve each of 35 conditions on the approval of the State's regulatory program. These deadlines were subsequently extended on October 30, 1981 (46 FR 54070-52071) and May 27, 1982 (47 FR 23156-23157).

On September 14, 1982, the State requested that the deadline for six of the conditions (conditions 2, 7, 8, 16, 23 and 30) due on November 1, 1982, be extended until May 1, 1983 (Administrative Record Number WV 453). An individual justification for each of the conditions was provided by the State.

The Director believes that under the circumstances, an extension of the current deadlines does not render the deficiencies major. However, the Director specifically requests comments on whether extension of the deadlines would render any particular deficiency major, as that term is used in 30 CFR 732.13(i).

Also, in the September 14 letter, the State requested that OSM reconsider seven conditions (conditions 9, 11, 13, 15, 20, 21, and 35) on the basis of developments subsequent to the date of approval of the State's program. Individual discussion of each of these conditions was provided.

Initial review of the request for reconsideration of the seven conditions indicates that the State may have in fact satisfied at least part of the seven conditions by the information submitted. The Director requests comments on whether these conditions can now be removed from the program approval.

On October 29, 1982, the State submitted a copy of emergency regulations promulgated on October 28, 1982 (Administrative Record Number WV 456). These emergency regulations were intended to satisfy conditions 6, 10, 12, 17, and 22. The letter also contained a copy of an actuarial study intended to satisfy condition 25 and information concerning valley fills intended to satisfy condition 18. In addition, the State requested that condition 14 be included in its request for extension of the deadline to satisfy the condition.

Additional Determinations

On August 28, 1981, the Office of Management and Budget (OMB) granted

OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for all actions to approve or conditionally approve State regulatory programs, actions or amendments. Therefore, a Regulatory Impact Analysis and regulatory review by OMB are not needed for this proposed rule.

This rule is deemed not to be a major Federal action within the meaning of section 102(2)(c) of NEPA. It is hereby designated as a categorical exclusion from the NEPA process. Therefore, this rule is exempt from the requirements of an Environmental Assessment of EIS.

Pursuant to the Regulatory Flexibility Act, Pub. L. 95-354, I have certified that this rule will not have a significant economic effect on a substantial number of small entities.

List of Subjects in 30 CFR Part 948

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

Dated: November 17, 1982.

J. Steven Griles,

Acting Director, Office of Surface Mining.

PART 948—WEST VIRGINIA

Accordingly, 30 CFR Part 948 is proposed to be amended as set forth herein:

§ 948.11 Conditions of State regulatory program approval.

1. 30 CFR 948.11(a) (2), (7), (8), (14), (16), (23), and (30) are proposed to be amended by substituting "May 1, 1983" for each date contained therein.

2. 30 CFR (48.11(a) (6), (9), (10), (11), (12), (13), (15), (17), (18), (20), (21), (22), (25) and (35) are proposed to be removed and reserved.

[FR Doc. 82-31984 Filed 11-22-82; 8:45 am]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Part 17

Dental Benefits

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration (VA) is proposing to amend its regulation concerning dental benefits to include changes in eligibility for dental treatment resulting from the recent enactment of legislation. Section 612(b) of title 38 United States Code now provides that any needed dental care may be provided to former prisoners of war who were interned for six months or more; and to any veteran who has a service-connected disability rated as total. Dental care may also be provided

to eligible veterans who served on active duty for a period of not less than 180 days. For those discharged or released after September 30, 1981, application for treatment must be made within 90 days of such discharge. Discharged enlisted personnel need not apply for dental benefits after each period of enlistment to preserve their eligibility for dental care, provided they re-enlist within a specified time limit.

DATES: Comments must be received before December 23, 1982. It is proposed to make this rule effective the date of final approval.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only at the Veterans Administration Central Office, Veterans Services Unit, room 132, at the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until January 7, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph F. Fleckenstein (202) 389-2851.

SUPPLEMENTARY INFORMATION: Section 102 of Pub. L. 96-22 amended section 612 of title 38 U.S.C. to provide authority to furnish any needed dental care to former prisoners of war who were interned for six months or more; and to any veteran who has a service-connected disability rated as total. Section 2002 of Pub. L. 97-35 amended section 612 of title 38 U.S.C. to provide that Class II dental benefits will only be provided to eligible veterans who had served on active duty for a period of not less than 180 days. For those discharged or released after September 30, 1981, application for treatment must be made within 90 days of such discharge or release. Dental care will not be provided if the applicant's certificate of discharge or release bears a certification that a complete dental examination and appropriate dental services were provided within 90 days of discharge or release. Section 103 of Pub. L. 97-72 amended section 612(b)(2) of title 38 U.S.C. to provide that discharged enlisted personnel need not apply for Class II dental benefits after each period of enlistment provided they re-enlist within a specified time limit. Retroactive dental benefits may be provided to previously discharged veterans who had applied for and were denied certain dental benefits because the dental condition was not related to their last period of active duty. Dental benefits will be limited to the treatment of

service-connected noncompensable conditions.

The Administrator has determined that this proposed revision to VA regulations is considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. The Administrator hereby certifies that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this proposed regulation is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this rule will only be applicable in the case of certain veterans applying for dental care.

The Catalog of Federal Domestic Assistance number is 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: November 2, 1982.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 17—MEDICAL

1. Section 17.123 is amended by revising paragraphs (b) and (d); adding new paragraphs (e), (f), and (h); and by redesignating the following paragraphs: (e) is redesignated as (g), (f) is redesignated as (i), and (g) is redesignated as (j). The new and revised material reads as follows:

§ 17.123 Authorization of outpatient dental treatment.

* * * * *

(b) Class II.

(1)(i) Those having a service-connected noncompensable dental condition or disability shown to have been in existence at time of discharge or release from active service, which took place after September 30, 1981, may be authorized any treatment indicated as reasonably necessary for the one-time correction of the service-connected noncompensable condition, but only if:

(A) They were discharged or released, under conditions other than dishonorable, from a period of active

military, naval or air service of not less than 180 days.

(B) Application for treatment is made within 90 days after such discharge or release.

(C) The certificate of discharge or release does not bear a certification that the veteran was provided, within the 90-day period immediately before such discharge or release, a complete dental examination (including dental X-rays) and all appropriate dental treatment indicated by the examination to be needed, and

(D) Veterans Administration dental examination is completed within six months after discharge or release, unless delayed through no fault of the veteran.

(ii) Those veterans discharged from their final period of service after August 12, 1981, who had reentered active military service within 90 days after the date of a discharge or release from a prior period of active military service, may apply for treatment of service-connected noncompensable dental conditions relating to any such periods of service within 90 days from the date of their final discharge or release.

(iii) If a disqualifying discharge or release has been corrected by competent authority, application may be made within 90 days after the date of correction.

(2)(i) Those having a service-connected noncompensable dental condition or disability shown to have been in existence at time of discharge or release from active service, which took place before October 1, 1981, may be authorized any treatment indicated as reasonably necessary for the one-time correction of the service-connected noncompensable condition, but only if:

(A) They were discharged or released, under conditions other than dishonorable, from a period of active military, naval or air service of not less than 180 days.

(B) Application for treatment is made within one year after such discharge or release.

(C) Veterans Administration dental examination is completed within 14 months after discharge or release, unless delayed through no fault of the veteran.

(ii) Those veterans discharged from their final period of service before August 13, 1981, who had reentered active military service within one year from the date of a prior discharge or release, may apply for treatment of service-connected noncompensable dental conditions relating to any such prior periods of service within one year of their final discharge or release.

(iii) If a disqualifying discharge or release has been corrected by competent authority, application may be made within one year after the date of correction. (Pub L. 97-35, sec. 2002(a);

Publ L. 97-72, sec. 103(a); 38 U.S.C. 612)

(d) Class II(b). Those having a service-connected noncompensable dental condition or disability and who had been detained or interned as prisoners of war for a period of less than six months may be authorized any treatment as reasonably necessary for the correction of such service-connected dental condition or disability. (Pub. L. 96-22, sec. 102; 38 U.S.C. 612)

(e) Class II(c). Those who were prisoners of war for six months or more, as determined by the concerned military service department, may be authorized any needed dental treatment. (Pub. L. 96-22, sec. 102(b)(1); 38 U.S.C. 612)

(f) Class IIR (Retroactive). Any veteran who had made prior application for and received dental treatment from the Veterans Administration for noncompensable dental conditions, but was denied replacement of missing teeth which were lost during any period of service prior to his/her last period of service may be authorized such previously denied benefits under the following conditions:

(1) Application for such retroactive benefits is made within one year of (effective date of regulation will be inserted).

(2) Existing Veterans Administration records reflect the prior denial of the claim.

All Class IIR (Retroactive) treatment authorized will be completed on a fee basis status. (Pub. L. 97-72, sec. 103; 38 U.S.C. 612)

(h) Class IV. Those whose service-connected disabilities are rated at 100% by schedular evaluation or who are entitled to the 100% rate by reason of individual unemployability may be authorized any needed dental treatment. (Pub. L. 96-22, sec. 102(b)(1); 38 U.S.C. 612)

2. In § 17.123a, the introductory paragraph and paragraph (a) are revised to read as follows:

§ 17.123a Eligibility for Class II dental treatment without rating action.

When an application has been made for class II dental treatment under § 17.123(b), the applicant may be deemed eligible and dental treatment authorized on a one-time basis without rating action if:

(a) The examination to determine the need for dental care has been accomplished within the specified time limit after date of discharge or release unless delayed through no fault of the veteran, and sound dental judgement warrants a conclusion the condition originated in or was aggravated during

service and the condition existed at the time of discharge or release from active service, and (Pub. L. 97-72, sec. 103(a); 38 U.S.C. 612)

(38 U.S.C. 210(c))

[FR Doc. 82-32092 Filed 11-22-82; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-5-FRL 2233-5]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations: Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 5, 1978, EPA promulgated the final attainment status designation for Summit County, Ohio. See 43 FR 45993 *et seq.* In that rulemaking, EPA designated portions of Summit County as not attaining the primary National Ambient Air Quality Standard for sulfur dioxide. A portion of EPA's designation of Summit County was subsequently found by the 6th Circuit Court to be unsupported by an administrative record and the rule was remanded to the Agency for further consideration. This action proposes to designate most of that area of Summit County affected by the remand as primary nonattainment for sulfur dioxide. The remaining, small part of that area is being proposed as attainment. These actions respond to the Court's remand and requests from the State of Ohio and PPG Industries, Inc. The intended effect of this proposed rulemaking is to satisfy the requirements of the Clean Air Act.

DATE: All comments must be submitted on or before December 23, 1982.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

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

Ohio Environmental Protection Agency,
Office of Air Pollution Control, 361
East Broad Street, Columbus, Ohio
43216.

Comments on this proposed rule should be addressed to: (Please submit an original and five copies, if possible).

Gary Gulezian, Chief, Regulatory
Analysis Section, Air Programs

Branch, EPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Sharon Reinders, (312) 886-6034.

SUPPLEMENTARY INFORMATION: Section 107(d) of the Clean Air Act (Act) directed each State to submit to the Administrator of EPA a list of the National Ambient Air Quality Standards (NAAQS) attainment status of all areas within the State. As required under Section 107(d)(2) of the Act, the Administrator promulgated the State lists, with any necessary modifications, on March 3, 1978 (43 FR 8962, *et seq.*) and October 5, 1978 (43 FR 45993, *et seq.*). In the October 5, 1978 Federal Register, EPA designated two primary nonattainment areas for sulfur dioxide (SO₂) in Summit County, Ohio.

On September 30, 1980, the U.S. Court of Appeals, Sixth Circuit remanded to the Agency the SO₂ nonattainment designation for Summit County stating that the designation was not supported by the administrative record. (See *PPG Industries, Inc. et al v. Costle*, 630 F. 2d 462 (6th Cir. 1980). Although the Court accepted EPA's use of computer dispersion modeling to determine the attainment/nonattainment status of Summit County, it remanded EPA's final rulemaking action because the proper modeling analysis was not in the administrative record. This analysis consists of remodeling voluntarily undertaken by the Agency to correct data base errors. The remodeling was completed by the time of the final promulgation of the attainment status designations (i.e. October 5, 1978), but was not explicitly included in the record for the promulgation.¹ EPA is satisfied that this modeling analysis supported the nonattainment status designation and has included this remodeling in the record for today's action.

Since the October 5, 1978 attainment status designation, new data have become available which support a revision to the original nonattainment area boundaries. On December 30, 1981, a request to designate part of Summit County as attainment for SO₂, among other things, was submitted to EPA on behalf of PPG Industries, Inc. (PPG) in Summit County. On May 17, 1982, the Ohio Environmental Protection Agency (OEPA) also requested EPA to designate a portion of Summit County as

attainment for SO₂. PPG's request was submitted pursuant to both Section 307(d)(7)(B) of the Act and the Administrative Procedure Act. Because Section 307(d)(7)(B) applies only to certain enumerated actions, not including redesignation under Section 107(d) of the Act, EPA decided to treat the request as a petition for revision of a rule under Section 3(e) of the Administrative Procedure Act. (See *Oljato Chapter of the Navajo Tribe v. Train*, 515 F.2d 654 (D.C. Cir. 1975)). On July 7, 1982 (47 FR 29572), EPA announced its finding that PPG had presented a basis under the Administrative Procedure Act for reconsidering the designation of a portion of Summit County. EPA also announced its intention to withhold action on PPG's request until review of the State's request was complete. The purpose of this notice is to respond to both the State of Ohio and PPG's request to designate part of Summit County to attainment for SO₂. This notice announces the results of EPA's review of the materials submitted by the State of Ohio and further announces EPA's decision to propose approval of Ohio's and PPG's request. Consistent with EPA's policy on Section 107 of the Act, all available, relevant modeling and monitoring data were considered in reviewing the redesignation request.

The proposed designation will change the SO₂ primary nonattainment area within Summit County from:

(1) Entire area northwest of the following line—Rte 80 east to Rte 91, Rte 91 to county line,

(2) Area bounded by the following lines—NORTH—Bath Road (48) east to Rte 8, Rte 8 north to Barlow Road, Barlow Road east to county line, EAST—Summit/Portage County line, SOUTH—Vanderhoof Road east to Rte 93, Rte 93 north to Rte 619, Rte 619 east to county line, WEST—Summit/Medina County line;

to:

(1) Entire area northwest of the following line—Rte 80 east to Rte 91, Rte 91 north to county line,

(2) Area bounded by the following lines—NORTH—Bath Road (48) east to Rte 8, Rte 8 north to Barlow Road, Barlow Road east to county line, EAST—Summit/Portage County line, SOUTH—Interstate 76 to Rte 93, Rte 93 south to Rte 619, Rte 619 east to county line, WEST—Summit/Medina County line.

The remainder of the County remains designated attainment. The effect of this proposed revision is to change the area around the PPG Barberton plant and Ohio Brass from nonattainment to attainment. EPA has determined that limiting the attainment designation to this area is appropriate because of the

ambient air quality monitoring and modeling data constraints.

Monitoring Data

Along with its redesignation request, OEPA submitted ambient air monitoring data collected during the year 1981 at eight monitoring sites near the PPG Barberton plant. EPA has determined that the monitoring network provides adequate spatial resolution in the vicinity of PPG, the dominant source in the Barberton area. The network was designed using all available relevant modeling and monitored data, as well as consideration of on-site meteorology. These data indicate that the maximum impacts from PPG are expected to occur in the northeast quadrant within two kilometers (km) of the plant. As a result, several monitors were located within this area. Two monitors were sited on a radial extending to the north, two on a radial to the northeast, and three on a radial to the east. The use of multiple monitors within two km on radials in multiple directions provides good spatial coverage of the expected high concentration area. An eighth monitor, located slightly more than one km to the southwest, was established primarily for background purposes.

The 1981 data show that the highest second high 24-hour average concentrations, recorded at PPG Pumphouse and Barberton High School, are 325 and 307 micrograms per cubic meter, respectively, reported as midnight-to-midnight "block" averages.² All ambient monitoring data and modeling studies have indicated that the constraining standard, in this case, is the 24-hour standard. Ambient monitoring data further indicate no violation of either the 3-hour or annual NAAQS.

EPA's redesignation criteria include a requirement of eight consecutive quarters of representative, quality assured ambient air quality data showing no violation of the appropriate NAAQS, or four quarters of ambient air quality data and documentation of concurrent and commensurate emission reductions. Because only four quarters of data are available from the eight-station network (and no emission reduction data), these 1981 data are not sufficient by themselves to support a redesignation to attainment. However,

² EPA set forth its policy on the use of midnight-to-midnight block averages and running averages for implementation of the SO₂ NAAQS in a memorandum from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, to Valdas V. Adamkus, Regional Administrator, Region V, entitled "Use of Running Averages for Determining Compliance with the 24-hour Sulfur Dioxide Standard". (March 24, 1982).

¹ EPA's remodeling and, hence, the Court's remand, applies only to one area in the center of Summit County. A second area, in the Northwest corner, was designated nonattainment on the basis of EPA's modeling for the Cleveland metropolitan area. Because this modeling was included in the original record, EPA notes that this area was properly designated as nonattainment and is not directly affected by today's notice.

the extensive 1981 monitoring network showed that the higher constraining concentrations occurred at Barberton High School and PPG Pumphouse, sites which have been in operation for at least three years. Thus, the eight-station network, in addition to providing at least four quarters of quality assured data, demonstrate the worst case representativeness of two sites where more than eight quarters of data are available. In addition to the monitoring data, EPA considered dispersion modeling analyses performed by EPA and PPG that was submitted by OEPA on August 27, 1982. These analyses demonstrate that the status quo emission level will protect the NAAQS. EPA's review of the modeling analyses is discussed in detail in the Technical Support Documents available at the regional EPA Office listed above. Consequently, the 1981 data from the eight-station network together with the multi-year record from Barberton High School and the PPG Pumphouse, as well as the modeling data and status quo emissions, support the redesignation to attainment.

All interested persons are invited to submit written comment on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether EPA will approve the redesignation. After review of all comments submitted, the Administrator of EPA will publish in the Federal

Register the Agency's final action on the redesignation.

Pursuant to Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of preparing a regulatory impact analysis. Today's action does not constitute a major regulation because it only changes an area's air quality designation; it does not impose any new regulatory requirements.

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Pursuant to the provisions of the Regulatory Flexibility Act, I certify that

this rule will not have a significant economic impact on a substantial number of small entities.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: October 12, 1982.

Valdas V. Adamkus,
Regional Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

§ 81.336 [Amended]

1. Within the "Ohio SO₂" portion of § 81.336, Summit County is revised as follows:

* * * * *

OHIO—SO₂

Designated areas	Does not meet primary standards	Does not meet primary standards	Cannot be classified	Better than national standards
Summit: Entire area northwest of the following line Rte 80 east to Rte 91. Rte 91 north to county line and the entire area between the following lines: 1) Bath Rd. (48) east to Rte 8. Rte 8 north to Barlow Rd. (T-121). Barlow Rd. east to county boundary, 2) Interstate 76 east to Rte 93. Rte 93 south to Rte 619. Rte 619 east to county boundary.....	X			
The remainder of Summit Co.....				X

[FR Doc. 82-31694 Filed 11-22-82; 8:45 am]

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Notices

Federal Register

Vol. 47, No. 226

Tuesday, November 23, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Economic Development Administration

Economic Development Assistance Programs Under the Continuing Appropriations Act of 1982 (Pub. L. 97-276); Availability of Funds

AGENCY: Economic Development Administration (EDA).

ACTION: Notice.

SUMMARY:

I. Program: Planning Grants for Economic Development Districts, Redevelopment Areas and Indian Tribes.

(Catalog of Federal Domestic Assistance: 11.302 Economic Development—Support for Planning Organizations.)

The EDA Office of Planning, Technical Assistance, Research and Evaluation announces that grant funds are available to defray administrative expenses in support of the economic development planning efforts of Economic Development Districts (Districts), Redevelopment Areas (Areas) and Indian Tribes under the authority of Section 301(b) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3121, *et seq.*, (PWEDA).

Eligibility: Eligible applicants are Districts, Areas and Indian Tribes (including Alaskan Native Villages), whose current grants expire before March 31, 1983.

Grant Objective: The objective of these Section 301(b) grants is to support the formulation and implementation of economic development programs designed to create or retain full-time permanent jobs and income, particularly in designated Redevelopment Areas.

Funding Availability: Funds are presently available in two categories:

Districts and Areas (Category A); and Indian Tribes (Category B).

1. As of October 29, 1982, a total of \$3,338,076 is available for Districts and Areas. Maximum assistance is limited to 25 percent of their previous annual grants.

2. As of October 29, 1982, a total of \$669,886 is available for Indian Tribes currently participating in the program. Maximum assistance will be limited to 25 percent of their previous annual grants.

Funding Instruments: Assistance will be provided in the form of grant amendments for up to 75 percent of project costs for Category A grants. Under Category A, the applicant will be required to cover the remaining costs through cash or in-kind contributions. Category B assistance will be provided in the form of grant amendments for up to 100 percent of project costs.

Grant Duration: Both Category A and Category B amended grants will be extended for three months, generally through March 31, 1983.

Selection Criteria: For eligible applicants under both Categories A and B, selection will be based upon past performance. Applicants with unresolved audits from previous 301(b) grants may not be considered for further funding.

Organizations whose existing EDA grants expire after March 31, 1983, will not be considered for funding at this time. Organizations which received one-time grants in fiscal year 1982 will not be refunded.

Pre-Application Procedures: Eligible applicants under both Categories A and B should begin the application process by submitting a letter signed by the chief elected official (Chairman of the Board, Tribal Chairman) of the District, Area or Indian Tribe indicating a desire to continue receiving funds to carry out the types of planning activities eligible under the 301(b) program.

Formal Application Procedures: Following a review of the letters, EDA will notify eligible applicants which meet the selection criteria to submit a revised budget document, ED-430 Planning Grant Application and an ED-503 Assurance of Civil Rights Compliance.

Submission Information: Requests for assistance under this program should be addressed to the appropriate EDA Regional Office identified hereinafter.

For further information, contact Leon T. Douglas (202) 377-2873 at EDA Headquarters in Washington, D.C.

II. Program: Planning Grants for Urban Planning Activities

(Catalog of Federal Domestic Assistance: 11.305 Economic Development—State and Local Economic Development Planning.)

Summary: The EDA Office of Planning, Technical Assistance, Research and Evaluation announces that grant funds are available to continue the Urban Planning Program operated under the authority of Section 302(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3121, *et seq.*, (PWEDA).

Eligibility: Eligible applicants under this program are the 84 cities and urban counties whose current grants expire before March 31, 1983.

Grant Objective: The primary objective of a planning grant under Section 302(a) is to strengthen the economic development planning capability of cities and urban counties to ensure a more productive use of available resources in reducing the effects of economic problems, particularly those resulting in high unemployment and low incomes. Planning conducted under these grants must be part of a continuous process involving public officials and private citizens.

Funding Availability: As of October 29, 1982, a total of \$1,021,860 is available for this program for continuation grants, which will be approximately 25 percent of each applicant's current annual grant level.

Funding Instrument: EDA will extend grant amendments to successful applicants for up to 75 percent of project costs. The applicant may be required to cover the remaining costs through cash or in-kind contributions.

Selection Criteria: Consideration of applications will be based upon past performance. Applicants with unresolved audits from previous 302(a) grants will not be considered for further funding. Cities and urban counties whose existing programs expire after March 31, 1983, will not be considered for funding at this time.

Grant Duration: Project activities funded under this program may extend no later than June 30, 1983.

Pre-Application Procedures:

Applicants for Section 302(a) planning grants should begin the application process by submitting a letter signed by the head of the grantee organization indicating a desire to continue receiving funds to carry out the types of planning activities eligible under the 302(a) program.

Formal Application Procedures:

Following review of the letters, EDA will notify applicants which meet the selection criteria and elect to continue in the program to submit a revised budget document, ED-430 Planning Grant Application, and ED-503 Assurance of Civil Rights Compliance.

Submission Information: Requests for assistance under this program should be addressed to Beverly L. Milkman, Director, Office of Planning, Technical Assistance, Research and Evaluation, Economic Development Administration, Room 7844, U.S. Department of Commerce, Washington, D.C. 20230. Further information can be obtained from Leon T. Douglas in EDA Headquarters on (202) 377-2873.

III. Program: Planning Grants for State Planning Activities

(Catalog of Federal Domestic Assistance: 11.305 Economic Development—State and Local Economic Development Planning.)

Summary: The EDA Office of Planning, Technical Assistance, Research and Evaluation announces that grant funds are available to continue the State Planning Program operated under the authority of Section 302(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3121, *et seq.*, (PWEDA).

Eligibility: Eligible applicants under this program are the 44 States and territories currently participating in the 302(a) program whose grants expire before March 31, 1983.

Grant Objective: The primary objective of a planning grant under Section 302(a) is to strengthen the economic development planning capability of States and other eligible entities to ensure a more productive use of available resources in reducing the effects of economic problems, particularly those resulting in high unemployment and low incomes. Planning conducted under these grants must be part of a continuous process involving public officials and private citizens.

Funding Availability: As of October 29, 1982, a total of \$647,178 is available for this program. For eligible applicants, maximum assistance is limited to 25 percent of their current annual grant

level. Organizations whose existing EDA grants expire after March 31, 1983, will not be considered for funding at this time.

Funding Instrument: Assistance will be provided in the form of a grant amendment for up to 75 percent of project costs. The applicant is required to cover the remaining costs through cash or in-kind contributions. The amendment will serve to increase project costs, continue the existing scope of work, and extend the duration of the project.

Selection Criteria: Selection will be based upon past performance. Applicants with unresolved audits or outstanding financial obligations from previous 302(a) grants may not be considered for funding.

Grant Duration: Project activities funded under this program may not extend beyond June 30, 1983.

Pre-Application Procedures: Eligible applicants should begin the application process by submitting a letter signed by the head of the grantee organization indicating a desire to continue receiving funds to carry out the types of planning activities eligible under the 302(a) program.

Formal Application Procedures: Following review of the letters, EDA will notify eligible applicants which meet the selection criteria to submit a revised budget document, ED-430 Planning Grant Application, and an ED-503 Assurance of Civil Rights Compliance.

IV. Program: Grants for Technical Assistance

(Catalog of Federal Domestic Assistance: 11.303 Economic Development—Technical Assistance.)

Summary: The EDA Office of Planning, Technical Assistance, Research and Evaluation announces that grant funds are available to support Technical Assistance projects under the authority of Section 301(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3121, *et seq.*, (PWEDA).

Eligibility: Eligible applicants under this program are: University Centers presently funded by EDA whose grants expire December 31, 1982; and public or private non-profit organizations, States, counties, cities, towns or townships, education institutions, Indian tribes, economic development districts, private profit-making firms, and councils of government.

Grant Objective: The objective of Section 301(a) technical assistance grants is to provide help that will be useful in alleviating or preventing conditions of excessive unemployment

or underemployment. Projects may address the specific needs of an individual area or the common needs of many areas.

Funding Availability: Funds in the amount of \$1,748,000 are presently available. Priority consideration for use of these funds will be given to University Centers presently supported by EDA.

Funding Instrument: Assistance for University Centers will be provided in the form of grant amendments for up to 75 percent of the project costs. Other assistance will be provided in the form of grants for up to 75 percent of the project costs. In both cases at least 25 percent of project costs must be covered by the applicant.

Grant Duration: University Center grants will generally be for three months. Other grants will be for up to 12 months as required to complete the scope of work.

Selection Criteria: The criteria that will be applied to University Center applicants and other applicants are as follows:

A. University Centers: Consideration for funding will be based in the case of an existing center on an assessment of the grantee's past performance and conformance of the program structure and scope of work to the following guidelines which govern the University Center Program.

1. The center must be a significant component of a University's outreach program with high level policy guidance and administrative support.

2. The center must offer a comprehensive range of business and engineering technical assistance services primarily through one-to-one counseling techniques.

3. The center must assemble a small full-time staff. The center must also mobilize the specialized resources of the University.

4. The center must fill a significant gap in the range of institutional assistance available to support economic development in the service area, and must complement and reinforce this with other assistance.

5. The center must serve an area of substantial economic need.

6. The center must demonstrate that it will be capable of generating the resources needed to carry on the program of activity after EDA funding expires.

7. Applicants with unresolved audits from previous grants may not be considered for further funding.

B. Other Applicants: Priority will be given to projects which promote innovative public/private sector

approaches to addressing issues of national significance. These issues include: productivity growth and technology transfer, export development, and adjustment to structural economic change. Projects will be expected to address these issues in such a way as to generate practical applications of benefit in the near term to the economic development community, including the private sector. Projects may focus on discrete regional aspects of these issues and/or develop applications of particular relevance at the State level.

Submission Information: For further information, contact:

University Centers: Scott Rutherford (202) 377-2812.

Other: Felicity Gillette (202) 377-3081 and Richard Hage (202) 377-2127.

Requests for assistance under this program should be addressed to Beverly L. Milkman, Director, Office of Planning, Technical Assistance, Research and Evaluation, Economic Development Administration, Room 7844, U.S. Department of Commerce, Washington, D.C. 20230. Further information can be obtained from Leon T. Douglas in EDA Headquarters on (202) 377-2873.

V. Program: Grants For Research

Summary: The EDA Office of Planning, Technical Assistance, Research and Evaluation announces that grant funds are available for research projects under the authority of Section 301(c) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3121, *et seq.*, (PWEDA).

Eligibility: Eligible applicants are private individuals, partnerships, firms, corporations, universities, or other institutions.

Grant Objective: The objective of Section 301(c) grants is to:

1. Assist in determining the causes of unemployment, underemployment, underdevelopment, and chronic depression in various areas and regions of the Nation.

2. Assist in the formulation and implementation of national, State and local programs which will raise income levels and otherwise produce solutions to the problems resulting from these conditions.

Funding Availability: A total of \$436,000 is presently available for research.

Grant Duration: Grants will be awarded for projects up to twelve months duration.

Selection Criteria: Applicants will be judged on the following:

1. Demonstrated knowledge of the problem they wish to investigate.

2. Quality of their workplan.

3. Qualifications of investigators.

4. Accompanying budget information.

Projects in certain broad areas of Department of Commerce interest will receive priority. The areas include export development, productivity, rural economic development, State and local economic development capacity building, private sector economic development participation, minority economic and business development, and the role of new and high technology on economic development.

Submission Information: For further information, contact David H. Geddes (202) 377-4085 at EDA Headquarters in Washington, D.C.

VI. Program: Economic Adjustment Assistance

Catalog of Federal Domestic Assistance: 11.311 Special Economic Development and Adjustment Assistance Program—Sudden and Severe Economic Dislocation (SSED).

Summary: The EDA Office of Economic Adjustment announces its policies and application procedures for grants available under the Economic Adjustment Program. This program authorized under Title IX of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3121, *et seq.*, (PWEDA), is designed to assist communities anticipate and prevent a sudden, major job loss or to reestablish employment opportunities as quickly as possible after one occurs.

Scope and Purpose: Sudden and Severe Economic Dislocation (SSED) Assistance is intended to respond to structural rather than cyclical job losses. Thus, the dislocation must involve a permanent job loss. Funds can be used by eligible applicants to develop and/or implement and Economic Adjustment Strategy (EAS). An EAS must identify each adjustment need of the area, describe each activity planned to meet each need, and explain the details of the method of carrying out each such planned activity. It must consider both the immediate reemployment or other assistance needs of the dislocated workers and the economic adjustment needs of the local economy.

It must present a complete program for dealing with the dislocation problems, not just for those elements for which EDA funding may be sought. An EAS need not have been prepared with EDA assistance to be considered as a basis for an Implementation Grant.

Eligible Applicants: Awards will be open to all applicants eligible for assistance under Title IX. These include the following: a designated EDA "redevelopment area," or a nonprofit organization determined by EDA to be

the representative of a redevelopment area; an Economic Development District; a State; a city or other political subdivision of a State, or a consortium of such political subdivisions; an Indian tribe; a Community Development Corporation defined in the Community Economic Development Act of 1981.

Funding Availability: Under the Continuing Appropriations Act of 1982 (Pub. L. 97-276), EDA has a total of \$6,987,000 available for its Economic Adjustment program. EDA will consider proposals for the use of the \$6,987,000 for actual or threatened permanent job losses that exceed the following threshold criteria:

1. For areas not in Standard Metropolitan Statistical Areas:

- a. If the unemployment rate of the Labor Market Area exceeds the national average, the dislocation must amount to the lesser of 4 percent of the employed population, or 1,000 direct jobs.

- b. If the unemployment rate of the Labor Market Area is equal to or less than the national average, the dislocation must amount to the lesser of 8 percent of the employed population, or 2,000 direct jobs.

2. For areas within Standard Metropolitan Statistical Areas:

- a. If the unemployment rate of the Standard Metropolitan Statistical Area exceeds the national average, the dislocation must amount to the lesser of 0.5 percent of the employed population, or 4,000 direct jobs.

- b. If the unemployment rate of the Standard Metropolitan Statistical Area is equal to or less than the national average, the dislocation must amount to the lesser of 1 percent of the employed population, or 8,000 direct jobs.

Actual dislocations must have occurred within one year and threatened dislocations must be anticipated to occur within two years of the date EDA is contacted.

Surpassing the minimum impact threshold does not confer program eligibility on an area but merely permits consideration of an area. Proposals will be assessed according to the evaluation criteria that have been developed for the SSED program.

Pre-Application Procedures: Eligible applicants can respond to this announcement by contacting the EDA Regional Office for their area, as identified hereinafter.

Submission Information: Requests for further information about this program should be directed to Paul J. Dempsey, Director, Office of Economic Adjustment, Economic Development Administration, Room 7217, U.S.

Department of Commerce, Washington, D.C. 20230, telephone (202) 377-2659.

VII. Program: Grants for Public Works And Development Facilities

(Catalog of Federal Domestic Assistance: 11.300 Economic Development Grants and Loans for Public Works and Development Facilities. 11.304 Economic Development Public Works Impact Projects.)

Summary: The EDA Office of Public Works hereby announces that grant funds are available for the Public Works program under the authority of Title I and IV of the Public Works and Economic Development Act of 1965, as amended 42 U.S.C. 3121 *et seq.*, (PWEDA). Eligible applicants under this program are States, local subdivisions thereof, Indian Tribes, and non-profit organizations representing EDA-designated redevelopment areas.

Grant Objectives: The purpose of the Public Works grant program is to assist communities with the funding of public works and development facilities that contribute to the creation of new private sector jobs and to the alleviation of unemployment and underemployment.

Funding Availability: Grant funds in the amount of \$28,822,000 are presently available for program investments.

Funding Instrument: EDA will provide grants with maximum EDA participation ranging from 50 percent to 100 percent of the project cost according to existing regulations. Applicants will be required to provide the matching share, as appropriate.

Selection Criteria: Priority will be given to projects which come out of a joint public/private planning process, are consistent with the new Federalism initiative, have a substantial local match, are located in areas of high unemployment and low per capita income, will create new private sector jobs in the near term, have low job-cost ratio, and have broad community support.

Application procedures: Interested applicants should contact the appropriate EDA Regional Office regarding their proposals. EDA will screen proposals before authorizing the submission of a formal application. Following a review of the preapplication materials, EDA will notify those proponents whose projects are selected for funding consideration and assist them in completing Form ED-101A. Only technically and legally approvable projects will be funded. Applicants with unresolved audits from previous Public Works or Local Public Works grants may not be considered for funding.

FURTHER INFORMATION: For further information contact the appropriate EDA Regional Office identified below.

EDA Regional Offices and the States they cover are:

Craig M. Smith, Director, Philadelphia Regional Office, Economic Development Administration, Federal Reserve Bank Building, 105 North Seventh Street, Room 600, Philadelphia, Pennsylvania 19106. (215) 597-4803.

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, and West Virginia.

Wilbur J. Hattendorf, Director Atlanta Regional Office, Economic Development Administration, Suite 700, 1365 Peachtree Street, NE., Atlanta, Georgia 30309, (404) 881-7401.

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

William J. Roberts, Director, Denver Regional Office, Economic Development Administration, Tremont Center, 333 West Colfax Avenue, Denver, Colorado 80206, (303) 837-4714.

Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Edward G. Jeep, Director, Chicago Regional Office, Economic Development Administration, 175 W. Jackson Boulevard, Suite A-1630, Chicago, Illinois 60604, (312) 353-7706.

Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Robert M. Hill, Director, Seattle Regional Office, Economic Development Administration, Lake Union Building, Suite 500, 1700 Westlake Avenue, North Seattle, Washington 98109, (206) 442-0596.

Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington.

Joseph B. Swanner, Director, Austin Regional Office, Economic Development Administration, American Bank Tower, Suite 600, 221 West Sixth Street, Austin, Texas 78701. (512) 482-5461.

Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

A-95 Applicability: All applicants must comply with the provisions of OMB Circular A-95.

Dated: November 15, 1982.

Carlos C. Campbell,
Assistant Secretary for Economic Development.

[FR Doc. 82-32037 Filed 11-22-82; 8:45 am]

BILLING CODE 3510-24-M

International Trade Administration

Prestressed Concrete Steel Wire Strand From France; Amendment to Final Affirmative Countervailing Duty Determination

AGENCY: International Trade Administration; Commerce.

ACTION: Notice of Amendment to Notice of Final Affirmative Countervailing Duty Determination.

SUMMARY: On October 15, 1982, the Department of Commerce signed the final affirmative countervailing duty determination on prestressed concrete steel wire strand from France.

Due to a clerical error, the notice incorrectly stated the net subsidies arising from certain programs. The incorrect subsidy rates listed in the notice were 0.011 percent *ad valorem* for non-export oriented loans issued prior to 1978; 0.389 percent *ad valorem* for non-export oriented loans issued since 1978; 1.241 percent *ad valorem* for export loans issued since 1978; and 0.822 percent *ad valorem* for the cancellation of debt. The correct net subsidy arising from each of these programs is: 0.014 percent for non-export oriented loans issued prior to 1978; 0.818 percent *ad valorem* for non-export oriented loans issued since 1978; 2.290 percent *ad valorem* for export loans issued since 1978; and 1.523 percent *ad valorem* for the cancellation of debt.

Therefore the estimated net subsidy rate for all manufacturers, producers and exporters in the "Suspension of Liquidation" section of the notice should be change from 4.792 percent *ad valorem* to 6.974 percent *ad valorem*.

EFFECTIVE DATE: November 23, 1982.

FOR FURTHER INFORMATION CONTACT: Barbara E. Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 377-4036.

Dated: November 17, 1982.

Lawrence J. Brady,
Assistant Secretary for Trade Administration.

[FR Doc. 82-32086 Filed 11-22-82; 8:45 am]

BILLING CODE 3510-25-M

Walden Meat Co., Inc., et al.; Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from the following firms: (1) Walden Meat Company, Inc., Box 568, Walden,

New York 12586, processor of meat (accepted October 29, 1982); (2) Tensor Lamp Corporation, 33 Stanley Avenue, Brooklyn, New York 11207, producer of lamps (accepted October 29, 1982); (3) Associated Mechanical Devices, Inc., 8-16 Renee Place, Irvington, New Jersey 07111, producer of plastic drinkware and food and drug containers (accepted November 1, 1982); (4) Hersey Products, Inc., 250 Elm Street Dedham, Massachusetts 02026, producer of meters and other liquid and energy control devices (accepted November 1, 1982); (5) Allomatic Industries, Inc., 30-60 60th Street, Woodside, New York 11377, producer of automotive parts (accepted November 1, 1982); (6) Emgee Corporation, 3210 Koapaka Street, Honolulu, Hawaii 96819, producer of Christmas ornaments and decorations (accepted November 2, 1982); (7) Effanjay Pens, Inc., 21-09 Borden Avenue, Long Island City, New York 11101, producer of writing instruments (accepted November 2, 1982); (8) Roman Knit, Inc., P.O. Box 888, Norwood, North Carolina 28128, producer of knit fabric (accepted November 3, 1982); (9) GEL Systems, Inc., 68 Vine Street, Everett, Massachusetts 02149, producer of audio language systems (accepted November 4, 1982); (10) Wire Technology and Machinery Company, 380 Pleasantview Avenue, Hackensack, New Jersey 07601, producer of wire and cable machinery (accepted November 4, 1982); (11) Bud Fashions, Inc., 705 6th Avenue, Brooklyn, New York 11215, producer of women's blouses and maternity tops (accepted November 4, 1982); (12) Colby Co-operative Starch Company, 27 Birdseye Avenue, Caribou, Maine 04736, producer of potato starch and pulp, and frozen potatoes (accepted November 5, 1982); (13) A. & B. Sportswear Company, Inc., 564 Broadway, New York, New York 10012, producer of children's pants and men's, women's and children's shorts (accepted November 8, 1982); (14) Warwick Manufacturing Corporation, 112 Cavalier Boulevard, Chesapeake, Virginia 23323, producer of refrigerators (accepted November 8, 1982); (15) Mid-State Tile Company, P.O. Box 1777, Lexington, North Carolina 27292, producer of ceramic wall and floor tile (accepted November 8, 1982); (16) E-Z Sales and Manufacturing, Inc., 1418 West 166th Street, Gardena, California 90247, producer of hammocks, utility bags and patio chairs (accepted November 8, 1982); (17) Dirilyte Company, R. R. 7, Box 266, Warsaw, Indiana 46580, producer of bronze flatware and hollow ware (accepted November 9, 1982); (18) Bur-Con Enterprises, Inc., State Route 5 North,

Carlinville, Illinois 62626, producer of work gloves (accepted November 9, 1982); (19) Division Garment Company, 512 Seventh Avenue, New York, New York 10018, producer of women's coats, jackets, pants, shirts and blouses (accepted November 9, 1982); and (20) Max Rubin Industries, 113 West North Avenue, Baltimore, Maryland 21201, producer of men's suits and sportcoats (accepted November 10, 1982).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and Section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Director, Certification Division, Office of Trade Adjustment Assistance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Insofar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A-95 regarding review by clearinghouses do not apply.

Charles L. Smith,

Acting Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 82-32087 Filed 11-22-82; 8:45 am]

BILLING CODE 3510-25-M

Withdrawal of Application for Duty-Free Entry of Scientific Articles

The University of Illinois at Urbana-Champaign has withdrawn Docket Number 82-00270, an application for duty-free entry of an Electron Microscope, EM 400. Accordingly, further administrative proceedings will not be taken by the Department of Commerce with respect to this application.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-32038 Filed 11-22-82; 8:45 am]

BILLING CODE 3510-25-M

Withdrawal of Application for Duty-Free Entry of Scientific Article

The University of Texas at Austin has withdrawn Docket Number 82-00339, an application for duty-free entry of an Electron Microscope, EM 400. Accordingly, further administrative proceedings will not be taken by the Department of Commerce with respect to this application.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-32039 Filed 11-22-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Marine Mammals; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Dr. Daniel P. Costa (P227D).

b. Address: Center for Coastal Marine Studies, University of California at Santa Cruz, Santa Cruz, California 95064.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Northern elephant seals (*Mirounga angustirostris*), 60.

4. Type of Take: Capture, study, and release.

5. Location of Activity: Año Nuevo Island, California.

6. Period of Activity: 4 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those

individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: November 17, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-32116 Filed 11-22-82; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council, Shrimp Subpanel; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Gulf of Mexico Fishery Management Council, established by section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265), has established a Shrimp Subpanel. The Council and its Shrimp Subpanel will hold separate public meetings.

AGENDAS: The Council will meet to discuss:

- Appointment of committee members
- Evaluation of the cooperative shrimp closure with Texas
- Amendments to the Stone Crab and Shrimp Fishery Management Plans (FMP's)
- The draft Calico Scallop FMP
- Recommendations of the International Commission for the Conservation of Atlantic Tuna (ICCAT)
- Other administrative and fishery management business, as appropriate

The Shrimp Subpanel will meet to review the National Marine Fisheries Service's evaluation of the cooperative closure of the fishery conservation zone off Texas to shrimping.

DATES: The Council meeting will convene at 8:30 a.m., on Tuesday, December 7, 1982, for the purpose of appointing committees and will adjourn

at approximately 9:30 a.m.; reconvene on Wednesday, December 8, 1982, at approximately 10 a.m., adjourn at approximately 5 p.m.; reconvene on Thursday, December 9, 1982, at approximately 8:30 a.m., and adjourn at approximately noon. The Shrimp Subpanel meeting will convene on Monday, December 6, 1982, at approximately 2 p.m., adjourning at approximately 5:30 p.m.

ADDRESS: The public meetings will take place at the Fort Brown Motor Hotel, Cavalry Room, 1900 East Elizabeth Street, Brownsville, Texas.

FURTHER INFORMATION: Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609, Telephone: (813) 228-2815.

Dated: November 18, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-32117 Filed 11-22-82; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Additional Import Controls on Certain Cotton Textile Products from Thailand

November 18, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Controlling imports of other woven cotton fabrics in Category 320 pt. (excluding T.S.U.S.A. 326.0092), produced or manufactured in Thailand and exported during the eighteen-month period which began on January 1, 1982, at a level of 8,000,000 square yards.

(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: Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended and extended, between the Governments of the United States and Thailand, the United States Government has decided to control imports of cotton textile products in Category 320 pt. (excluding T.S.U.S.A. 326.0092), produced or manufactured in Thailand and exported to the United States during the eighteen-month period

which began on January 1, 1982, in addition to those categories previously designated.

EFFECTIVE DATE: November 24, 1982.

FOR FURTHER INFORMATION CONTACT:

Gordana Siljepcevic, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On October 14, 1982, there was published in the *Federal Register* (47 FR 45896) a letter dated October 8, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool, and man-made fiber textile products, produced or manufactured in Thailand, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the eighteen-month period which began on January 1, 1982 and extends through June 30, 1983. In accordance with the terms of the bilateral agreement, as amended and extended, the United States Government has decided also to control imports of cotton textile products in Category 320 pt. (excluding T.S.U.S.A. 326.0092), produced or manufactured in Thailand and exported to the United States during the eighteen-month period which began on January 1, 1982. Accordingly in the latter published below the Chairman of the Committee for Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 320 pt. (excluding T.S.U.S.A. 326.0092), produced or manufactured in Thailand and exported during the eighteen-month period which began on January 1, 1982, in excess of 8,000,000 square yards. The level has not been adjusted to reflect any imports after December 31, 1981. Imports during the January 1-October 22, 1982 period have amounted to 3,106,408 square yards and will be charged. As the data become available, further charges will be made to account for imports during the period which began on October 23, 1982 and extends to the effective date of this action, as well as thereafter.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 18, 1982.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 1982 by the Chairman, of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Thailand.

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 October 4, 1978, as amended, between the Governments of the United States and Thailand; 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 to prohibit, effective on November 24, 1982 and for the eighteen-month period which began on January 1, 1982 and extends through June 30, 1983, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 320 pt.,¹ produced or manufactured in Thailand, in excess of 8,000,000 square yards.²

In carrying out this directive, entries of textile products in Category 320 pt. (excluding T.S.U.S.A. 326.0092), produced or manufactured in Thailand, which have been exported to the United States on and after January 1, 1981 and extending through December 31, 1981, shall, to the extent of any unfilled balance, be charged against the level of restraint established for such goods during that twelve-month period. In the event the level of restraint established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

Textile products in Category 320 pt. (excluding T.S.U.S.A. 326.0092) which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

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).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Thailand and with respect to imports of cotton textile products from

Thailand 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,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-32089 Filed 11-22-82; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Army

Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: Wednesday, 15 December 1982.

Time: 0830-1700 hours (Closed).

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense will meet to receive additional briefings and reports. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. app. 1, subsection 10(d). The classified and non-classified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contacted for further information at (202) 695-3039 or 697-9703.

Ronald A. Mlinarchik,

Executive Director.

[FR Doc. 82-32046 Filed 11-22-82; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Roanoke River Upper Basin, Va.; Intent, To Prepare a Draft Environmental Impact Statement (DEIS)

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. In order to reduce flood damages along the Roanoke River within the corporate limits of Salem and Roanoke, Virginia, the Corps has investigated

several alternative plans. The plan proposed includes the construction of 10.2 miles of benched channel and 4,500 feet of training wall, 6.3 miles of channel clearing and snagging, floodproofing three structures, a flood warning system and replacement of two bridges. This plan also includes a recreational component consisting of 16 miles of hiking/biking path adjacent to the river with picnic areas and park sites.

2. Other alternatives investigated include: 16 miles of channelization; construction of 16 miles of benched channel; construction of 16 miles of benched channel and nine dikes; construction of 16 miles of benched channel and two training walls; and evacuation and floodproofing.

3a. The public involvement program has been an integral part of the Roanoke River Upper Basin Study. The primary public involvement mechanisms used in this study were Public Assistance Committee (PAC) meetings, information bulletins, and public meetings. The PAC consists of about 40 government and interest group representatives. This committee has met, as needed, throughout the study and functions so as to provide feedback and input for engineering, environmental, social, and economic considerations and evaluations made during the study. A public meeting was held at the end of preliminary and intermediate planning stages, and one will be held when the DEIS is circulated. Interviews, presentations, and workshops have been conducted as needed. This scoping process has led to a concentration of study efforts in the Salem-Roanoke reach because of expressed opposition to larger projects in the western portion of the basin.

3b. Significant issues to be analyzed in the DEIS include impacts to water quality, fish and wildlife including endangered species, esthetics, cultural resources, prime and unique farmland, and socioeconomic factors.

3c. Other environmental review requirements include the compliance with the following regulations: Historic Preservation Act of 1966, National Environmental Policy Act of 1969, Clean Water Act of 1977, Endangered Species Act of 1973, Fish and Wildlife Coordination Act, and Executive Order 11988.

4. The DEIS should be available to the public in April 1983. Questions about the proposed action and Draft Environmental Impact Statement should be directed to Mr. Richard Jackson, Chief, Environmental Resources Branch, U.S. Army Engineer District,

¹ All T.S.U.S.A. numbers in the category except 326.0092.

² The level of restraint has not been adjusted to reflect any imports after December 31, 1981.

Wilmington, PO Box 1890, Wilmington, NC 28402.

A. A. Kopcsak,

Lieutenant Colonel, Corps of Engineers,
Acting District Engineer.

[FR Doc. 82-32000 Filed 11-22-82; 8:45 am]

BILLING CODE 3710-GN-M

DEPARTMENT OF EDUCATION

Discretionary Grant Programs; Application Notice Establishing Closing Dates for Transmittal of Certain Fiscal Year 1983 Applications

AGENCY: Education Department.

ACTION: Application notice establishing closing dates for transmittal of certain Fiscal Year 1983 applications.

SUMMARY: The purpose of these application notices is to inform potential applicants of fiscal and programmatic information and closing dates for transmittal of applications for new grants under the Training Personnel for the Education of the Handicapped Program administered by the Department of Education.

Organization of Notice:

This notice contains two parts. Part I includes the list of application announcements and closing dates covered by this notice. Part II consists of the individual application announcements for each program.

The Secretary is publishing a Notice of Proposed Rulemaking (NPRM) for the Training Personnel for the Education of the Handicapped Program in this issue of the *Federal Register*. Applicants are advised to prepare their applications in accordance with the NPRM. Following the expiration of a forty-five (45) day comment period on the proposed regulations, the Secretary will publish final regulations to govern awards for Fiscal Year 1983. If there are any substantive changes made when the final regulations are published, applicants will be given the opportunity to amend or resubmit their applications.

The proposed regulations provide that the Secretary, in any fiscal year, may establish one or more of the following seven priorities:

- (a) Preparation of special educators; personnel;
- (b) Preparation of leadership personnel;
- (c) Preparation of related services personnel;
- (d) State educational agency programming;
- (e) Special projects;
- (f) Specialized training of regular educators; and

(g) Preparation of trainers of volunteers, including parents.

The Secretary proposes to award grants under each of these priorities in Fiscal Year 1983.

Instructions for Transmittal of Applications:

Applicants should note specifically the instructions for the transmittal of applications included below:

Transmittal of applications:

Applications for new projects must be mailed or hand delivered on or before January 21, 1983.

Applications Delivered by Mail:

Applications must be addressed to the Department of Education, Application Control Center, Attention: (insert appropriate CFDA Number), Washington, D.C. 20202.

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

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

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

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

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

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

Applications Delivered by Hand:

Hand-delivered applications must be taken to the Department of Education, Application Control Center (Room 5673, Regional Office Building 3), 7th and D Streets, S.W., Washington, D.C. 20202.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

PART I.—PROGRAMS AND CLOSING DATE

CFDA No.	Program	Closing date
84.029B...	Handicapped—Preparation of Special Educators—New.	January 21, 1983.
84.029D...	Handicapped—Preparation of Special Personnel—New.	January 21, 1983.
84.029F...	Handicapped—Preparation of Related Services Personnel—New.	January 21, 1983.
84.029H...	Handicapped—State Educational Agency Programming—New.	January 21, 1983.
84.029K...	Handicapped—Special Projects—New.	January 21, 1983.
84.029S...	Handicapped—Specialized Training of Regular Educators—New.	January 21, 1983.
84.029P...	Handicapped—Preparation of Trainers of Volunteers, Including Parents—New.	January 21, 1983.

Part II—Application Notices

Training Personnel for the Education of the Handicapped Program

Applications are invited for new projects under the Training Personnel for the Education of the Handicapped Program.

Authority for the Training Personnel for the Education of the Handicapped Program is contained in Sections 631, 632, and 634 of Part D of the Education of the Handicapped Act. (20 U.S.C. 1431, 1432, 1434)

This program issues awards to State educational agencies, institutions of higher education, and other nonprofit institutions or agencies.

The purpose of the awards is to improve the quality and increase the supply of special educators and support personnel.

Available Funds: Since the fiscal year 1983 appropriation level has not been determined yet, accurate estimates of funding under each priority are not available. However, the amount available for new and continuation awards for this program in fiscal year 1982 was \$49,300,000. All estimates listed under *Available Funds* do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

84.029B—Handicapped—Preparation of Special Educators

Closing Date: January 21, 1983.

Program Information: The Special Educators competition supports projects designed to provide training for personnel engaged or preparing to engage in employment as special educators of handicapped children ages 0-21 years or as supervisors of such educators. The competition includes the preparation of: Early Childhood Specialists, Educators of the

Handicapped, special Education Administrators and Supervisors, Speech and Language Pathologists, Audiologists, Adaptive Physical Education Specialists and Vocational Special Educators. Awards will be made for preservice training only.

Available Funds: About 48 percent of the funds made available for new training personnel for the education of the handicapped awards for fiscal year 1983 will be made available for this competition. The average grant is expected to be about \$50,000.

84.029D—Handicapped—Preparation of Leadership Personnel

Closing Date: January 21, 1983.

Program Information: The Leadership Personnel competition supports doctoral and post-doctoral preparation of professional personnel to conduct training of teacher, researchers, administrators and other specialists. Awards will be made for preservice training only.

Available Funds: About 17 percent of the funds made available for new training personnel for education of the handicapped awards for fiscal year 1983 will be made available for this competition. The average grant is expected to be about \$79,000.

84.029F—Handicapped—Preparation of Related Services Personnel

Closing Date: January 21, 1983.

Program Information: The Related Services Personnel competition supports the preparation of individuals who provide developmental, corrective, and other related supportive services as may be required to assist a handicapped child to benefit from special education. This competition supports only the preservice preparation of paraprofessionals, for example, educational aides, recreational aides, transportation and home care providers, assistants, career educators, and recreational specialists.

Available Funds: About 5 percent of the funds made available for new training personnel for the education of the handicapped awards for fiscal year 1983 will be made available for this competition. The average grant is expected to be about \$40,000.

84.029H—Handicapped—State Educational Agency Programming

Closing Date: January 21, 1983.

Program Information: The State Educational Agency Programming competition supports projects dealing with unique State-wide training in all or several of the need areas identified by the Comprehensive System of Personnel Development (CSPD), and may include

training in management and organizational design which enhance the ability of States to provide comprehensive services to handicapped children and youth. Only State Educational Agencies or groups of State Educational Agencies are eligible to submit applications under this competition. Awards will be made for preservice and/or inservice training.

Available Funds: About 8 percent of the funds made available for new training personnel for the education of the handicapped awards for fiscal year 1983 will be made available for this competition. The average grant is expected to be about \$80,000.

84.029K—Handicapped—Special Projects

Closing Date: January 21, 1983.

Program Information: The Special Projects competition supports the development (including adaptation), evaluation, and dissemination of imaginative, innovative, and useful approaches to personnel preparation, and includes for example the development of personnel preparation materials, the development of models designed to provide efficiency and effectiveness, and the innovative utilization of technology to prepare personnel to educate handicapped children. Awards will be made for preservice and/or inservice activities.

Available Funds: About 10 percent of the funds made available for new training personnel for the education of the handicapped awards for fiscal year 1983 will be made available for this competition. The average award is expected to be about \$77,500.

84.029S—Handicapped—Specialized Training of Regular Educators

Closing Date: January 21, 1983.

Program Information: The Specialized Training of Regular Educators competition supports projects that provide deans or equivalent administrators from institutions of higher education and local educational agency officials the skills necessary to promote development of regular classroom teachers, administrators, and supervisors. The purpose is to provide quality education to handicapped children who receive a part of their education in regular classes. Awards will be made for preservice training only.

Available Funds: About 5 percent of the funds made available for new training personnel for the education of the handicapped awards for fiscal year 1983 will be made available for this competition. The average award is expected to be about \$40,000.

84.029P—Handicapped—Preparation of Trainers of Volunteers, Including Parents

Closing Date: January 21, 1983.

Program Information: This competition provides support for the preparation of trainers of volunteers, including parents, to assist in the provision of provision of educational services to handicapped students. In addition to the preparation of volunteers and parents by experienced professionals, this priority may support projects which emphasize the training of parents by parents. Awards will be made for preservice training only.

Available Funds: About 7 percent of the funds made available for new training personnel for the education of the handicapped awards for fiscal year 1983 will be made available for this competition. The average award is expected to be about \$50,000.

Application Forms: Application forms and program information packages are available and may be obtained by writing to the Division of Personnel Preparation, Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Room 4805, Donohoe Building), Washington, D.C. 20202.

The program information is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competitions.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary urges applicants not to submit information that is not required.

Applicable Regulations: Regulations applicable to these program announcements include the following:

(a) Regulations governing the Training Personnel for the Education of the Handicapped (34 CFR Part 318). A Notice of Proposed Rulemaking for the Training Personnel for the Education of the Handicapped program is published in this issue of the *Federal Register* and when published as final regulations will govern awards for Fiscal Year 1983. Applicants should prepare their applications based on the proposed rules. If there are any substantive changes made when the final regulations are published, applicants

will be given the opportunity to amend or resubmit their applications.

Further Information: Dr. Herman Saettler, Acting Director, Division of Personnel Preparation, Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4805, Donohoe Building), Washington, D.C. 20202. Telephone: (202) 245-9886.

(20 U.S.C. 1431, 1432, 1434)

(Catalog of Federal Domestic Assistance No. 84.029 Training Personnel for the Education of the Handicapped Program)

Dated: November 17, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82-32058 Filed 11-22-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Intent To Prepare an Environmental Impact Statement on Revised Wholesale Power Rates

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement on Revised Wholesale Power Rates.

Bonneville Power Administration hereby gives notice of its intent to prepare and consider an environmental impact statement (EIS) on a proposal to revise its wholesale electric power rates effective October 1, 1983. The draft EIS is tentatively planned for completion in January 1983.

Based on anticipated increases in BPA's costs because of inflation, interest rates, and increased costs of purchasing power, BPA foresees a need to increase its wholesale power rates. The proposed action would revise rates to a level sufficient to meet BPA's revenue requirements, which are now being calculated. BPA customers receiving service would pay the full costs incurred to provide that service and BPA would meet all financial obligations.

Alternatives to the proposed action are: (1) No action, which would maintain the existing rate structure and cause a revenue deficiency; (2) basing rates on the projected long-run cost of acquiring new power resources; and (3) alternative rate designs. The draft EIS will also analyze the cumulative impacts of the wholesale rate increases from 1979.

BPA recently prepared an EIS on its 1982 rate proposal (DOE/EIS-0093-F). Because the range of actions, impacts, and alternatives to be considered are similar, BPA will use that EIS to

substantially scope the EIS it intends to prepare for the 1983 rate proposal. No scoping meetings will be held. However, written comments on the scope of the EIS are welcome. BPA will also seek comments on the scope of the EIS by individual contact with persons and organizations who have expressed interest in BPA's rate proposals.

The draft EIS on the wholesale power rate revision will not analyze any increase in BPA's transmission rates because any such increase would be a separate action undertaken in a separate rate decisionmaking process. This EIS also will not analyze any environmental effects of any actions that may be undertaken as a result of the fish and wildlife program adopted by the Pacific Northwest Electric Power and Conservation Planning Council.

These actions may affect rates, however, so the effect on rates of these actions will be explained. For example, reductions in the amount of firm power available from the Federal Columbia River Power System resources may require acquisition of alternative high-cost replacement resources. Any actions undertaken to implement the fish and wildlife program will be the subject of an independent environmental document that may be required prior to making decisions on those actions.

Suggestions and recommendations concerning the development of the draft EIS on the proposed wholesale power rates will be accepted through December 23, 1982.

FOR FURTHER INFORMATION CONTACT:

Anthony R. Morrell, Environmental Manager, P.O. Box 3621-SJ, Portland, Oregon 97208, 503-230-5136.

Issued in Portland, Oregon, November 15, 1982.

Peter T. Johnson,
Administrator.

[FR Doc. 82-31998 Filed 11-22-82; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket PP-79]

Application for Presidential Permit; San Diego Gas & Electric

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application by San Diego Gas & Electric (SDG&E) for a Presidential Permit for an International Interconnection.

SUMMARY: SDG&E has filed an application for a Presidential Permit, Docket PP-79, to construct and operate a 230 kilovolt transmission system from its

Imperial Valley substation to the U.S./Mexican border, a distance of approximately four miles, to the point of interconnection with a similar transmission line owned and operated by the Commission Federal de Electricidad (CFE).

FOR FURTHER INFORMATION CONTACT:

Garet Bornstein, Office of Energy, Emergency Operations, EP-42, Department of Energy, Room GH-034-G, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-1714.

Lise Courtney M. Howe, Office of General Counsel (GC-11), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2900.

SUPPLEMENTARY INFORMATION: On September 24, 1982, SDG&E filed an application with DOE to construct, connect, operate and maintain electric facilities at the borders of the United States and Mexico. Specifically, SDG&E seeks authority to construct, connect, operate and maintain a 230 kV overhead transmission line between the SDG&E Imperial Valley substation and the U.S./Mexican international border, where it will interconnect with a similar line owned and operated by CFE, originating at CFE's planned La Rosita substation.

Because the bulk of this transmission line will be located on land subject to the jurisdiction of the Bureau of Land Management (BLM), U.S. Department of Interior, the BLM rather than DOE will be the lead in preparation of any environmental documentation required by the project. DOE will cooperate fully in BLM's proposed environmental review of this application.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Office of Energy Emergency Operations, EP-42, Department of Energy, Room GH-034-G, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in accordance with §§ 1.8 or 1.10 of the Rules of Practice and Procedure (18 CFR 1.8 and 1.10).

Petitions and protests should be filed on or before December 20, 1982. Protests will be considered by DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with DOE and will, upon request, be made available for public inspection and copying at the Office of Energy Emergency Operations, Room GH-034-

G, 1000 Independence Avenue, SW.,
Washington, D.C.

Issued in Washington, D.C., November 12,
1982.

Rayburn Hanzlik,
Administrator, Economic Regulatory
Administration, Department of Energy.

[FR Doc. 82-31989 Filed 11-22-82; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ERA-FC-82-020]; [OFC Case
No. 61044-9222-21-22]

**Order Granting Augusta Kraft
Company an Exemption From the
Prohibitions of the Powerplant and
Industrial Fuel Use Act of 1978**

AGENCY: Economic Regulatory
Administration, DOE.

ACTION: Notice.

SUMMARY: On July 21, 1982, Augusta Kraft Company, hereinafter referred to as petitioner, filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent fuels mixtures exemption for a new major fuel burning installation (MFBI) from the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act), that prohibit the use of petroleum and natural gas as a primary energy source in certain new MFBI's. An amendment to that petition was filed on August 9, 1982. The revised final rules containing the criteria and procedures for petitioning for exemption from the prohibitions of FUA were published in the Federal Register at 46 FR 59872 (December 7, 1981). The criteria governing the fuels mixture exemption are contained in 10 CFR 503.38 of the final rules.

The petitioner requested a permanent fuels mixture exemption in order to burn woodwaste in combination with No. 6 fuel oil and/or natural gas as a primary energy source in a boiler identified as Unit No. 1 to be operated at the petitioner's proposed pulp and paper mill to be located near Augusta, Georgia. Unit No. 1 will have a design heat input rate of 383 M/Btu per hour.

The basis for ERA's Order granting the petitioner a permanent fuels mixture

exemption is provided in the
SUPPLEMENTARY INFORMATION
section below.

DATE: In accordance with section 702(a) of FUA, this Order and its provisions shall take effect on January 24, 1983.

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: DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.-4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

William H. Freeman, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-073, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-2993.

Allen J. Stein, Esq., Office of the General Counsel, Department of Energy, Forrestal Building, Room 6B-178, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-2967.

SUPPLEMENTARY INFORMATION: The petitioner proposes to install Unit #1 at its proposed pulp and paper mill to be located near Augusta, Georgia. The primary purpose of the boiler will be to generate steam in conjunction with an adjacent chemical recovery boiler for generating electric power and satisfying process steam demand. Petitioner requests an exemption, under the certification alternative for MFBI's contained in 10 CFR 503.38(d), to burn up to 25 percent petroleum and/or natural gas in a mixture with woodwaste.

In accordance with 10 CFR 503.38(d), the petitioner certified in its petition for exemption, filed on July 21, 1982, and amended on August 9, 1982, that the amount of petroleum or natural gas proposed to be used as a primary energy source in the mixture in Unit #1 will not exceed twenty-five percent (25%) of the total annual Btu heat input of the installation. The petitioner also submitted environmental certifications, pursuant to 10 CFR 503.13(b), indicating that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

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 Unit #1 in the Federal Register on September 16, 1982 (47 FR 40821), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by sections 701(f) and 701(g) of the Act, ERA provided a copy of the petition to the Environmental Protection Agency and the Federal Trade Commission for their respective comments. During the public comment 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 November 1, 1982. No hearing was requested and no comments were received.

After a review by DOE's Office of Environment of the petitioner's completed environmental checklist submitted pursuant to 10 CFR 503.13, 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 or the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act.

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 503.38(d) and section 212(d) of FUA, and ERA hereby grants the petitioner a permanent exemption to use a fuel mixture containing up to 25 percent natural gas or petroleum in its Unit #1 to be located at its proposed pulp and paper mill near Augusta, Georgia.

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 publication of this Order in the Federal Register.

Issued in Washington, D.C. on November 16, 1982.

James W. Workman,
Director, Office of Fuels Programs, Economic
Regulatory Administration.

[FR Doc. 82-31988 Filed 11-22-82; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Vol. 775]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: November 17, 1982.

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
OHIO DEPARTMENT OF NATURAL RESOURCES								

RECEIVED: 10/20/82 JA: OH								
8304425		3416726506	107-DV		P J DONNELLY HEIRS #1 OH-47-3501	LAWRENCE	10.0	COLUMBIA GAS TRAN

RECEIVED: 10/20/82 JA: OH								
8304426		3412725701	103		UNDERWOOD-SHEPPERD #1	PIKE TOWNSHIP	4.5	

RECEIVED: 10/20/82 JA: OH								
8304428		3405320627	107-TF		DARST #1	CHESHIRE TOWNSHIP	5.0	COLUMBIA GAS TRAN
8304427		3405320611	107-TF		HANMACK #1	CHESHIRE TOWNSHIP	5.0	COLUMBIA GAS TRAN
8304430		3405320663	107-TF		M GROVER #1A	CHESHIRE TOWNSHIP	4.0	COLUMBIA GAS TRAN
8304429		3405320657	103		107-TF SUSIE SWISHER #2	CHESHIRE TOWNSHIP	5.0	

RECEIVED: 10/20/82 JA: OH								
8304431		3416922097	108		NEISS #1	13.0	COLUMBIA GAS TRAN	

RECEIVED: 10/20/82 JA: OH								
8304445		3415520138	108		B RYSER #1	0.0	SHARON STEEL CORP	
8304439		3415520096	108		BURKELL #1	0.0	SHARON STEEL CORP	
8304437		3415520081	108		CORLL #1	0.0	SHARON STEEL CORP	
8304440		3415520097	108		CORLL #2	0.0	SHARON STEEL CORP	
8304438		3415520082	108		CROSS #1	0.0	SHARON STEEL CORP	
8304456		3415520206	108		DE ANGELO #1	0.0	COLUMBIA GAS TRAN	
8304461		3415522135	102-2		107-TF E LILLIE #3	0.0	SHARON STEEL CORP	
8304449		3415520173	108		FLEM-DELSERONE #1	0.0	SHARON STEEL CORP	
8304451		3415520184	108		HARTLINE #1	0.0	SHARON STEEL CORP	
8304434		3409920339	108		KRAUTNER #1	0.0	SHARON STEEL CORP	
8304454		3415520204	108		LOIS REALTY #1	0.0	SHARON STEEL CORP	
8304457		3415520210	108		MABEL CORLL #1	0.0	SHARON STEEL CORP	
8304436		3415520080	108		MASSULLO #1	0.0	SHARON STEEL CORP	
8304444		3415520128	108		MIKLOS #1	0.0	SHARON STEEL CORP	
8304435		3415520079	108		MURKEE ACRES #1	0.0	SHARON STEEL CORP	
8304452		3415520188	108		NEWELL #1	0.0	SHARON STEEL CORP	
8304459		3415520230	108		ONDICH FORTINE #1	0.0	SHARON STEEL CORP	
8304458		3415520225	108		PATRICK PENCIS #1	0.0	SHARON STEEL CORP	
8304443		3415520126	108		PETRINJAK #1	0.0	SHARON STEEL CORP	
8304433		3409920328	108		PILORUSSO #1	0.0	SHARON STEEL CORP	
8304442		3415520123	108		PRICE #1A	0.0	SHARON STEEL CORP	
8304441		3415520122	108		PRICE #2	0.0	SHARON STEEL CORP	
8304446		3415520152	108		REPUBLIC STEEL #2	0.0	REPUBLIC STEEL CO	
8304447		3415520154	108		REPUBLIC STEEL #6	0.0	REPUBLIC STEEL CO	
8304453		3415520192	108		RYSER SLIPAO #1	0.0	SHARON STEEL CORP	
8304460		3415520455	108		SHARON STEEL #1	0.0	SHARON STEEL CORP	
8304448		3415520170	108		TRACY #1	0.0	SHARON STEEL CORP	
8304432		3409920311	108		WALNUT VALLEY #1	0.0	SHARON STEEL CORP	
8304455		3415520205	108		YORBE #1	0.0	SHARON STEEL CORP	

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8304450		3415520179	108		ZIMMERMAN #1	BATH	0.0	SHARON STEEL CORP
-BERMAN J SHAVER		3415520179	108		ZIMMERMAN #1	BATH	0.0	SHARON STEEL CORP
8304556		3415321165	103		RYBA-FRENCH UNIT #1		7.5	EAST OHIO GAS CO
-BUCKEYE OIL PRODUCING CO		3415321165	103		RYBA-FRENCH UNIT #1		7.5	EAST OHIO GAS CO
8304476		3410323119	103		BRIGGS UNIT #4	HARRISVILLE	10.0	COLUMBIA GAS TRAN
-CLARENCE K TUSSEL JR		3410323119	103		BRIGGS UNIT #4	HARRISVILLE	10.0	COLUMBIA GAS TRAN
8304671		3400722012	103		107-TF J DROESE #1	MONROE	35.0	
8304672		3400722048	103		107-TF P MAKO #1	MONROE	36.0	
-CLARENCE SHERMAN		3400722048	103		107-TF P MAKO #1	MONROE	36.0	
8304658		3407521720	103		107-RT ANDY J A YODER #6	CLARK	7.3	
8304657		3407521589	103		107-RT DELBERT TROYER #19	CLARK	9.1	
-COASTAL PETROLEUM CORP		3407521589	103		107-RT DELBERT TROYER #19	CLARK	9.1	
8304480		3416923262	107-TF		BAUMAN #2	MILTON	9.0	COLUMBIA GAS TRAN
8304481		3416223283	107-TF		HARTZLER #1	MILTON	9.0	COLUMBIA GAS TRAN
8304478		3410322938	107-TF		WESTERN RESERVE #6	SHARON	9.0	COLUMBIA GAS TRAN
8304479		3410323027	107-TF		WESTERN RESERVE #9	SHARON	9.0	COLUMBIA GAS TRAN
-COLUMBIA GAS TRANSMISSION CORP		3410323027	107-TF		WESTERN RESERVE #9	SHARON	9.0	COLUMBIA GAS TRAN
8304487		3411522300	107-TF		MAX H KISTER 710248	NORTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8304488		3411522301	107-TF		MAX H KISTER 710248	NORTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8304489		3411522311	107-TF		PRESLEY-OLSHAUSKY UNIT #1	SENECAVILLE	14.6	COLUMBIA GAS TRAN
8304494		3411522312	107-TF		PRESLEY-OLSHAUSKY UNIT #1	SENECAVILLE	14.6	COLUMBIA GAS TRAN
8304495		3411522302	107-TF		R SIDWELL #10	DEERFIELD	0.0	COLUMBIA GAS TRAN
8304500		3411522303	107-TF		R SIDWELL #11	DEERFIELD	0.0	COLUMBIA GAS TRAN
8304491		3411522304	107-TF		R SIDWELL #12	DEERFIELD	0.0	COLUMBIA GAS TRAN
8304492		3411522305	107-TF		R SIDWELL #13	DEERFIELD	0.0	COLUMBIA GAS TRAN
8304493		3411522306	107-TF		R SIDWELL #14	DEERFIELD	0.0	COLUMBIA GAS TRAN
8304496		3411522313	107-TF		R SIDWELL #15	DEERFIELD	0.0	COLUMBIA GAS TRAN
8304484		3411522297	107-TF		R SIDWELL #16	DEERFIELD	0.0	COLUMBIA GAS TRAN
-ENERGY DEVELOPMENT CORP		3411522297	107-TF		R SIDWELL #17	DEERFIELD	0.0	COLUMBIA GAS TRAN
8304502		34070722016	103		R SIDWELL #18	DEERFIELD	0.0	COLUMBIA GAS TRAN
-FINCK OIL & GAS CO		34070722016	103		R SIDWELL #19	DEERFIELD	0.0	COLUMBIA GAS TRAN
8304503		3412725672	103		R SIDWELL #20	DEERFIELD	0.0	COLUMBIA GAS TRAN
-FOLTZ ENTERPRISES		3412725672	103		R SIDWELL #21	DEERFIELD	0.0	COLUMBIA GAS TRAN
8304509		3415122379	108		R SIDWELL #22	DEERFIELD	0.0	COLUMBIA GAS TRAN
8304504		3415121320	108		R SIDWELL #23	DEERFIELD	0.0	COLUMBIA GAS TRAN
8304507		3415122088	108		R SIDWELL #24	DEERFIELD	0.0	COLUMBIA GAS TRAN
8304508		3415122220	108		R SIDWELL #25	DEERFIELD	0.0	COLUMBIA GAS TRAN
8304510		3415122503	108		R SIDWELL #9	DEERFIELD	0.0	COLUMBIA GAS TRAN
8304511		3415122509	108		107-TF FETTERS UNIT #1	CHERRY VALLEY	17.0	
8304506		3415121680	108		107-TF FETTERS UNIT #1	CHERRY VALLEY	17.0	
8304505		3415121639	108		C BUTTS #1	FULTONHAM	0.3	NATIONAL GAS & OI
8304512		3415122510	108		C BUTTS #1	FULTONHAM	0.3	NATIONAL GAS & OI
-FORAKER PRODUCING COMPANY INC		3415122510	108		CABLE #1	EAST CANTON	1.0	TRANS-GAS CO
					FOLTZ #1	EAST CANTON	1.0	TRANS-GAS CO
					FOLTZ #2	EAST CANTON	1.0	TRANS-GAS CO
					FOLTZ #3	EAST CANTON	1.1	TRANS-GAS CO
					FOLTZ #4	EAST CANTON	1.1	TRANS-GAS CO
					FOLTZ #5	EAST CANTON	1.1	TRANS-GAS CO
					FOLTZ-SHERER #1	EAST CANTON	1.1	TRANS-GAS CO
					N & I #1	EAST CANTON	1.1	TRANS-GAS CO
					N & I #2	EAST CANTON	1.1	TRANS-GAS CO
					RECEIVED: 10/20/82			

JD NO	JA OKT	API NO	U SEC(1)	SEC(2)	WELL NAME	FIELD NAME	VOLUME	PAGE	PROD	PURCHASER
8304515		3412723897	108		BLOSSER #1		775	103	1.5	
8304513		3412723817	108		FORAKER #1				2.0	
8304516		3412724028	108		FORAKER #1				4.0	
8304521		3412724172	108		FORAKER #2				6.0	
8304518		3412724032	108		FORAKER #3				1.0	
8304522		3412724173	108		FORAKER #3A				2.5	
8304514		3412723878	108		FRIEL #2				1.0	
8304519		3412724033	108		MASTERSON #1				6.5	
8304523		3412724178	108		MCCELWEE #1				2.0	
8304517		3412724030	108		MCNUITY #1				6.0	
8304520		3412724166	108		SCOTT #1				1.5	
8304524		3412724779	108		STAR - FRIEL - FORAKER #1				1.0	
-FREDERICK PETROLEUM CORP										
8304527		3412122854	107-DV	RECEIVED:	10/20/82	JA: OH			41.0	JEFFERSON
8304525		3412122831	107-DV		E HUFFMAN #1				109.0	JEFFERSON
8304526		3412122853	107-DV		J NOON #2				0.0	JEFFERSON
8304528		3416727232	107-DV		K PUND #1				44.0	AURELIUS
-G W F CORP										
8304534		3400922306	107-TF	RECEIVED:	10/20/82	JA: OH			10.0	LODI
8304539		3400922500	107-TF		ANTHONY PRESTIGIACOMO #1				13.0	BERN
8304536		3400922373	107-TF		ARTHUR W ADAMS SR #1				13.0	ROME
8304532		3400922261	107-TF		ARTIE MILLER #2				14.0	CARTHAGE
8304538		3400922382	107-TF		C O LUCAS #1				12.0	CARTHAGE
8304535		3400922361	107-TF		FORREST METCALF #1				11.0	ROME
8304529		3400922144	107-TF		HENRY PARSONS #1				14.0	ROME
8304531		3400922260	107-TF		JEAN S HUBBARD #3-A				12.0	LODI
8304533		3400922262	107-TF		JOHN ALDEN #2				13.0	CARTHAGE
8304537		3400922383	107-TF		LAWSON - LUCAS #1				14.0	CARTHAGE
8304530		3400922257	107-TF		META-LAWSON #1				10.0	LODI
-GASCARCH INC										
8304540		3415521294	107-TF	RECEIVED:	10/20/82	JA: OH			100.0	FARMINGTON
8304541		3409321163	107-DV	RECEIVED:	10/20/82	JA: OH			5.0	WEST VIEW
8304501		3405320607	107-TF	RECEIVED:	10/20/82	JA: OH			12.0	ADDISON
8304544		3411122044	107-TF		WEARS #1				16.0	WASHINGTON TOWNSHIP
8304543		3416725890	107-TF		ARNETT WHITACRE #1				18.0	NEWPORT TOWNSHIP
8304545		3410521899	107-TF	RECEIVED:	10/20/82	JA: OH			6.0	POMEROY
8304542		3416722457	108	RECEIVED:	10/20/82	JA: OH			2.4	RIVER GAS CO
8304548		3410522501	107-DV	RECEIVED:	10/20/82	JA: OH			10.0	COLUMBIA GAS TRAN
8304559		3416923204	107-TF	RECEIVED:	10/20/82	JA: OH			10.0	COLUMBIA GAS TRAN
8304563		3407523735	107-TF	RECEIVED:	10/20/82	JA: OH			36.0	COLUMBIA GAS TRAN
8304662		3400922622	103	RECEIVED:	10/20/82	JA: OH			7.0	BERLIN
8304550		3411522809	107-TF	RECEIVED:	10/20/82	JA: OH			8.0	LODI
8304549		3411522542	107-TF	RECEIVED:	10/20/82	JA: OH			6.0	ROKEYB LOCK DEERFIELD
-J D DRILLING CO										
8304548		3410522501	107-DV	RECEIVED:	10/20/82	JA: OH			10.0	COLUMBIA GAS TRAN
8304545		3410521899	107-TF	RECEIVED:	10/20/82	JA: OH			10.0	COLUMBIA GAS TRAN
8304542		3416722457	108	RECEIVED:	10/20/82	JA: OH			2.4	RIVER GAS CO
8304548		3410522501	107-DV	RECEIVED:	10/20/82	JA: OH			10.0	COLUMBIA GAS TRAN
8304559		3416923204	107-TF	RECEIVED:	10/20/82	JA: OH			10.0	COLUMBIA GAS TRAN
8304563		3407523735	107-TF	RECEIVED:	10/20/82	JA: OH			36.0	COLUMBIA GAS TRAN
8304662		3400922622	103	RECEIVED:	10/20/82	JA: OH			7.0	BERLIN
8304550		3411522809	107-TF	RECEIVED:	10/20/82	JA: OH			8.0	LODI
8304549		3411522542	107-TF	RECEIVED:	10/20/82	JA: OH			6.0	ROKEYB LOCK DEERFIELD

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JD NO	JA DKT	API NO	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-KING DRILLING CO						SEVILLE	10.0	COLUMBIA GAS TRAN
8304551		3410323121	RECEIVED:	10/20/82	JA: OH			
-L J MATTHES			107-TF		HELEN KOPPEL #1			
8304554		3416722591	RECEIVED:	10/20/82	JA: OH			
-LAKE REGION OIL INC			108		MATTHEES #1			0.0 RIVER GAS CO
8304552		3407523867	RECEIVED:	10/20/82	JA: OH			
-MAJ			103		JOHN WALTMAN #1	KILLBUCK		15.0 COLUMBIA GAS TRAN
8304554		3414520280	RECEIVED:	10/20/82	JA: OH			
8304553		3414520276	RECEIVED:	10/20/82	JA: OH			
-MARJAC ENERGY CO			107-DV		FORREST & WILLA CONLEY #1	MADISON	0.7	
8304557		3412723355	RECEIVED:	10/20/82	JA: OH			
8304558		3412723604	RECEIVED:	10/20/82	JA: OH			
8304559		3412723800	RECEIVED:	10/20/82	JA: OH			
8304560		3412722482	RECEIVED:	10/20/82	JA: OH			
-MARK RESOURCES CORP			108		FISHER #2		0.0	
8304561		3408720331	RECEIVED:	10/20/82	JA: OH			
8304562		3408720335	RECEIVED:	10/20/82	JA: OH			
-MGN DEVELOPMENT CO			103		R FULLER #1	ROME	10.0	
8304556		3416723219	RECEIVED:	10/20/82	JA: OH			
8304555		3416702710	RECEIVED:	10/20/82	JA: OH			
-MID-CON OIL COMPANY			108		CHRISTOPHER #1		1.0	RIVER GAS CO
8304565		3408924333	RECEIVED:	10/20/82	JA: OH			
-MORGAN-PENNINGTON INC			103		CHRISTOPHER #2		2.0	RIVER GAS CO
8304566		3407523848	RECEIVED:	10/20/82	JA: OH			
8304567		3407523857	RECEIVED:	10/20/82	JA: OH			
-MORHACK INDUSTRY INC			103		SWINEHART #4	GLENFORD	12.0	COLUMBIA GAS TRAN
8304568		3416923105	RECEIVED:	10/20/82	JA: OH			
-MURPHY OIL CO			107-TF		HILL #1	KNOX	6.5	COLUMBIA GAS TRAN
8304570		3410522436	RECEIVED:	10/20/82	JA: OH			
8304569		3410522435	RECEIVED:	10/20/82	JA: OH			
-NORTH EAST NATURAL GAS CO INC			107-TF		WOLF UNIT #1	KNOX	7.2	COLUMBIA GAS TRAN
8304573		3401920589	RECEIVED:	10/20/82	JA: OH			
8304576		3401920789	RECEIVED:	10/20/82	JA: OH			
8304572		3401970000	RECEIVED:	10/20/82	JA: OH			
8304586		3415722396	RECEIVED:	10/20/82	JA: OH			
8304581		3415721521	RECEIVED:	10/20/82	JA: OH			
8304585		3415722360	RECEIVED:	10/20/82	JA: OH			
8304582		3415721577	RECEIVED:	10/20/82	JA: OH			
8304579		3415721485	RECEIVED:	10/20/82	JA: OH			
8304583		3415721804	RECEIVED:	10/20/82	JA: OH			
8304580		3415721502	RECEIVED:	10/20/82	JA: OH			
8304578		3415721480	RECEIVED:	10/20/82	JA: OH			
8304575		3401920748	RECEIVED:	10/20/82	JA: OH			
8304571		3401920580	RECEIVED:	10/20/82	JA: OH			
8304574		3401920658	RECEIVED:	10/20/82	JA: OH			
8304584		3415722290	RECEIVED:	10/20/82	JA: OH			
8304577		3401920851	RECEIVED:	10/20/82	JA: OH			
-OLYMPIC RESOURCES CO			108		YANICE BROOKS #2A	CONGRESS	12.0	COLUMBIA GAS TRAN
8304587		3416923376	RECEIVED:	10/20/82	JA: OH			
-ONE LIVINGSTON ENTERPRISES			107-TF		M CAMPBELL #1			
8304588		3410522177	RECEIVED:	10/20/82	JA: OH			
-ORION ENERGY CORP			107-TF		DEWHURST #2	RUTLAND	1.5	COLUMBIA GAS TRAN
8304592		3416923354	RECEIVED:	10/20/82	JA: OH			
			107-TF		BILLMAN #1	WEST SALEM	9.0	COLUMBIA GAS TRAN

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8304591		3416970000	107-TF	JACKSON #2	WEST SALEM	15.0	COLUMBIA GAS TRAN	
8304589		3415123541	107-TF	RUEGG #5	TUSCARAWAS	18.0	COLUMBIA GAS TRAN	
8304590		3415123595	107-TF	WEISGARBER #1	TUSCARAWAS	12.0	COLUMBIA GAS TRAN	
-OXFORD OIL CO			RECEIVED: 10/20/82	JA: OH				
8304594		3407523777	107-TF	DALE BRUMME #1	KILLBUCK	10.0		
8304596		3411926197	107-TF	DILTS #1	BRUSHCREEK	12.0		
8304593		3407523774	103	EVA DAUGHERTY #1	PRAIRIE	12.0	COLUMBIA GAS TRAN	
8304595		3411924395	108	PAUL MILLER #1	CHESTER	20.0	COLUMBIA GAS TRAN	
8304597		3416923345	107-TF	PHILLIP BOREMAN #1		10.0		
-PETRO-LEWIS CORPORATION			RECEIVED: 10/20/82	JA: OH				
8304629		3405921201	108	GOETTE #1	SPENCER TWP	0.3	EAST OHIO GAS CO	
8304628		3405921200	108	GOETTE #2	SPENCER TWP	0.3	EAST OHIO GAS CO	
8304631		3415721172	108	KADRI UNIT	CLAY TWP	11.8	EAST OHIO GAS CO	
8304627		3401920539	108	R & N TRESSEL #1	ROSE TWP	0.4	M B OPERATING CO	
8304632		3415721173	108	TAYLOR UNIT	CLAY TWP	7.1	EAST OHIO GAS CO	
8304630		3405921333	108	WICKHAM UNIT	SPENCER TWP	2.6	EAST OHIO GAS CO	
-PETROLEUM ENERGY PRODUCING CORP			RECEIVED: 10/20/82	JA: OH				
8304618		3400720777	108	C & E VAN KIRK #1	BUSHNELL	1.5	EAST OHIO GAS CO	
8304620		3400720821	108	D SNYDER #1 B	BUSHNELL	2.5	EAST OHIO GAS CO	
8304604		3400720601	108	D SNYDER #1A	BUSHNELL	1.5	EAST OHIO GAS CO	
8304613		3400720689	108	D SNYDER #2	BUSHNELL	1.5	EAST OHIO GAS CO	
8304622		3400720842	108	D SNYDER #5B	BUSHNELL	1.0	EAST OHIO GAS CO	
8304624		3400720892	108	E & C OLIN #1	BUSHNELL	3.5	EAST OHIO GAS CO	
8304609		3400720664	108	E & J SIMAK #1	BUSHNELL	2.5	EAST OHIO GAS CO	
8304616		3400720718	108	H & F WILLIAMS #1	BUSHNELL	5.0	EAST OHIO GAS CO	
8304599		3400720521	108	H & H LILJA #1	BUSHNELL	1.5	EAST OHIO GAS CO	
8304601		3400720537	108	H & H LILJA #2	BUSHNELL	2.0	EAST OHIO GAS CO	
8304614		3400720690	108	H & P SPRINKLE #1	BUSHNELL	1.0	EAST OHIO GAS CO	
8304602		3400720579	108	J & A OREN #1	BUSHNELL	1.5	EAST OHIO GAS CO	
8304605		3400720607	108	J & A OREN #1-A	BUSHNELL	6.0	EAST OHIO GAS CO	
8304606		3400720608	108	J & A OREN #2A	BUSHNELL	2.0	EAST OHIO GAS CO	
8304610		3400720669	108	J KANANEN UNIT #1	BUSHNELL	1.0	EAST OHIO GAS CO	
8304603		3400720600	108	KOROSY UNIT #1	BUSHNELL	4.0	EAST OHIO GAS CO	
8304607		3400720616	108	KOROSY UNIT #2	BUSHNELL	4.0	EAST OHIO GAS CO	
8304617		3400720738	108	M & A LEWIS #1	BUSHNELL	2.0	EAST OHIO GAS CO	
8304619		3400720820	108	M & D LICKLIDER #1	BUSHNELL	1.0	EAST OHIO GAS CO	
8304623		3400720850	108	M & M CASE #1	BUSHNELL	1.0	EAST OHIO GAS CO	
8304615		3400720717	108	METHODIST CHURCH UNIT #1	BUSHNELL	1.5	EAST OHIO GAS CO	
8304598		3400720520	108	OTIS LONG #1	BUSHNELL	8.0	EAST OHIO GAS CO	
8304612		3400720682	108	P & M WESTCOTT #1	BUSHNELL	10.0	EAST OHIO GAS CO	
8304626		3400720894	108	P & M WESTCOTT #2	BUSHNELL	3.5	EAST OHIO GAS CO	
8304625		3400720893	108	R & A BURCH #1	BUSHNELL	3.5	EAST OHIO GAS CO	
8304608		3400720620	108	R & A SHRIVER #1	BUSHNELL	2.5	EAST OHIO GAS CO	
8304611		3400720670	108	R & A SHRIVER #2	BUSHNELL	3.0	EAST OHIO GAS CO	
8304621		3400720822	108	R & D ROGERS #1	BUSHNELL	5.0	EAST OHIO GAS CO	
8304600		3400720528	108	SMITH UNIT #1	BUSHNELL	9.0	EAST OHIO GAS CO	
-POI ENERGY INC			RECEIVED: 10/20/82	JA: OH				
8304634		3400722066	103	107-TF BOYD #1-3	ROME	30.0		
8304633		3400721688	103	107-TF M HAWKINS #1-1	WAYNE	22.0		
8304635		3415321160	103	107-TF MACLAREN-FALCONE #1-1	HUDSON	50.0		
-POMSTONE CORP			RECEIVED: 10/20/82	JA: OH				
8304636		3403123486	108	DELLA PEPPER #1		1.0		
8304639		3403124094	108	ELEANOR HAWK #1		14.0		

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JD NO	JA DKT	API NO	Q SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8304641		34031248591	103	107-TF	K STAHL #1	FRESNO	7.0	
8304640		3403124350	103	107-TF	VEIGEL #1	JACKSON	7.0	
8304638		3403124092	108		WALDO OAKLIEP #1		8.0	
8304637		3403123494	108		WILLIAM E WILSON #1-8		2.0	
-PROVIDENT OIL & GAS				RECEIVED:	10/20/82	J.A. OH	0.0	
8304642		3415321194	107-TF		CONSTANTINE #1	RICHFIELD		
-QUAKER STATE OIL REFINING CORP				RECEIVED:	10/20/82	J.A. OH		
8304643		3411924244	108		ROBERT BAKER #1		1.4	NATIONAL GAS & OI
-R. GENE BRASEL DBA BRASEL & BRASEL				RECEIVED:	10/20/82	J.A. OH		
8304474		3405320652	107-TF		DALE DARST #2	CHESHIRE	1.5	COLUMBIA GAS TRAN
8304473		3405320651	107-TF		DALE DARST #3	CHESHIRE	1.5	COLUMBIA GAS TRAN
8304472		3405320650	107-TF		DALE DARST #4	CHESHIRE	1.5	COLUMBIA GAS TRAN
8304471		3405320649	107-TF		DALE DARST #5	CHESHIRE	4.0	COLUMBIA GAS TRAN
8304468		3405320424	107-TF		DALE L WORKMAN #1	ADDISON	1.5	COLUMBIA GAS TRAN
8304467		3405320317	108		DONALD WAREHIME #1	GALLIA	1.5	COLUMBIA GAS TRAN
8304475		3405320731	107-TF		DONALD WAREHIME #5	ADDISON	1.5	COLUMBIA GAS TRAN
8304469		3405320587	107-TF		M RUSSELL #2	ADDISON	1.5	COLUMBIA GAS TRAN
8304470		3405320588	107-TF		M RUSSELL #3	ADDISON	1.5	COLUMBIA GAS TRAN
-R. H. HUTCHESON				RECEIVED:	10/20/82	J.A. OH	60.0	EAST OHIO GAS CO
8304546		3415723712	103		TWI-LIGHT MINING #2	FRANKLIN	60.0	EAST OHIO GAS CO
8304547		3415723713	103		TWI-LIGHT MINING #3	FRANKLIN		
-REDSTONE CORP				RECEIVED:	10/20/82	J.A. OH	3.0	
8304645		3403123178	108		FISHER-WALLACE #1 (AKA RHEA FISHER)		7.0	
8304647		3403123321	108		HOTHEN/DUNLEVY #1		14.0	
8304646		3403123213	108		SEWELL RIVER #1		3.0	
8304644		3403123169	108		SHIRLEY MOORE #1		8.0	
-RICHARD W ULLMAN				RECEIVED:	10/20/82	J.A. OH		
8304673		3411522661	107-TF		DALTON #1	CHESTERHILL		
-ROBERT WOODYARD				RECEIVED:	10/20/82	J.A. OH	0.0	COLUMBIA GAS TRAN
8304712		3412725388	103		107-TF CLAIR W & THELMA M REED #1	BEARFIELD	0.0	COLUMBIA GAS TRAN
8304711		3412725385	103		107-TF CLAIR W & THELMA M REED #2	BEARFIELD		
-ROVI RESOURCES CORP				RECEIVED:	10/20/82	J.A. OH	11.0	COLUMBIA GAS TRAN
8304648		3411924730	107-TF		MCINTIRE 3	SALT CREEK		
-ROYAL PETROLEUM 80 - IV				RECEIVED:	10/20/82	J.A. OH	5.0	COLUMBIA GAS TRAN
8304649		3405320513	107-TF		STOVER #3	ADDISON	5.0	COLUMBIA GAS TRAN
-ROYAL PETROLEUM 80 III				RECEIVED:	10/20/82	J.A. OH	5.0	COLUMBIA GAS TRAN
8304651		3405320566	107-TF		ELLIOTT #1	ADDISON	5.0	COLUMBIA GAS TRAN
8304650		3405320557	107-TF		FOWBLE #2	ADDISON	5.0	COLUMBIA GAS TRAN
-SANTA FE DRILLING CO INC				RECEIVED:	10/20/82	J.A. OH	50.0	
8304652		3416724465	107-DV		RICHARD AND ELVA KNOCH #1	SALEM		
-SCHRIMSHER OIL & GAS EXPLORATION				RECEIVED:	10/20/82	J.A. OH	20.0	COLUMBIA GAS TRAN
8304653		340523488	103		107-TF OTT #1	MOHIEAM	20.0	COLUMBIA GAS TRAN
8304655		3410322998	103		107-TF SCHIRIPPA #1	HINCKLEY	20.0	COLUMBIA GAS TRAN
8304654		3410322691	103		107-TF VATSKO #2	HINCKLEY	20.0	COLUMBIA GAS TRAN
-STRATA CORP				RECEIVED:	10/20/82	J.A. OH	14.0	
8304660		3400922401	107-TF		CYRIL ARNOLD #1	ROME		
-TALBOTT OIL & GAS CO				RECEIVED:	10/20/82	J.A. OH	5.0	COLUMBIA GAS TRAN
8304661		3410521986	107-TF		ROBERT MILLER #1	RUTLAND		
-TEMPLE OIL & GAS CO				RECEIVED:	10/20/82	J.A. OH	10.0	
8304664		3411522823	107-TF		FUNK-SMITH UNIT #1	YORK	10.0	
8304663		3411522693	107-TF		I P PORTER #2	DEERFIELD	12.0	
8304665		3412725675	107-TF		PRINTZ THARP UNIT #1	HARRISON	12.0	
-THE BENATTY CORPORATION				RECEIVED:	10/20/82	J.A. OH		

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JD NO	JA DKT	API NO	Q	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
830463		3411522538	103	107-TF	C DILLON #2	DEERFIELD	30.0 COLUMBIA GAS TRAN		
830464		3411925070	103	107-TF	C VERNON #5	ADAMS	25.0 COLUMBIA GAS TRAN		
830465		3411925071	103	107-TF	F FRAZIER #1	ADAMS	20.0 COLUMBIA GAS TRAN		
830466		3411925072	103	107-TF	F FRAZIER #3	ADAMS	20.0 COLUMBIA GAS TRAN		
830467		3411522517	103	107-TF	MCPECK/VOYTKO #1	STOCKPORT	20.0 COLUMBIA GAS TRAN		
-THE CARTER JONES LUMBER CO				RECEIVED: 10/20/82	JA: OH				
830468		3401921222	108		MOORE #2		3.0 M B OPERATING CO		
-TOMNER PETROLEUM CO				RECEIVED: 10/20/82	JA: OH				
830469		3405923308	103	107-TF	C BOND #1	LONDONDERRY	27.0 TENNESSEE GAS PIP		
830470		3405923331	103	107-TF	TOLAND M #1	LONDONDERRY	27.0 TENNESSEE GAS PIP		
-TRAP SPRINGS OIL AND GAS COMPANY				RECEIVED: 10/20/82	JA: OH				
830471		3416723348	108		HEISS #1	ROBERT G HEISS	0.2 GAS TRANSPORT INC		
830472		3416700789	108		MISSER #1	ROGER D & SUE A MARTI	0.3 GAS TRANSPORT INC		
830473		3416724564	108		SCHAAH #1	HOWARD L & BERNICE SC	2.9 GAS TRANSPORT INC		
-UNIVERSAL MINERALS INC				RECEIVED: 10/20/82	JA: OH				
830474		3416923369	107-TF		GREEN OAKES - HARTZLER #1	GREEN	18.0		
-WEB OIL INC				RECEIVED: 10/20/82	JA: OH				
830475		3400523518	103		HUMPHREY #1	LAKE	7.5 EAST OHIO GAS CO		
-WELSH HILLS OIL & GAS CO				RECEIVED: 10/20/82	JA: OH				
830476		3408924468	103		OSCAR RALSTON #2	MARY ANN	10.0 COLUMBIA GAS TRAN		
-WENNER PETROLEUM CORPORATION				RECEIVED: 10/20/82	JA: OH				
830477		3416123107	107-TF		H KRABILL TRUST #6	CANAAN-WAYNE POOL	21.9 COLUMBIA GAS TRAN		
-WITCO CHEMICAL CORP				RECEIVED: 10/20/82	JA: OH				
830478		3415122744	108		A VAN VOORHIS #B-2		2.5 CANTON OIL & GAS		
830479		3415122745	108		A VAN VOORHIS #B-3		2.5 CANTON OIL & GAS		
830480		3415122103	108		C BAUM #1		2.5 CANTON OIL & GAS		
830481		3415122121	108		C BAUM #2		2.5 CANTON OIL & GAS		
830482		3415122122	108		C WANDT #1		2.5 CANTON OIL & GAS		
830483		3415122455	108		C WANDT #2		2.5 CANTON OIL & GAS		
830484		3401920585	108		FREIDMAN #1		2.5 CANTON OIL & GAS		
830485		3401920707	108		FREIDMAN #2		2.5 CANTON OIL & GAS		
830486		3401921104	108		FREIDMAN #3		2.5 CANTON OIL & GAS		
830487		3401920536	108		GAMBER #1		2.5 CANTON OIL & GAS		
830488		3401920537	108		GAMBER #2		2.5 CANTON OIL & GAS		
830489		3401921116	108		GAMBER #3		2.5 CANTON OIL & GAS		
830490		3401920543	108		GAMBER #4		2.5 CANTON OIL & GAS		
830491		3401920550	108		GAMBER #7		2.5 CANTON OIL & GAS		
830492		3401920715	108		GAMBER UNIT #1		2.5 CANTON OIL & GAS		
830493		3415122438	108		H DOBRANSKY #1		2.5 CANTON OIL & GAS		
830494		3415122137	108		H WELKER #1		2.5 CANTON OIL & GAS		
830495		3415122158	108		H WELKER #2		2.5 CANTON OIL & GAS		
830496		3415122240	108		H WELKER #3		2.5 CANTON OIL & GAS		
830497		3415122298	108		H WELKER #4		2.5 CANTON OIL & GAS		
830498		3415122073	108		J BLEND #1		2.5 CANTON OIL & GAS		
830499		3415122142	108		J WELKER #1		2.5 CANTON OIL & GAS		
830500		3415122174	108		J WELKER #2		2.5 CANTON OIL & GAS		
830501		3415122305	108		J WELKER #3		2.5 CANTON OIL & GAS		
830502		3415122477	108		J WELKER #4		2.5 CANTON OIL & GAS		
830503		3415122896	108		J WELKER #5		2.5 CANTON OIL & GAS		
830504		3415122310	108		J WANDT UNIT #1		2.5 CANTON OIL & GAS		
830505		3415122144	108		R BAUM #1		2.5 CANTON OIL & GAS		
830506		3415122164	108		R BAUM #2		2.5 CANTON OIL & GAS		
830507		3415122156	108		WEAVER #1		2.5 CANTON OIL & GAS		

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JD NO	JA DKT	API NO	U SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8304707		3415122479	108		WEAVER #2		2.5	CANTON OIL & GAS
8304689		3415122114	178		WEIS BETZ #1		2.5	CANTON OIL & GAS
8304692		3415122123	108		WEIS ROBERTO #1		2.5	CANTON OIL & GAS

SOURCE DATA FOR THIS NOTICE IS AVAILABLE ON MAGNETIC TAPE FROM THE NATIONAL TECHNICAL INFORMATION SERVICE (NTIS), FOR INFORMATION# CONTACT STUART WEISHAN (NTIS) AT (703) 487-4808, 5285 PORT ROYAL RD, SPRINGFIELD, VA 22161, OR SANDRA SPEAR (FERC) (202) 357-8681.

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 10 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual product (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 623 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 10 CFR 275.203 and 275.204, file a protest with the

Commission on or before December 8, 1982.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease
102-2: New well (2.5 mile rule)
102-3: new well (1000 ft rule)
102-4: New onshore reservoir
102-5: New reservoir on old OCS lease
Section 107-DP: 15,000 feet or deeper
107-CP: 13,000 feet or deeper
107-GB: Geopressured brine
107-CS: Coal seams
107-DV: Devonian shale
107-PE: Production enhancement
107-TF: New tight formation
107-RT: Recompletion tight formation
Section 108: Stripper well
108-SA: Seasonally affected
108-ER: Enhanced recovery
108-PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-32055 Filed 11-22-82; 8:45 am]

BILLING CODE 6717-01-M

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8305030	3566	3101111432	108		ANNA RINOLFLEISCH WN1387	SPRINGPORT	24.0	GENERAL SYSTEM PU
8304995	1932	3102911738	102-4		BENJAMIN KEEN WN-1464		67.0	GENERAL SYSTEM PU
8304993	1930	3102911692	102-4		CLARENCE HEARY WN-1462		10.6	GENERAL SYSTEM PU
8304988	1926	3102915059	102-4		CLARENCE HEARY WN-1342		27.8	GENERAL SYSTEM PU
8304992	2129	3102912745	102-4		CLARENCE HEARY WN-1617		12.2	GENERAL SYSTEM PU
8304989	1927	3102911439	102-4		EDWIN P HEARY WN-1421		1.3	GENERAL SYSTEM PU
8304991	1929	3102911510	102-4		HAROLD POTTER WN-1428		21.5	GENERAL SYSTEM PU
8304987	1935	3102911951	102-4		HOWARD EMERLING WN-1500		12.2	GENERAL SYSTEM PU
8304997	1934	3102911975	102-4		MYRTLE M CLARK WN-1499		5.3	GENERAL SYSTEM PU
8304994	1931	3102911728	102-4		WAYNE H KEEN WN-1463		69.8	GENERAL SYSTEM PU
-CUMBERLAND OIL CORP				RECEIVED: 10/25/82	JA: NY		21.0	TENNESSEE GAS PIP
8305027	3576	3101316835	107-TF		TINQUE #1	LAKESHORE		
-ENVIROGAS INC				RECEIVED: 10/25/82	JA: NY		18.0	COLUMBIA GAS TRAN
8305031	3603	3100917276	107-TF		D BERGEY #1	WILDCAT		
8304998	2334	3101315782	107-TF		NYS REFORESTATION AREA 3/ #2	SUMMERDALE		
8304999	2338	3101316361	107-TF		NYS REFORESTATION AREA 3/ #9	SUMMERDALE		
8305000	2336	3101316249	107-TF		W SIMMELINK #1	CLYMER		
-KEystone ENERGY OIL & GAS PRODUCTION				RECEIVED: 10/25/82	JA: NY		16.0	NATIONAL FUEL GAS
8305009	3493	3100915964	107-TF		ALLEN #1	SKINNER HOLLOW		
8305032	3618	3100916859	107-TF		BAIRD #3	SKINNER HOLLOW		
8305008	3491	3100916417	107-TF		CARLTON & JOAN STONE #2	SKINNER HOLLOW		
8305012	3477	3100916420	107-TF		EVANS #2	SKINNER HOLLOW		
8305011	3479	3100916412	107-TF		EVANS #3	SKINNER HOLLOW		
8305018	3483	3100916415	107-TF		EVANS #4	SKINNER HOLLOW		
8305016	3487	3100916418	107-TF		EVANS #5	SKINNER HOLLOW		
8305015	3471	3100916411	107-TF		GOOCHEE #1	SKINNER HOLLOW		
8305014	3473	3100916406	107-TF		GOOCHEE #2	SKINNER HOLLOW		
8305010	3481	3100916405	107-TF		NAHLIK #1	SKINNER HOLLOW		
8305013	3475	3100916375	107-TF		STONE #1	SKINNER HOLLOW		
8305004	3489	3100916864	107-TF		VICK #1	SKINNER HOLLOW		
8305017	3485	3100916425	107-TF		WILLIAMS #1	SKINNER HOLLOW		
-ROBERT D CHARLEBOIS				RECEIVED: 10/25/82	JA: NY		31.0	COLUMBIA GAS TRAN
8305037	3502	3101314805	107-TF		WESTFIELD WATERSHED 31-013-14805	LAKESHORE		
-SUNRISE RESOURCES INC				RECEIVED: 10/25/82	JA: NY		20.0	TENNESSEE GAS PIP
8305007	3583	3101316942	107-TF		J CURTIS #1	LAKESHORE		
8305026	3584	3101316943	107-TF		J CURTIS #2	LAKESHORE		
-TRAHAN PETROLEUM INC				RECEIVED: 10/25/82	JA: NY		36.0	COLUMBIA GAS TRAN
8305001	3512	3101317196	107-TF		BEIGHTOL #2 31-013-17196	ELLINGTON		
-US ENERGY DEVELOPMENT CORP				RECEIVED: 10/25/82	JA: NY		21.0	COLUMBIA GAS TRAN
8305033	3612	3101315418	107-TF		H OLMSIEAD #2	GERRY		
8305034	3609	3101317035	107-TF		KIGHTLINGER #1	GERRY		
8305035	3611	3101317038	107-TF		P JOHNSON #1	GERRY		
8305036	3610	3101317039	107-TF		P JOHNSON #2	GERRY		
-OKLAHOMA CORPORATION COMMISSION								
-A C RICHARDS				RECEIVED: 10/21/82	JA: OK		24.0	WARREN PETROLEUM
8304835	15857	3504900003	108-ER		HIX SHOEMAKE #1	GOLDEN TREND		
-AIR OIL CO				RECEIVED: 10/21/82	JA: OK		54.8	BARON PRODUCTION
8304774	16692	3514723181	103		HARRIS #4	OCHELATA PUOL		
-AMERICAN SUPPLY CO				RECEIVED: 10/21/82	JA: OK		19.0	KERR-MCGEE CORP
8304757	17416	3503700000	108		VANDERSLICE #1	NONE		
-AMOCO PRODUCTION CO				RECEIVED: 10/21/82	JA: OK			

JD NO	JA DMT	API NO	U SEC(1)	SEC(2)	WELL NAME	FIELD NAME	VOLUME	776	PAGE	306	PROD	PURCHASER
8304781	16792	3508321852	103		GARNER #2	N E CRESCENT					10.5	EASON OIL CO
8304820	16793	3508321061	103		REDMOND-WOODRUFF #3	N W ABELL					2.5	EASON OIL CO
8304780	16791	3508321868	103		WESLEY #1-9	N E CRESCENT					10.5	EASON OIL CO
-GRAHAM EXPLORATION LTD DRILLING PAR					RECEIVED: 10/21/82							
8304803	16900	3513320645	103		DAY #1							
-HARPER OIL COMPANY					RECEIVED: 10/21/82							
8304783	16805	3504721666	103		NOBLE LONG A-1	SOONER TREND					369.4	INTER NORTH INC
-HESTON OIL CO					RECEIVED: 10/21/82							
8304805	16493	3513321309	103		MCDANIEL #22-1						26.0	EXXON CORP
-MILLIARD OIL & GAS INC					RECEIVED: 10/21/82							
8304779	16784	3504321364	103		MAUD WOODS #1						0.0	ARCO OIL & GAS CO
-WINKLE ENGINEERING INC					RECEIVED: 10/21/82						270.0	MOBIL OIL CORP
8304804	16490	3507323338	103		HELLWEGE #1-19						3.6	CONOCO INC
8304768	16491	3508321818	103		TOMPKINS #1	S LUCIEN					15.0	EASON OIL CO
-J WALTER DUNCAN JR					RECEIVED: 10/21/82							
8304789	13389	3515320534	103		BURKHART #1	WILDCAT (SE ALABASTER					19.0	DELHI GAS PIPELIN
-JENIGAN OIL CORP					RECEIVED: 10/21/82							
8304777	16739	3509322030	103		EDWARDS #5	CHEYENNE VALLEY					0.0	PHILLIPS PETROLEU
-JERRY SCOTT DRILLING CO INC					RECEIVED: 10/21/82							
8304843	16771	3510720589	103		BILLIE SNELL #1	LYONS-QUINN					16.0	TRANSOK PIPELINE
8304845	16773	3506320688	103		STANFORD (TWIN) NO 2-B	DUSTIN					2.5	OKLAHOMA GAS & EL
8304844	16772	3506320636	103		STANFORD #1-B	DUSTIN					5.6	OKLAHOMA GAS & EL
-KAISER-FRANCIS OIL COMPANY					RECEIVED: 10/21/82							
8304814	21348	3505100000	107	PE	RAYBURN #1	S W BRADLEY					12.0	TRANSOK PIPELINE
-KEPCO INC					RECEIVED: 10/21/82							
8304837	16893	3508321357	103		BARNES #1-18	GUTHRIE					22.0	SERVICE DRILLING
8304797	16895	3508321666	103		BARNES #2-18	GUTHRIE					28.0	SERVICE DRILLING
8304796	16894	3508321903	103		BARNES #3-18	GUTHRIE					29.0	SERVICE DRILLING
-LEAR PETROLEUM EXPLORATION INC					RECEIVED: 10/21/82							
8304800	18403	3503920593	102	2	PERKINS 1-28	N W HYDRO					78.0	EL PASO NATURAL G
-LILES OIL & GAS CO					RECEIVED: 10/21/82							
8304795	16852	3501121678	103		OSCAR #1						821.3	O G & E & PUBLIC
-MARSHALL OIL CORP					RECEIVED: 10/21/82							
8304829	16749	3513722421	103		FATCO #1	STAGE SAND					0.0	ARKANSAS LOUISIAN
-NEUBOURNE OIL COMPANY					RECEIVED: 10/21/82							
8304784	16856	3504521035	103		STUART UNIT #2	STUART RANCH (LOWER M					21.0	UNITED GAS PIPELI
-MONSANTO COMPANY					RECEIVED: 10/21/82							
8304817	16585	3503920485	103		BLACKWOLF #1	TOKAWA SE					100.0	
-MORTON BROTHERS INC					RECEIVED: 10/21/82							
8304770	16578	3503723485	103		AMROY #2	N/2 NW/4 SEC 9-16N-10					75.0	GOLDEN ARROW GAS
-NATOMAS NORTH AMERICA INC					RECEIVED: 10/21/82							
8304765	16448	3504321133	103		IRENE BURGESS #1-20	GIBBLE GAS/DEEP CREEK					116.0	DELHI GAS PIPELIN
-OIL & GAS LOGISTICS INC					RECEIVED: 10/21/82							
8304782	16852	3510174043	103		HENRY #1						14.4	PHILLIPS PETROLEU
-ONYX ENERGY CORP					RECEIVED: 10/21/82							
8304778	16733	3501722014	103		REIN #1-28	REIN					100.4	PHILLIPS PETROLEU
8304824	16740	3501722057	103		SCHUMACHER #1-33	SCHUMACHER					138.7	PHILLIPS PETROLEU
-PALACE EXPLORATION CO					RECEIVED: 10/21/82							
8304767	16489	3508121513	103		LANGWELL #20-1	N E SPARKS					9.0	MERIDIAN ENERGY I
-PEDESTAL OIL CO INC					RECEIVED: 10/21/82							
8304756	16113	3508321729	103		HILLER #1	SOONER TREND					0.0	EASON OIL CO
-PETRO-ENERGY EXPLORATION INC					RECEIVED: 10/21/82							
8304772	16580	3505320764	103		LACY #1-33	EAST LAMONT					100.0	CRA INC

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JD NO	JA DKT	API NO	U SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8304773	16681	3508321697	103		MCCLANE #1-18	EAST MARSHALL	100.0	EASON OIL CO
8304771	16679	3505320822	103		WHITWORTH #2-3	EAST LAMONT	100.0	CRA INC
-PETRO-LEWIS CORPORATION								
8304816	16682	3508320533	103	RECEIVED:	10/21/82	JAYME #1	0.0	AMINOIL USA INC
-PHILLIPS PETROLEUM COMPANY								
8304760	17532	3507070000	108	RECEIVED:	10/21/82	JAYME #1	0.0	EL PASO NATURAL GAS
8304759	17631	3500700000	108	RECEIVED:	10/21/82	JAYME #1	0.0	EL PASO NATURAL GAS
-PORTS OF CALL OIL CO								
8304815	16675	3504321330	103	RECEIVED:	10/21/82	JAYME #1	175.0	PHILLIPS PETROLEUM
-RATLIFF EXPLORATION CO								
8304827	16743	3509322224	103	RECEIVED:	10/21/82	JAYME #1	0.0	
-REBEL OIL CO								
8304802	02340	3511900000	108	RECEIVED:	10/21/82	JAYME #1	1.9	CITIES SERVICE GAS
-REM INDUSTRIES								
8304838	18405	3510524919	102-2	RECEIVED:	10/21/82	JAYME #1	9.0	CITIES SERVICE GAS
8304799	18404	3510524918	102-2	RECEIVED:	10/21/82	JAYME #1	12.0	CITIES SERVICE GAS
-RON & DUNS OIL LTD								
8304794	16308	3503722613	103	RECEIVED:	10/21/82	JAYME #1	1.2	DIAMOND S GAS SYS
-SAMSON RESOURCES COMPANY								
8304832	17476	3500700000	108	RECEIVED:	10/21/82	JAYME #1	600.0	COLORADO GAS COMP
-SEARCH DRILLING CO								
8304764	15961	3503920535	102-4	RECEIVED:	10/21/82	JAYME #1	3.9	PHILLIPS PETROLEUM
-SENECA OIL COMPANY								
8304834	12174	3501721814	102-4	RECEIVED:	10/21/82	JAYME #1	809.0	DELHI GAS PIPELIN
-SHAR-ALAN OIL CO								
8304840	12988	3504700000	103	RECEIVED:	10/21/82	JAYME #1	25.2	PHILLIPS PETROLEUM
-SOUTHWESTERN EXPLOR CONSULTANTS INC								
8304798	16916	3510321661	103	RECEIVED:	10/21/82	JAYME #1	6.0	CHAMPLIN PETROLEUM
-SUN EXPL. & PROD. CO.								
8304842	4330	3505300000	108	RECEIVED:	10/21/82	JAYME #1	0.0	AMINOIL U S A INC
8304788		3505300000	108	RECEIVED:	10/21/82	JAYME #1	4.0	
-SUNDANCE ENERGY CORP								
8304821	16708	3510321553	103	RECEIVED:	10/21/82	JAYME #1	51.0	AMINOIL USA INC
8304785	16897	3504722856	103	RECEIVED:	10/21/82	JAYME #1	43.0	ARCO OIL & GAS CO
-TEXACO INC								
8304836	16582	3507322927	103	RECEIVED:	10/21/82	JAYME #1	29.0	PHILLIPS PETROLEUM
8304811	18353	3502520478	102-4	RECEIVED:	10/21/82	JAYME #1	360.0	TRANSWESTERN PIPE
-TOWNER PETROLEUM CO								
8304825	16741	3501722176	103	RECEIVED:	10/21/82	JAYME #1	0.0	PHILLIPS PETROLEUM
8304826	16742	3535017221	103	RECEIVED:	10/21/82	JAYME #1	0.0	PHILLIPS PETROLEUM
-TXO PRODUCTION CORP								
8304801	21158	3501160000	107-PE	RECEIVED:	10/21/82	JAYME #1	89.0	DELHI GAS PIPELIN
8304762	21159	3501100000	107-PE	RECEIVED:	10/21/82	JAYME #1	122.0	DELHI GAS PIPELIN
-UNION OIL COMPANY OF CALIF								
8304790	13598	3505930000	108-ER	RECEIVED:	10/21/82	JAYME #1	30.0	MICHIGAN WISCONSIN
-UNIT DRILLING & EXPLORATION CO								
8304787	16810	3513921568	103	RECEIVED:	10/21/82	JAYME #1	390.0	PANHANDLE EASTERN
WEST VIRGINIA DEPARTMENT OF MINES								
-BURDETTE OIL & GAS CO INC								
8304958		473501330	107-0V	RECEIVED:	10/22/82	JAYME #1	0.0	ROCKCASTLE

JD NO JA DKT API NO SEC(2) WELL NAME RECEIVED: 10/22/82 JA: WV
 -D G HANEY INC 4707901054 BURDETTE-BONWELL #2
 8304964 4707901055 BURDETTE-BONWELL #21
 8304978
 -ELAHS GAS CO 4709901701 GLENHAYES #2
 8304959 4709901725 GLENHAYES #3
 8304957
 -HAUGHT INC 4708505134 BASIL HOOVER H-1246
 8304986 4709500661 R E PHILLIPS & R JACKSON H-1178
 8304963 4707301338 T E CUNNINGHAM H-1290
 8304961 4707301337 T E CUNNINGHAM H-1291
 8304962 4707301339 T E CUNNINGHAM H-1292
 -INTERSTATE DRILLING INC 10/22/82 JA: WV
 8304980 4733926520 ALLEN #1
 8304981 4704103153 CONRAD #66
 8304979 4704103125 MCCLAIN #1
 8304982 4704103143 MCCLAIN #2
 -J & J ENTERPRISES INC 10/22/82 JA: WV
 8304977 4704102164 B-104
 8304973 4700108720 B-111
 8304970 4701722511 B-199
 8304972 4701702326 B-261
 8304975 4703302191 B-305
 8304974 4703302266 B-306
 8304971 4701722540 B-312
 8304976 4703301188 B-93
 8304968 4701723032 J-141
 8304967 4701723033 J-398
 8304985 4709702233 J-450
 8304969 4701722976 J-465
 8304966 4708525273 J-572
 8304965 4709722328 J-574
 -JAMES F SCOTT 10/22/82 JA: WV
 8304984 4701900472 ANGELA NICASTRO #2 SW-402
 8304983 4701900469 EVA B HUDDLESTON SW-400
 -DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, ALBUQUERQUE, NM
 -AMOCO PRODUCTION CO 10/20/82 JA: NM 4
 8304877 NM 0833-82 3004524870 GALLEGOS CANYON UNIT #163E
 8304876 NM 0832-82 3004525262 GALLEGOS CANYON UNIT #204E
 8304878 NM 0835-82 3004524866 GALLEGOS CANYON UNIT #243E
 8304852 NM 0527-82 3004525206 L C KELLEY #7
 8304881 NM 0855-82 3004524842 PAN AM FEDERAL GAS COM #B #1E
 -AZTEC ENERGY CORP 10/20/82 JA: NM 4
 8304909 NM-0891-82 3003922827 DEVER #1
 8304907 NM-0889-82 3004320593 EMILY #1
 8304908 NM-0890-82 3004320594 LU-LU #1
 -BEARTOOTH OIL & GAS CO 10/20/82 JA: NM 4
 8304912 NM-0897-82 3003922856 MINEL FEDERAL #3-A
 -BTA OIL PRODUCERS 10/20/82 JA: NM 4
 8304858 NM 0753-82 3002527600 MESA 8105 JV-P
 -CONSOLIDATED OIL & GAS INC 10/22/82 JA: NM 4

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 FIELD NAME PROD PURCHASER
 CURRY DISTRICT 19.0 COLUMBIA GAS TRAN
 CURRY DISTRICT 19.0 COLUMBIA GAS TRAN
 LINCOLN 0.0 COLUMBIA GAS TRAN
 LINCOLN 0.0 COLUMBIA GAS TRAN
 MURPHY DISTRICT 11.0 CABOT CORP
 MEADE DISTRICT 15.0 CONSOLIDATED GAS
 JEFFERSON DISTRICT 18.0 COLUMBIA GAS TRAN
 MCKIN DISTRICT 18.0 COLUMBIA GAS TRAN
 MCKIN DISTRICT 18.0 COLUMBIA GAS TRAN
 SHINNISTON 0.0 CONSOLIDATED GAS
 COLLINS 0.0 CONSOLIDATED GAS
 CANOE RUN 0.0 CONSOLIDATED GAS
 CANOE RUN 0.0 CONSOLIDATED GAS
 HACKERS CREEK 0.0 CONSOLIDATED GAS
 PLEASANT 0.0 CONSOLIDATED GAS
 CENTRAL 0.0 COLUMBIA GAS TRAN
 WEST UNION 0.0 COLUMBIA GAS TRAN
 SARDIS 0.0 CONSOLIDATED GAS
 SARDIS 0.0 CONSOLIDATED GAS
 WEST UNION 0.0 COLUMBIA GAS TRAN
 UNION 0.0 CONSOLIDATED GAS
 NEW MILTON 0.0 CONSOLIDATED GAS
 NEW MILTON 0.0 CONSOLIDATED GAS
 UNION 0.0 COLUMBIA GAS OF W
 NEW MILTON 0.0 CONSOLIDATED GAS
 CLAY 0.0 CONSOLIDATED GAS
 UNION 0.0 COLUMBIA GAS TRAN
 KANAWHA 25.0 ROARING FORK GAS
 KANAWHA 20.0 ROARING FORK GAS
 BASIN DAKOTA 33.0 EL PASO NATURAL G
 BASIN DAKOTA 11.0 EL PASO NATURAL G
 BASIN DAKOTA 10.0 EL PASO NATURAL G
 FLORA VISTA- GALLUP 7.0 EL PASO NATURAL G
 BASIN DAKOTA 12.0 EL PASO NATURAL G
 LYBROOK GALLUP EXTENS 11.0 EL PASO NATURAL G
 LYBROOK GALLUP EXTENS 16.0 EL PASO NATURAL G
 LYBROOK GALLUP EXTENS 16.0 EL PASO NATURAL G
 BLANCO-MESA VERDE 150.0 SOUTHWEST GAS COR
 RED HILLS (WOLF CAMP) 730.0 UNITED GAS PIPE L

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JD NO	JA OKT	API NO	U SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8305038	NM124-80	3003900000	108-PB	TRIGAL C-11A	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN	
8304903	NM-3884-82	30039222953	103	RECEIVED: 10/20/82	SOUTH BLANCO PICTURED	25.0	EL PASO NATURAL G	
8304867	NM 1766-82	30039222942	103	FOSTER #3	SO BLANCO PICTURED CL	25.0	EL PASO NATURAL G	
8304893	NM 0370-82	3003906226	108	RECEIVED: 10/20/82	SOUTH BLANCO - PICTUR	14.0	NORTHWEST PIPELIN	
8304927	NM-0325-82	30039222073	108	JICARILLA 120 C #15	SOUTH BLANCO PICTURED	14.0	NORTHWEST PIPELIN	
8304886	NM 8633-82	3003920540	108	JICARILLA 120 C #16	BALLARD - PICTURED CL	17.0	EL PASO NATURAL G	
8304889	NM-0866-82	3003920888	108	CANYON LARGO UNIT #114	BASIN - DAKOTA	19.0	EL PASO NATURAL G	
8304888	NM-0955-82	3004520906	108	DAY A #15	BLANCO - PICTURED CLI	19.0	EL PASO NATURAL G	
8304892	NM-0959-82	3004511762	108	FLORENCE C #11	SOUTH BLANCO-PICTURED	22.0	EL PASO NATURAL G	
8304851	NM-0456-82	3004521983	108	HEATON #23	BLANCO - PICTURED CLI	22.0	EL PASO NATURAL G	
8304885	NM 0951-82	3004520316	108	HUGHES #9	AZTEC-PICTURED CLIFFS	18.0	EL PASO NATURAL G	
8304896	NM 0874-82	3003906282	108	JICARILLA F #4	BALLARD-PICTURED CLIF	16.0	EL PASO NATURAL G	
8304925	NM-0921-82	3003906380	108	LUDWICK #17	SOUTH BLANCO - PICTUR	14.0	EL PASO NATURAL G	
8304884	NM 859-82	3004509246	108	LUDWICK #20	BASIN DAKOTA	17.0	EL PASO NATURAL G	
8304895	NM 0873-82	3004513113	108	PIERCE #9	BLANCO - PICTURED CLI	18.0	EL PASO NATURAL G	
8304901	NM-0882-82	3004520475	108	SAN JUAN 27-4 UNIT #11	TAPACITO - PICTURED C	20.0	EL PASO NATURAL G	
8304926	NM-0923-82	3003906787	108	SAN JUAN 27-4 UNIT #29	BLANCO - MESA VERDE	9.0	EL PASO NATURAL G	
8304901	NM-0850-82	3003906939	108	SAN JUAN 27-4 UNIT #89	TAPACITO - PICTURED C	15.0	EL PASO NATURAL G	
8304871	NM 0782-82	3003920828	108	SAN JUAN 27-5 UNIT #68	BLANCO-MESA VERDE & S	16.0	EL PASO NATURAL G	
8304894	NM 0372-82	3003906847	108	SAN JUAN 28-6 UNIT #172	BLANCO SOUTH - PICTUR	17.0	EL PASO NATURAL G	
8304887	NM 0864-82	3003920608	108	SAN JUAN 28-6 UNIT #24	BLANCO-MESA VERDE	16.0	EL PASO NATURAL G	
8304898	NM-0878-82	3003907125	108	SAN JUAN 28-7 UNIT #37	BLANCO SOUTH - PICTUR	22.0	EL PASO NATURAL G	
8304902	NM-0883-82	3003907172	108	SAN JUAN 30-4 UNIT #34	EAST BLANCO - PICTURE	15.0	EL PASO NATURAL G	
8304890	NM-0867-82	3003920777	108	SCHUMACHER #11	BASIN DAKOTA	20.0	EL PASO NATURAL G	
8304902	NM-0883-82	3004509480	108	STICKLE #1	BLANCO - PICTURED CLIF	18.0	EL PASO NATURAL G	
8304897	NM 0375-82	3004520762	108	STOKEY #1	BLANCO - MESA VERDE	19.0	EL PASO NATURAL G	
8304899	NM-2879-82	3004507183	108	VAUGHN #19 PC & CH	SOUTH BLANCO - PICTUR	21.0	EL PASO NATURAL G	
8304922	NM-0908-82	3003920505	108	RECEIVED: 10/20/82	WILDCAT	27.0		
8304869	NM 2776-82	3001523611	103	RYAN FEDERAL #1	OTERO GALLUP	0.0	EL PASO NATURAL G	
8304849	NM 2019-81	3003905769	108	JICARILLA "B" #14	OTERO GALLUP	0.0	EL PASO NATURAL G	
8304848	NM 2018-81	3003905709	108	JICARILLA "B" #9	SHUGART MORROW GAS	0.0	TRANSWESTERN PIPE	
8304920	NM-090582	3001523938	103	SOUTH SHUGART DEEP FEDERAL UNIT #1	WAW-FRUITLAND-PC	11.5	EL PASO NATURAL G	
8304850	NM-0255-82	3004524845	108	CHRISTOPHER RAY COM #1	BALLARD PICTURED CLIF	105.0	EL PASO NATURAL G	
8304875	NM 1831-82	3004320635	103	INDIAN BEND "A" #1	BALLARD PICTURED CLIF	150.0	EL PASO NATURAL G	
8304874	NM 0930-82	3004320636	103	INDIAN BEND "A" #2	PECOS SLOPE ABO GAS	0.0	TRANSWESTERN PIPE	
8304915	NM-089982107	3000561455	103	107-TF HOBBS CANYON FEDERAL #3	PECOS SLOPE ABO GAS	0.0	TRANSWESTERN PIPE	
8304916	NM-090082107	3000561514	103	107-TF HOBBS CANYON FEDERAL #4	PECOS SLOPE ABO GAS	0.0	TRANSWESTERN PIPE	
8304913	NM 089882107	3000561532	103	107-TF HOBBS CANYON FEDERAL #5	LYBROOK-GALLUP EXTENS	21.5	GAS CO OF NEW MEX	
8304921	NM-0906-82	3004525121	102-2	FEDERAL #3-43	TURKEY TRACK SR QUEEN	139.0	PHILLIPS PETROLEU	
8304857	NM 0752-82	3001524087	103	BRAINARD FED #12	UNDESIGNATED (ABO)	51.1	TRANSWESTERN PIPE	
8304883	NM083782107	3000561469	102-4	107-TF MCCLELLAN LUKE COM FED #1 NM-15290				

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JD NO	JA DKT	API NO	D SEC(1) SEC(2)	WELL NAME	RECEIVED	10/20/82	JA: NM	4	FIELD NAME	PROD	PURCHASER
-MERRION OIL & GAS CORP		3013922939			RECEIVED:	10/20/82	JA: NM	4	DEVILS FORK GALLUP	163.0	EL PASO NATURAL G
8304868	NM 0769-82	3013922939			103	CANYON LARGO UNIT #313			BLANCO MESASVERDE GAS	964.3	NORTHWEST PIPELIN
-MOBIL PRDG TEXAS & NEW MEXICO INC					RECEIVED:	10/20/82	JA: NM	4	BURTON FLAT (MORROW)	10.0	GAS CO OF NEW MEX
8304854	NM 0745-82	3003922878			103	JICARILLA E #6			BURTON FLAT (MORROW)	15.0	TRANSWESTERN PIPE
-MONSANTO COMPANY					RECEIVED:	10/20/82	JA: NM	4	MESASVERDE	2510.0	
8304923	NM-0916-82	3001520960			108	BURTON FLAT #9			BASIN DAKOTA	2510.0	
8304924	NM-0919-82	3001521884			108	CERF FEDERAL COM #2			BASIN DAKOTA/GALLUP	9.9	NORTHWEST PIPELIN
-MTS LIMITED PARTNERSHIP					RECEIVED:	10/20/82	JA: NM	4	BLANCO PICTURED CLIFF	29.0	NORTHWEST PIPELIN
8304855	NM 0746-82-A	3003922253			103	FEDERAL #13E			BASIN DAKOTA	6.0	NORTHWEST PIPELIN
8304856	NM 0746-82-B	3003922253			103	FEDERAL #13E			UNDESIGNATED MORROW	1000.0	NATURAL GAS PIPEL
-NORTHWEST EXPLORATION COMPANY					RECEIVED:	10/20/82	JA: NM	4	CHAVEROO SAN ANDRES	69.0	
8304873	NM-0786-82	3003922860			102-2	GAVILAN #1			BASIN DAKOTA	0.0	WESTAR TRANSMISSI
-NORTHWEST PIPELINE CORPORATION					RECEIVED:	10/20/82	JA: NM	4	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
8304847	NM-0139-82PB	3003921791			108-PB	SAN JUAN 30-5 #63			KUTZ FRUITLAND	0.0	EL PASO NATURAL G
8304846	NM-0138-82PB	3003920779			108-PB	SAN JUAN 31-6 UNIT #24			BALLARD	392.0	GAS CO OF NEW MEX
-PERRY R BASS					RECEIVED:	10/20/82	JA: NM	4	BALLARD	276.0	GAS CO OF NEW MEX
8304930	NM-100382107	3001523783			103	107-OP POKER LAKE UNIT #53			BALLARD	566.0	GAS CO OF NEW MEX
-PHILLIPS PETROLEUM COMPANY					RECEIVED:	10/20/82	JA: NM	4	BLANCO	243.4	GAS CO OF NEW MEX
8304870	NM-0777-82	3000520848			103	DAVIS N #6			BASIN	242.0	GAS CO OF NEW MEX
-PIONEER PRODUCTION CORPORATION					RECEIVED:	10/20/82	JA: NM	4	BLANCO	2.4	GAS CO OF NEW MEX
8304882	NM 0856-82	3004500000			108	LUCERNE A #1			BLANCO	8.0	GAS CO OF NEW MEX
-R & G DRILLING CO C/O WALSH ENG					RECEIVED:	10/20/82	JA: NM	4	BASIN	6.0	GAS CO OF NEW MEX
8304910	NM 0894-82	3004500000			108	WARRON #29			BLANCO	260.0	GAS CO OF NEW MEX
8304880	NM 0951-82	3004507200			108	SCHLOSSER #26			BLANCO	115.0	SOUTHERN UNION GA
-SOUTHERN UNION EXPLORATION COMPANY					RECEIVED:	10/20/82	JA: NM	4	BASIN	250.0	SOUTHERN UNION GA
8304865	NM 0759-82	3004524024			103	FOSTER #6			BASIN DAKOTA	500.0	EL PASO NATURAL G
8304864	NM 0758-82	3004524354			103	HODGES #1-Y			EAST GEM (MORROW GAS)	620.0	LLANO INC
8304866	NM 0762-82	3004524473			103	HODGES #15E			TOM-TOM	13.5	
8304860	NM 0754-82-A	3003922410			103	JICARILLA "A" #10E			UNDESIGNATED (ABO)	460.0	TRANSWESTERN PIPE
8304860	NM 0754-82-B	3003922410			103	JICARILLA "A" #10E			PECOS SLOPE ABO	0.0	TRANSWESTERN PIPE
8304872	NM-0783-82	3003922051			103	JICARILLA "D" #13A			PECOS SLOPE ABO	0.0	TRANSWESTERN PIPE
8304862	NM 0756-82-A	3003922414			103	JICARILLA "K" #15E			PECOS SLOPE ABO	0.0	TRANSWESTERN PIPE
8304863	NM 0756-82-B	3003922414			103	JICARILLA "K" #15E			WEST OKARCHE	200.0	DELHI GAS PIPELIN
8304861	NM 0755-82	3003922415			103	JICARILLA "K" #22					
-SOUTHLAND ROYALTY CO					RECEIVED:	10/20/82	JA: NM	4			
8304918	NM-0904-82A	3004525328			103	CAIN #15-M					
8304919	NM-0904-82-B	3004525328			103	CAIN #15-M					
-TENNECO OIL COMPANY					RECEIVED:	10/20/82	JA: NM	4			
8304879	NM 0842-82	3004525196			103	NEAL COM 1E					
-UNION OIL COMPANY OF CALIF					RECEIVED:	10/20/82	JA: NM	4			
8304929	NM-0999-82	3002527152			102-4	LAGUNA DEEP UNIT FEDERAL #3					
-UNION TEXAS PETROLEUM					RECEIVED:	10/20/82	JA: NM	4			
8304853	NM 0677-82	3000520838			103	MILLER 33 FEDERAL #2					
-WESTERN RESERVES OIL COMPANY					RECEIVED:	10/20/82	JA: NM	4			
8304906	NM-0887-82	3000561309			103	107-TF BEVMOR 24 FEDERAL #3					
-YATES PETROLEUM CORPORATION					RECEIVED:	10/20/82	JA: NM	4			
8304917	NM-090282107	3000561414			102-2	107-TF EVERETTE "00" FEDERAL #5					
8304914	NM-090282107	3000561528			102-2	107-TF EVERETTE "00" FEDERAL #7					
8304904	NM 0885-82	3000561521			102-2	107-TF LANGLEY "RJ" FEDERAL #3					
8304905	NM 0886-82	3000561314			102-2	107-TF THOMAS "LN" FEDERAL #3					
-DONALD C SLAWSON					RECEIVED:	10/20/82	JA: OK	4			
8304928	OKA-0965-82	3501722017			102-4	SHORTNECK #1-5					
-SAMEDAN OIL CORPORATION					RECEIVED:	10/20/82	JA: OK	4			

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8304911	OKA-0895-82	3501721862	102-2		CHEYENNE #1-18	WILLOCAT	110.0	PHILLIPS PETROLEU

SOURCE DATA FOR THIS NOTICE IS AVAILABLE ON MAGNETIC TAPE FROM THE NATIONAL TECHNICAL INFORMATION SERVICE (NTIS). FOR INFORMATION, CONTACT STUART WEISMAN (NTIS) AT (703) 487-4808, 5285 PORT ROYAL RD, SPRINGFIELD, VA 22161, OR SANDRA SPEAR (FERC) (202) 357-8681.

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determinations are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 10 CFR 275.203 and 275.204, file a protest with the Commission on or before December 8, 1982.

Categories within each NGPA section are indicated by the following codes:

- Section 102-1: New OCS lease
- 102-2: New well (2.5 mile rule)
- 102-3: New well (1000 ft. rule)
- 102-4: New onshore reservoir
- 102-5: New reservoir on old OCS lease
- Section 107-DP: 15,000 feet or deeper
- 107-CB: Geopressured brine
- 107-CS: Coal seams
- 107-DV: Devonian shale
- 107-PE: Production enhancement
- 107-TF: New tight formation
- 107-RT: Recompletion tight formation
- Section 108-SW: Stripper well
- 108-SA: Seasonally affected
- 108-ER: Enhanced recovery
- 108-PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-32056 Filed 11-22-82; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of September 13 Through 17, 1982

During the week of September 13 through September 17, 1982, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Professor Gerald Holton, September 17, 1982,
HFA-0075

Professor Gerald Holton filed an Appeal from a denial by the Executive Secretary of the DOE of a request for information which he had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the documents in question were properly classified pursuant to the terms of both Executive Order No. 12356 and Executive Order No. 12065. Accordingly, it was determined that the documents had been correctly withheld by the Executive Secretary under Exemption 1 of the FOIA. However, the DOE remanded the matter to the Executive Secretary to determine whether the requester, who is a Professor of History at Harvard University, may qualify for discretionary release of the documents under the historical research provision of Executive Order No. 12356.

Jones, Gungoll, Jackson, Collins & Dodd,
September 13, 1982, HFA-0076

Jones, Gungoll, Jackson, Collins & Dodd filed an Appeal from a denial by the Kansas City Office of the Economic Regulatory Administration of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that certain of the documents which were initially withheld under exemptions 4 and 5 should be remanded to the Denying Official for further consideration. Important issues that were considered in the Decision and Order were (i) whether there was sufficient justification for withholding the documents, and (ii) whether the descriptions of the documents were adequate.

National Conference of Black Mayors,
September 17, 1982, HFA-0074

The National Conference of Black Mayors filed an Appeal from a partial denial by the Inspector General of the Department of Energy of a request for information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the determination by the Inspector General failed to provide the requester with an index of responsive documents withheld pursuant to Exemptions 2 and 7(A). Consequently, the DOE remanded the matter to the Office of Inspector General for a new determination which should include a document specific index for material withheld under Exemption 2 and a generic index for documents withheld under Exemption 7(A).

Request for Modification and/or Rescission
San Joaquin Refining Co., Inc., September 13,
1982, HYR-0012

On November 23, 1981, San Joaquin Refining Co., Inc. (San Joaquin) filed an Application for Modification or Rescission of two Decisions and Orders issued to the firm by the Office of Hearings and Appeals on June 12, 1981, and September 22, 1981, respectively. *San Joaquin Refining Co.*, 8 DOE 82,578 (1981) ("the June 12 order"); *San Joaquin Refining Co.*, 8 DOE 82,634 (1981) ("the September 22 order"). Those orders required San Joaquin to purchase additional entitlements amounting to \$329,610 to account for excessive entitlements exception relief the firm received during its 1979 fiscal year. In its application, San Joaquin claimed that

the findings of the June 12 and September 22 orders were based on an erroneous entitlements expense the firm mistakenly reported in its fiscal 1979 financial data. San Joaquin therefore requested that OHA reevaluate the firm's appropriate level of exception relief for fiscal 1979 with corrected entitlements expense for that fiscal year. As a result of that reevaluation, the OHA determined that San Joaquin should receive additional entitlement exception relief for fiscal 1979 in the amount of \$58,756.

Interlocutory Order

New York State Energy Office, State of
California, September 13, 1982, HRZ-
0089 HRZ-0090

The New York Energy Office and the State of California filed request to participate in ongoing settlement negotiations between Mobil Oil Corporation and the DOE Office of Special Counsel of the Economic Regulatory Administration which might resolve several proposed remedial orders issued to Mobil. The DOE noted that the requests were identical to those which were denied in *New York State Energy Office; State of Michigan*, 9 DOE ¶ 82,601 (1982). Accordingly, the present requests were denied.

Implementation of Special Refund Procedures

Office of Enforcement: In the Matter of Lyon
County Cooperative Oil Company,
September 16, 1982, HEF-0002

The ERA's Office of Enforcement filed a Petition for Implementation of Special Refund Procedures in connection with a consent order entered into with Lyon County Cooperative Oil Company. The OHA issued a final Decision and Order distributing the settlement funds to customers who were not members of the Lyon Cooperative and which purchased gasoline or middle distillates from the firm during the consent order period.

Refund Applications

Tenneco Oil Co./Chevron U.S.A., September
13, 1982, RF7-80

Chevron U.S.A., Inc. filed an Application for Refund pursuant to the Decision and Order establishing special refund procedures for the distribution of money obtained by the DOE under a consent order with Tenneco Oil Company. *See Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). In considering the Application, the OHA determined that throughout much of the relevant period Chevron had purchased substantial volumes of No. 2 oils and kerosene from Tenneco at prices well below the average national price for those products. In view of these circumstances, the OHA concluded that Chevron had not demonstrated that the alleged Tenneco overcharges had caused the firm to incur an injury of the type intended to be redressed through the application of special refund procedures. Accordingly, Chevron's Application for Refund was denied.

Tenneco Oil Co./Enterprise Products
Company, September 17, 1982, RF7-65

Enterprise Products Company filed an Application for Refund seeking a portion of the settlement fund obtained by the DOE

through a consent order the agency had entered into with Tenneco Oil Company. In its Application, Enterprise alleged that it should receive a refund based on its purchases of propane, butane and natural gasoline from Tenneco. In considering Enterprise's application, the DOE found that the existence of banks of unrecouped product cost increases did not necessarily indicate that the firm was injured by alleged Tenneco overcharges. In addition, the DOE found that during a substantial portion of the consent order period Tenneco's sales price to Enterprise for the three products was less than the average market price for those same products. The DOE determined that the firm was not injured during those periods. However, the DOE approved a refund for Enterprise for the portion of the consent order period where Tenneco's sales prices were higher than the average market prices for the three products involved.

Tenneco Oil Co./Plateau, Inc., September 14, 1982, RF7-71

Plateau, Inc. filed an Application for Refund in the Tenneco Special Refund Proceeding on the basis of its crude oil purchases during the consent order period. Plateau claimed that Tenneco had miscertified crude oil and asserted that it was entitled to a refund which was based upon the price differential between the price it paid for crude oil per barrel and the posted price for price-controlled old oil. The Office of Hearings and Appeals denied the portion of the firm's application which requested a refund for the period during which it participated in the Entitlement Program, 10 CFR § 211.67, because Plateau failed to demonstrate that it experienced a unique or particularized injury not compensated for by the entitlements program. The OHA approved Plateau's application for refund in part for the firm's crude oil purchases prior to November 1, 1974. Since the firm was unable to provide evidence to substantiate its claim that miscertifications actually occurred, the OHA rejected the firm's claim that it was entitled to "damages." Moreover, since the firm failed to provide complete banks of unrecouped costs and market data demonstrating that the refiner absorbed, rather than passed on, the effects of any alleged regulatory violation, the OHA declined to approve a refund based upon Plateau's entire volume of purchases. Since Plateau could have limited its refund application to a 50,000 gallon per month threshold without demonstrating actual injury, however, a *pro-rata* share of the consent order funds was approved for threshold purchases prior to the inception of the Entitlements Program.

Vickers Energy Corporation/Vaughn Oil Company et al., September 17, 1982, RF1-198 et al.

On July 17, 1981, the Office of Hearings and Appeals issued a Decision and Order implementing special refund procedures for the distribution of a \$2,850,000 fund obtained by the DOE through a consent order with Vickers Energy Corporation. *Office of Enforcement*, 8 DOE ¶ 82,598 (1981). The July 17 Decision stated that the DOE would accept applications for refund from qualified

claimants that purchased Vickers motor gasoline from other than company-operated outlets during the period covered by the consent order, August 19, 1973 through March 31, 1979. On September 17, 1982, the DOE issued a Decision and Order concerning eleven applications for refund. The September 17 Decision addresses applications for refund based on Vickers motor gasoline purchase volumes in excess of the 50,000 gallon per month small claims threshold. It also addresses applications submitted by firms below the threshold level and firms which agreed to limit their claims to that level. In considering these applications the DOE determined that the applications had all met the standards set forth in the July 17 Decision and in DOE regulations applicable to special refund proceedings, 10 CFR Part 205, Subpart V. Accordingly, the applications were granted.

Protective Order

The following firms filed an Application for Protective Order. The application, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firms. The DOE granted the following application and issued the requested Protective Order as an Order of the Department of Energy.

Name and Case No.

Ashland Oil, Inc.; Tosco Corp., HEJ-0023

Dismissals

The following submissions were dismissed without prejudice:

Name and Case No.

Everett Street Exxon, HRR-0020

Johnny Capps Auto Center, HRR-0024

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Ave., N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: November 15, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 82-31990 Filed 11-22-82; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10327; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20572, within 20 days after the date of the *Federal Register* in which this notice appears. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T-3950-1.

Filing Party: Mr. Paul D. Pella, Port Director, Jackson County Port Authority, 3033 Pascagoula Street, Pascagoula, Mississippi 39567.

Summary: Agreement No. T-3950-1, between the Jackson County Port Authority and Ryan-Walsh Stevedore Company modifies the basic agreement between the parties by extending the term for three years and altering the conditions of compensation.

Agreement No.: 10461.

Filing Party: Robert A. Peavy, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, D.C. 20036.

Summary: Agreement No. 10461, between Galleon Shipping Corp. and Maritime Co. of the Philippines (Philippine-Flag Carriers) and American President Lines, Ltd., Lykes Bros. Steamship Co., Inc., Sea-Land Service, Inc., and Waterman Steamship Corporation (U.S.-Flag Carriers), establishes an Equal Access Agreement in the United States/Republic of the Philippines Ocean Liner Trade. The agreement provides that both the Philippine-Flag Carriers and the U.S.-Flag Carriers shall have free and equal access to the total import and export cargo available, and that each national-flag group will use its best efforts in

representations to its respective government to secure for the other group the benefits of its regulations concerning the reservation of cargo to its nation's merchant marine. The agreement further provides that the parties will become associate companies; that they will seek their governments' approval of the agreement so that each party can participate under equal conditions in the exchange of traffic in this trade; and that the character of association for Philippine-Flag Carriers in the United States and for U.S.-Flag Carriers in the Republic of the Philippines is subject to the fulfilling of this requirement in both countries. Additional authorized Philippine-Flag Carrier(s) and/or additional U.S.-Flag Carrier(s) entering the trade may participate in the agreement, upon application to the agreement and notice to the Federal Maritime Commission and the R.O.P. Maritime Industry Authority. The agreement's duration is indefinite, but any party may terminate its participation on 30 days' notice.

Dated: November 18, 1982.

Francis C. Hurney,
Secretary.

[FR Doc. 82-31991 Filed 11-22-82; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Maybaco Co. et al.; Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *The Maybaco Company*, Baltimore, Maryland; to acquire, through its

subsidiary Equitable Bancorporation, Baltimore, Maryland, 100 percent of the voting shares or assets of Equitable Bank of Delaware, N.A., Dover, Delaware. Comments on this application must be received not later than December 7, 1982.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Am South Bancorporation*, Birmingham, Alabama; to acquire 100 percent of the voting shares of State Bank of the Gulf, Gulf Shores, Alabama. Comments on this application must be received not later than December 17, 1982.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dakota Company, Inc.*, Minneapolis, Minnesota; to acquire 53.5 percent of the voting shares of South Dakota Bancorp, Inc., Minneapolis, Minnesota, a proposed multibank holding company. Comments on this application must be received not later than December 17, 1982.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

2. *First Wyoming Bancorporation*, Cheyenne, Wyoming; to acquire 100 percent of the voting shares of State Bank of Big Piney, Big Piney, Wyoming. Comments on this application must be received not later than December 17, 1982.

2. *Omnibancorp*, Denver, Colorado; to acquire 100 percent of the voting shares or assets of Omnibank Arapahoe, N.A., Arapahoe County, Colorado, a *de novo* bank. Comments on this application must be received not later than December 17, 1982.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Balch Springs Bancshares, Inc.*, Balch Springs, Texas; to acquire 100 percent of the voting shares or assets of Central National Bank, Dallas, Texas, a *de novo* bank. Comments on this application must be received not later than December 17, 1982.

2. *Consolidated Bancorp, Inc.*, Waco, Texas; to acquire 100 percent of the voting shares or assets of First Consolidated Bank, N.A., Buda, Texas. Comments on this application must be received not later than December 15, 1982.

3. *Independent Bankshares, Inc.*, Abilene, Texas; to acquire 100 percent of the voting shares or assets of First State

Bank of Wylie, N.A., Abilene, Texas. Comments on this application must be received not later than December 17, 1982.

F. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *First Bankers Corporation of Florida*, Pompano Beach, Florida; to acquire 99 percent of the voting shares of National Trust Bank of Florida, St. Petersburg, Florida. This application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Comments on this application must be received not later than December 17, 1982.

2. *Texas Commerce Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares of Lockwood National Bank of Houston, Houston, Texas. This application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Comments on this application must be received not later than December 17, 1982.

Board of Governors of the Federal Reserve System, November 17, 1982.

William W. Wiles,
Secretary of the Board.

[FR Doc. 82-32035 Filed 11-22-82; 8:45 am]
BILLING CODE 6210-01-M

Meadowlands Bancorp et al.; Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Meadowlands Bancorp.*, Garfield, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of County Trust Company, Garfield, New Jersey. Comments on this application must be received not later than December 17, 1982.

B. *Federal Reserve Bank of Atlanta* (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Chatsworth Bankshares, Inc.*, Chatsworth, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Chatsworth, Chatsworth, Georgia. Comments on this application must be received not later than December 17, 1982.

2. *Vista Banks, Inc.*, DeLeon Springs, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of DeLeon Springs Bank, DeLeon Springs, Florida. Comments on this application must be received not later than December 17, 1982.

C. *Federal Reserve Bank of Chicago* (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bayard Bancorporation*, Bayard, Iowa; to become a bank holding company by acquiring 80 percent or more of the voting shares of The Farmers State Bank, Bayard, Iowa. Comments on this application must be received not later than December 17, 1982.

2. *First Rockford Bancorporation, Inc.*, Rockford, Iowa; to become a bank holding company by acquiring over 90 percent of the voting shares of The First State Bank, Rockford, Iowa. Comments on this application must be received not later than December 13, 1982.

D. *Federal Reserve Bank of St. Louis* (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Clark Financial Corporation*, Jeffersonville, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Clark County State Bank, Jeffersonville, Indiana. Comments on this application must be received not later than December 17, 1982.

E. *Federal Reserve Bank of Minneapolis* (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *South Dakota Bancorp, Inc.*, Minneapolis, Minnesota; to become a bank holding company by acquiring 96 percent of the voting shares of Big Stone State Bank, Big Stone City, South Dakota, and 81.52 percent of the voting shares of Farmers and Merchants Bank of Huron, Huron, South Dakota, and 98.67 percent of the voting shares of

Dakota State Bank, Milbank, South Dakota. Comments on this application must be received not later than December 17, 1982.

F. *Federal Reserve Bank of Kansas City*, (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Hazelton Bancshares, Inc.*, Hazelton, Kansas; to become a bank holding company by acquiring 84 percent or more of the voting shares of Farmers State Bank, Hazelton, Kansas. Comments on this application must be received not later than December 17, 1982.

2. *Second Security Bankshares, Inc.*, Miami, Oklahoma; to become a bank holding company by acquiring 80.67 percent of the voting shares of Security Holding Company, Miami, Oklahoma, and thereby indirectly, acquire shares of Security Bank and Trust Company, Miami, Oklahoma. Comments on this application must be received not later than December 17, 1982.

G. *Federal Reserve Bank of Dallas* (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Pecos Bancshares, Inc.*, Midland, Texas; to become a bank holding company by acquiring at least 80 percent of the voting shares of The First National Bank of Pecos, Pecos, Texas. Comments on this application must be received not later than December 15, 1982.

2. *Sabine Bancshares, Inc.*, Many, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Sabine State Bank & Trust Company, Many, Louisiana. Comments on this application must be received not later than December 17, 1982.

H. *Board of Governors of the Federal Reserve System*, (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Taney County Bancorporation, Inc.*, Kansas City, Missouri; to become a bank holding company by acquiring at least 91.4 percent of the voting shares of Security Bank and Trust Company, Branson, Missouri. This application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Comments on this application must be received not later than December 17, 1982.

2. *United Bancorp, Inc.*, Dunbar, West Virginia; to become a bank holding company by acquiring 80.004 percent of the voting shares of the Bank of Dunbar, Dunbar, West Virginia. This application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Richmond. Comments on

this application must be received not later than December 17, 1982.

Board of Governors of the Federal Reserve System, November 17, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-32036 Filed 11-22-82; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Office of the Administrator Advisory Board; Meeting

Notice is hereby given that the GSA Advisory Board's Subcommittee on Supply and Distribution will meet on December 8, 1982, from 10:00 a.m. to 4:00 p.m., in Room 6324, GSA Central Office, 18th and F Streets, N.W., Washington, DC 20405. This session will be open to the public and will be devoted to a discussion and review of the Subcommittee's efforts to assist GSA in improving supply support to the agency's clientele.

Less than fifteen (15) days notice of this meeting is being provided due to scheduling difficulties.

For further information, contact Roger C. Dierman, Deputy Associate Administrator, on (202) 523-1141.

Charles S. Davis III,

Associate Administrator.

[FR Doc. 82-32047 Filed 11-22-82; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Advisory Committees; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory bodies scheduled to assemble during the month of December 1982.

National Advisory Mental Health Council

December 6-7, 9:30 a.m., National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20205.

Open—December 6-7. Contact: Helen W. Barrett, Committee Management Officer, Parklawn Building, Room 17C-26, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Purpose: The National Advisory Mental Health Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and

Mental Health Administration, and the Director, National Institute of Mental Health regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Agenda: From 9:30 a.m.-5:00 p.m., December 6 and 7, the meetings will be open for discussion of NIMH policy issues and will include current administrative, legislative, and program developments. Attendance at this two-day open meeting will be limited to space available.

Rape Prevention and Control Advisory Committee

December 13-14, 9:00 a.m., Parklawn Building, Conference Room 17-09B, 5600 Fishers Lane, Rockville, Maryland 20857.

Open—December 13, 14. Contact: Mary Lystad, Ph.D., Executive Secretary, Rape Prevention and Control Advisory Committee, 5600 Fishers Lane, Room 6C-12, Rockville, Maryland 20857, (301) 443-1910.

Purpose: The Rape Prevention and Control Advisory Committee advises the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health through the National Center for the Prevention and Control of Rape (NCPCR), on matters regarding the needs and concerns associated with rape in the United States and makes recommendations pertaining to activities to be undertaken by the Department to address the problems of rape.

Agenda: The entire meeting will be open to the public. It will include a report from the National Center for the Prevention and Control of Rape on the research, training and educational activities of the Center, as well as prevention issues in sexual assault. Discussions will be held with representatives from the President's Task Force on Victims of Crime, the Division of Child Protection of the Children's Hospital National Medical Center, and the Family Advocacy Program of the Department of Defense. The Committee will also discuss planning for Fiscal Year 1983.

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of Committee members may be obtained from Helen W. Garrett, Committee Management Officer, Room 17C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Dated: November 18, 1982.

Sue Simons,
Committee Management Officer, Alcohol,
Drug Abuse, and Mental Health
Administration.

[FR Doc. 82-32096 Filed 11-22-82; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 76N-0050]

Accidental Radioactive Contamination of Human Food and Animal Feeds; Recommendations for State and Local Agencies

Correction

In FR Doc. 82-28595 beginning on page 47073 of the issue for Friday, October 22, 1982, make the following changes:

1. On page 47075, the middle column, the fourth complete paragraph, the ninth line, the word "are" should read "and".
2. On page 47076, the middle column, the second complete paragraph, the fifth line, the initials "FDA" should read "EPA".
3. On page 47080, the third column, the third paragraph, the ninth line, the word "lease" should read "release".
4. On the same page, in the same column, the fourth paragraph, the ninth line, the word "the" should read "that".
5. On page 47081, the middle column, the paragraph, designated "(7)", the fourth line, the word "ipact" should read "impact".

BILLING CODE 1505-01-M

Advisory Committees; Filing of Annual Reports

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that under the Federal Advisory Committee Act annual reports of the various committees must be filed with the Library of Congress. These have been filed, and a list appears below.

ADDRESS: Copies are available from the Dockets Management Branch (HFA-305), food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1751.

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.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 [5 U.S.C. App. I]), the annual reports required by the Act for the following FDA advisory committees that held closed meetings during the period July 1, 1981, through June 30, 1982, have been filed with the Library of Congress:

National Center for Drugs and Biologics,
Blood Products Advisory Committee,
Vaccines and Related Biological

Products Advisory Committee,
Pulmonary-Allergy Drugs Advisory
Committee.

National Center for Devices and Radiological Health, Circulatory System Devices Panel, General Medical Devices Panel, Immunology and Microbiology Devices Panel, Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, Respiratory and Nervous System Devices Panel, Surgical and Rehabilitation Devices Panel.

Annual reports are available for public inspection at (1) the Library of Congress, Newspaper and Current Periodical Reading Room, Rm. 1026, Thomas Jefferson Bldg., 2d and Independence Ave. SE., Washington, DC, (2) the Department of Health and Human Services Library, Rm. 1436, 330 Independence Ave. SW., Washington, DC, on weekdays between 9 a.m. and 4:30 p.m., (3) 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.

Dated: November 17, 1982.

William F. Randolph,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 82-31995 Filed 11-22-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 76P-0163]

Canned Pineapple Juice; Identity and Quality Standards for Juice Made From Concentrate; Commissioner's Final Decision

AGENCY: Food and Drug Administration.
ACTION: Notice; final decision following a formal evidentiary public hearing.

SUMMARY: The Commissioner of Food and Drugs is issuing his final decision in the rulemaking proceeding to amend the standard of quality regulation for canned pineapple juice by establishing a minimum soluble solids content or Brix level in pineapple juice made from concentrate. The soluble solids in canned pineapple juice are governed by § 146.185(b)(1)(i) (21 CFR 146.185(b)(1)(i)). A hearing was held before Administrative Law Judge Daniel J. Davidson (the ALJ) at which written evidence and arguments were presented by the Pineapple Growers Association of Hawaii (PGAH) supporting a 13.5° Brix requirement and by Juice Bowl, Inc. (JB), favoring a Brix requirement between 12.0 and 12.5°. On November 6,

¹ References to evidence presented at the hearing by PGAH will be H- and to evidence presented by JB will be J-

1980, Judge Davidson issued an Initial Decision in which he concluded that the soluble solids content should be set at 12.5° Brix. Pursuant to 21 CFR 12.125, PGAH appealed and filed exceptions to the Initial Decision. For the reasons explained below, I am issuing a final order which will result in amending § 146.185(b)(1)(i) to establish a minimum Brix level of 12.8° in pineapple juice from concentrate, to be effective May 23, 1983. This decision also ends the stay of effectiveness of § 146.185(b)(1)(i). The Food and Drug Administration (FDA) is issuing a document in the "rules and regulations" section of this Federal Register that affects this action.

ADDRESS: The transcript of the hearing, evidence submitted, and all other documents listed in the decision may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ted Herman, Regulations Policy Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION:

I. Administrative and Historical Background

This proceeding was initiated in 1974 by a petition filed by PGAH proposing several changes in the standards of identity and quality² for canned pineapple juice. H-5, H-7. At that time, canned pineapple juice sold in the United States could not be prepared from pineapple juice concentrate.³ Pineapple juice made from concentrate is often referred to as "reconstituted pineapple juice." The regulatory changes sought by PGAH included allowance for the marketing of reconstituted pineapple juice in addition to pineapple juice that has not been concentrated and reconstituted ("nonreconstituted pineapple juice"). PGAH also proposed that the standard of quality for reconstituted pineapple juice establish a

minimum soluble solids content for this product of 13.5 Brix.⁴

In support of the 13.5° Brix requirement, PGAH cited the adoption by the Codex Alimentarius (a body within the United Nations established to formulate policy regarding food regulation) of the 13.5° Brix standard. PGAH also proposed that the standard of identity permit the use of any safe and suitable dry nutritive carbohydrate sweetener rather than only sugar and require that all optional ingredients used in canned pineapple juice products be declared on their labels. PGAH's proposal was published in the Federal Register of March 27, 1975 (40 FR 13517). The Commissioner⁵ provided a 60-day period for the submission of comments on the proposal. *Id.* at 13518.

No opposition was expressed to the proposed changes allowing the use of concentrate to prepare canned pineapple juice and the use of sweeteners other than sugar (41 FR 21768; May 28, 1976). However, two comments were received concerning the 13.5° Brix requirement—one by PGAH in favor of it and one by JB supporting a standard of 12.0° to 12.5° Brix *Id.*, H-13, H-14. The Commissioner concluded that the level of soluble solids of reconstituted pineapple juice should reflect the level of soluble solids normally found in single strength pineapple juice⁶ consumed in the United States, which, prior to these regulatory changes, consisted entirely of nonreconstituted juice (41 FR 21769; May 28, 1976). At that time, all single strength juice consumed in the United States was produced in Hawaii with an average Brix level of at least 13.5°. *Id.* The Commissioner also noted the adoption of the 13.5° Brix level by the Codex Commission. He issued a final order to become effective January 1, 1978, revising the standards of identity and quality for canned pineapple juice to incorporate the changes proposed by PGAH, including the 13.5° minimum Brix requirement for pineapple juice made from concentrate. *Id.* at 21770.

Pursuant to 21 U.S.C. 371(e)(2), JB objected to and requested a hearing on the 13.5° Brix minimum soluble solids requirement for reconstituted pineapple juice. The Commissioner stayed that part of the regulation and confirmed

January 1, 1978, as the date the other changes in the regulation were to become effective (43 FR 10552; March 14, 1978). The Commissioner also advised "that, pending final resolution of the minimum 13.5° Brix requirement of § 146.185(b)(1)(i), he will consider pineapple juice from concentrate to be misbranded if the pineapple juice soluble solids are not equivalent to that in the single strength pineapple juice from which the concentrate was prepared." *Id.* at 10552-10553.

Shortly thereafter, PGAH asserted that it was impracticable to produce pineapple juice from concentrate with a soluble solids level equivalent to that in the single strength juice from which the concentrate was prepared because the Brix of the juice being concentrated constantly fluctuates (43 FR 47284; October 13, 1978). PGAH suggested that an interim standard of 12.5° minimum Brix be adopted instead; JB raised no objections to that suggestion. Thus, the Commissioner concluded that a 12.5° Brix minimum pineapple juice soluble solids level was a reasonable approximation of the Brix level of the single strength juice made into concentrate and adopted it as an interim standard. *Id.* at 47284-47285.

On January 25, 1980, the Commissioner granted JB's request for a hearing and ordered that:

A public hearing be held on whether it will promote honesty and fair dealing in the interest of consumers to set the minimum soluble solids requirement for pineapple juice made from concentrate at a Brix level of 13.5° or at a lower level between 12.0° and 12.5° Brix.

45 FR 6173; January 25, 1980. Written opening statements and evidence were submitted by PGAH in favor of the 13.5° Brix standard and by JB in favor of the lower standard. The Bureau of Foods of FDA did not take a position or submit any evidence at the hearing and has taken no position relating to PGAH's exception to the Initial Decision.

On November 6, 1980, the ALJ issued his Initial Decision in which he concluded that:

The promotion of honesty and fair dealing in the interest of consumers, as required by § 401 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 341), is best served by setting the minimum soluble solids requirement for pineapple juice made from concentrate at a Brix level of 12.5°. Initial Decision, 1.

The ALJ based his conclusion on the following subsidiary findings of fact and conclusions of law:

(1) Pursuant to 21 CFR 12.87(c), PGAH and JB must each sustain the burden of

² A standard of identity fixes the ingredients of a food product and often the amounts of those ingredients. See 21 CFR 130.8. A standard of quality requires that certain characteristics of a food product meet appropriate standards. See 21 CFR 103.5.

In 1974, the canned pineapple juice standard of identity was codified at 21 CFR 27.54 and has since been recodified at 21 CFR 146.185(a). The standard of quality was codified at 21 CFR 27.55 and has since been recodified at 21 CFR 146.185(b).

³ "Pineapple juice concentrate is prepared by passing single strength juice through triple or quadruple effect evaporation under vacuum to remove water." H-106 at 3.

⁴ "The Brix of a fruit or fruit juice is a measure of soluble solids contained in the fruit or juice. It represents that portion of the fruit or juice which is not insoluble plant matter or water." H-106 at 2.

⁵ There have been several Commissioners of the FDA since this proceeding was initiated. They will not be specifically identified in this decision.

⁶ The term "single strength pineapple juice" includes both reconstituted and nonreconstituted pineapple juice.

proving that its proposed Brix standard promotes honesty and fair dealing in the interest of consumers. Initial Decision, 4.

(2) The Brix of pineapple juice from concentrate should approximate the average Brix of the single strength pineapple juice from which the concentrate is made and not the average Brix of single strength juice consumed in the United States. Initial Decision, 11-16.

(3) In 1979, the average Brix of single strength pineapple juice concentrated and sold in the United States for reconstitution was, at most, 13.22°, and "it is highly probable that the average lies below 13.0°." Initial Decision 9.

(4) The agency does not have the authority to set the minimum requirement at a level between 12.5° and 13.5° because the Notice of Hearing published by the Commissioner ordered that the hearing be held on whether the standard should be 13.5° or between 12.0° and 12.5°. Initial Decision, 12.

(5) As stipulated by PGAH and JB, there is no significant difference in nutritional value or consumer acceptance between pineapple juice with 13.5° Brix and pineapple juice with 12.5° Brix. Initial Decision, 17.

PGAH has filed exceptions to these subsidiary findings and the conclusion that the minimum Brix standard for pineapple juice from concentrate should be 12.5°.

II. Discussion

A. The Food Standards Provision

The statutory section providing for the promulgation of food standards is found in 21 U.S.C. 341:

Whenever in the judgement of the Secretary such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standard of fill of container.

The purpose of 21 U.S.C. 341 is to assure consumers that, when they purchase standardized foods, they will get what they reasonably expect to receive. *Federal Security Administrator v. Quaker Oats Co.*, 318 U.S. 218, 229 (1943). It protects the "consumer from 'economic adulteration', by which less expensive ingredients [are] substituted, or the proportion of more expensive ingredients diminished, so as to make the product, although not in itself deleterious, inferior to that which the consumer expect[s] to receive when purchasing a product with the name under which it [is] sold." *Id.* at 230, citing Sen. Rep. No. 493, 73d. Cong., 2d Sess., p. 10; Sen. Rep. No. 361, 74th Cong., 1st Sess., p. 10. Food standards

are remedies "under which the integrity of food products can be effectively maintained." H.R. Rep. 2139, 75th Cong., 3d Sess., p. 2; H.R. Rep. 2755, 74th Cong., 2d Sess., p. 4.

A food standard is reasonable so long as it meets the purpose declared in 21 U.S.C. 341: The promotion of honesty and fair dealing in the interest of consumers. The factors the Commissioner will normally consider before issuing a food standard include "food chemistry, commercial practice, consumer reaction and other relevant factors." *Atlas Powder Co. v. Ewing*, 201 F.2d 347, 351 (3d Cir. 1952), cert. denied, 345 U.S. 923 (1953). As will be discussed in detail below, application of these factors to the evidence presented at the hearing supports a minimum 12.8° Brix standard for reconstituted pineapple juice.

B. The Allocation of the Burden of Proof

PGAH takes exception to the ALJ's conclusion that "the burden of establishing any particular minimum Brix level remains with the party supporting such level." Initial Decision, 4. PGAH argues that as the originator of the proposed 13.5° Brix standard, it had only to meet a "burden of going forward" by "setting forth a presumptive basis to support its proposal." PGAH further argues that the Commissioner's decision to adopt its proposal in his final order demonstrates that PGAH has met its burden of going forward. PGAH Brief, 23. PGAH then argues that the Administrative Procedure Act, 5 U.S.C. 556(d), requires that JB bear the ultimate burden of proving that 13.5° Brix is not a reasonable standard of quality. Finally, PGAH argues that this issue is important because JB has failed to meet this burden.

In an attempt to support its argument that it has only a burden of going forward, PGAH also argues that, because the Commissioner issued a final order adopting 13.5° standard it proposed, PGAH has become the "alter ego" of the FDA and must satisfy whatever burden the agency would have to carry if it had originally proposed the standard. PGAH then states that *Old Ben Coal Corporation v. Interior Board of Mine Operations Appeals*, 523 F.2d 25 (7th Cir. 1975) and *Environmental Defense Fund, Inc. v. EPA*, 548 F.2d 998 (D.C. Cir. 1976), cert. denied, 943 U.S. 925 (1977) require that, where a Government agency is defending a rule against objection, it has only a burden of going forward and the ultimate burden of persuasion rests upon the objector. PGAH Brief, 23-24.

Finally, PGAH argues that allocating the burden of proving each proposed

standard to the party proposing the standard is erroneous because it is "simple logic that only one party can be allocated the burden of persuasion." PGAH Brief, 24.

I conclude that the ALJ's allocation of the burden of proof in this proceeding not only conforms to statutory requirements and case law but also is eminently fair. The Administrative Procedure Act provides that in a formal evidentiary hearing "the proponent of a rule or order has the burden of proof." 5 U.S.C. 556(d). This provision is the only statutory directive on this issue. The legislative history, however, provides some elucidation of Congress' intent in passing section 556(d):

That the proponent of a rule or order has the burden of proof means not only that the party initiating the proceeding has the general burden of coming forward with a prima facie case but that other parties, who are proponents of some different result, also for that purpose have a burden to maintain.

Sen. Doc. No. 248, 79th Cong., 2d Sess., 208, 270 (1946). The intent of Congress to place some burden on the proponent of a result different from an original proposal is embodied in FDA's regulation on the burden of proof in formal evidentiary hearings, 21 CFR 12.87(c):

[I]n a hearing involving issuing, amending, or revoking a regulation or order, the originator of the proposal or petition or of any significant modification will be, within the meaning of 5 U.S.C. 556(d), the proponent of the regulation or order, and will have the burden of proof. A participant who proposes to substitute a new provision for a provision objected to has the burden of proof in relation to the new provision.

As the originator of the petition to adopt a 13.5° Brix standard, PGAH has the burden of proving by substantial evidence⁷ that the standard is a reasonable standard of quality, i.e., one that reflects the quality of the juice used to make concentrate. As the originator of the proposal to adopt a 12.0° to 12.5° Brix standard, which is a significant modification of PGAH's original proposal, JB has the burden of proving, also by substantial evidence, the propriety of a standard within the range. The ALJ correctly applied section 556(d) of the Administrative Procedure Act and § 12.87(c) in holding that:

[T]he burden of establishing any particular minimum Brix level remains with the party supporting such level. Accordingly, each of the parties to this proceeding is a 'proponent

⁷The statutory requirement that rules promulgated by formal rulemaking procedures under the Federal Food, Drug, and Cosmetic Act be based on substantial evidence appears at 21 U.S.C. 371(e)(3).

of the regulation' it supports and must sustain the burden of proof imposed in 21 CFR 12.87(c).

Initial Decision, 4.

PGAH's reliance on *Old Ben Coal Corp. v. Interior Board of Mine Operations Appeals and Environmental Defense Fund, Inc.*, v. EPA is misplaced. The courts in those cases held that, when an agency proposes a rule or order, section 556(d) by itself does not prohibit the agency from shifting the ultimate burden of persuasion to an opponent of that rule or order. They did not hold that the burden must be shifted to the opponent. They also did not, as PGAH claims, hold that a private party who initiates a rulemaking proceeding becomes the "alter ego" of the government when the government issues an order establishing that party's proposal and another party raises objections to it. When a hearing is held on objections to a proposal and the objector raises a counterproposal, it is fair to require each party to bear the burden of establishing the propriety of its proposal. There is nothing in section 556(d) of the Administrative Procedure Act, its legislative history, or the Federal Food, Drug, and Cosmetic Act (the act) that prohibits the ALJ from placing "the parties on equal footing" (Initial Decision, 4) by allocating to each party the burden of proof as to the standard it proposes. Finally, PGAH's charge that it is "simple logic" that only one party can be allocated that burden of persuasion in administrative hearings is irrelevant in proceedings like this one, where two or more rules or standards are at issue. In this case, the conclusion that a Brix standard of less than 13.5° best meets the requirement of "promoting honesty and fair dealing in the interests of consumers" necessarily includes a finding that PGAH did not meet its burden of demonstrating by substantial evidence that the 13.5° Brix standard should be adopted.

C. The Standard for Setting the Minimum Brix Requirement for Pineapple Juice Made from Concentrate.

PGAH objects to the ALJ's use of the average Brix level of pineapple juice that is concentrated and used for making reconstituted pineapple juice as the standard in this rulemaking proceeding. It argues that the Commissioner was correct in 1976 when he issued the final order amending the standards of identity and quality for canned pineapple juice and set the standard at 13.5° Brix. The Commissioner stated then that he "is of the opinion that the pineapple juice soluble solids requirements for

pineapple juice from concentrate should not be less than the soluble solids normally found in single strength pineapple juice sold in the U.S." (41 FR 21769; May 28, 1976).

I conclude that the ALJ was correct in ultimately applying the standard incorporating the average Brix level of single strength juice concentrate for reconstitution instead of a standard based on the single strength juice consumed directly in this country. The evidence presented at the hearing demonstrates that pineapple juice from concentrate is a different product from nonreconstituted pineapple juice. The sources of the juice made into concentrate for reconstitution do not have an average Brix of 13.5° because the majority of juice concentrated for reconstitution is produced in the Philippines and Mexico and has relatively low soluble solids content; whereas, most nonreconstituted pineapple juice consumed in the United States comes from Hawaii, which produces pineapple juice with a relatively high soluble solids content. Initial Decision, 11-12, J-55 at 3.

In addition, the average Brix of nonreconstituted pineapple juice is relatively high but it can be sold in this country with a Brix level as low as 12.0° and even as low as 10.5° if the producer is willing to forego a Grade A label from the Department of Agriculture. 21 CFR 146.185(b)(1)(i) and 7 CFR 2852.1769(a) and (b).⁸ I perceive no advantage for consumers in requiring a minimum Brix content for pineapple juice made from concentrate to reflect the average Brix level of nonreconstituted juice when that juice may be marketed with a significantly lower Brix level, especially when, as PGAH has stipulated, there is no consumer preference for pineapple juice with 13.5° Brix or a significant nutritional difference between pineapple juice with 13.5° Brix and pineapple juice with 12.5° Brix. Joint Stipulation of Facts, No. 1, April 8, 1980.

In its brief, however, PGAH claims that *Atlas Powder Co. v. Ewing*, 201 F.2d 347 (3d Cir. 1952), cert. denied, 345 U.S. 923 (1953), and FDA practice in setting food standards for peanut butter, fruit preserves and jellies, and tomato juice from concentrate require that the standard for pineapple juice from

⁸ Unlike the Brix level for a reconstituted pineapple juice, which is maintained at a uniform level by adjusting the amount of water that is added to the concentrate, the Brix level for nonreconstituted pineapple juice varies. For example, the Brix level of nonreconstituted Hawaiian pineapple juice fluctuates uncontrollably over a large range depending on a number of factors, including the time of year. It is for this reason that the minimum Brix requirement of nonreconstituted juice is 10.5°.

concentrate reflect "traditional food ingredient levels" and "traditional commercial practice in this country, rather than foreign trade practices or recent ingredient trends." *Atlas Powder* does not support PGAH's position. In that case, the court stated that "commercial practice" not "traditional commercial practice" should be considered. The commercial practice for reconstituted pineapple juice has been to use single strength juice with a relatively low average Brix to make the concentrate. Accordingly, the ALJ correctly applied the *Atlas Powder* decision.

The previous food standard proceedings cited by PGAH are of no avail to it either. When the peanut butter and fruit preserves and jellies food standards were being promulgated, the Commissioner was not faced with new products that were similar to but distinctly different from the corresponding traditional foods. The purpose of those proceedings was to standardize foods that had been available to consumers in the United States for a long time. The composition of those foods was, therefore, a significant factor. The purpose of this proceeding is not to standardize nonreconstituted pineapple juice, which is of long-standing availability; that product has already been standardized. The purpose rather is to standardize reconstituted pineapple juice. The composition of nonreconstituted pineapple juice is, therefore, not determinative of the composition to be required of pineapple juice from concentrate.

The tomato juice proceeding is analogous to this proceeding in that it resulted in an amendment to allow the use of juice concentrate in preparing reconstituted juice for consumption. But the result in that proceeding counsels against adopting PGAH's argument that the average Brix of nonreconstituted pineapple juice consumed in this country should be the standard in establishing the minimum Brix requirement for reconstituted pineapple juice. The minimum soluble solids content for reconstituted tomato juice was set at 5.5 percent specifically because the tomatoes used to make concentrate have an average level of 5.5 percent soluble solids (43 FR 19868; May 9, 1978).⁹ Similarly, the Brix standard

⁹ It appears from the Federal Register in which the tomato juice standard was published that domestically grown tomatoes are the only source of tomato juice concentrate. The tomato juice standard therefore coincidentally reflects the soluble solids content of tomatoes grown in the United States.

adopted in this decision reflects the average Brix level of the pineapple juice actually concentrated for reconstitution and consumption in the United States.

In sum, I believe that, pursuant to the food standards provision (21 U.S.C. 341), the case law, and FDA practice, the appropriate standard for establishing a minimum soluble solids content for pineapple juice made from concentrate is the average soluble solids content of the pineapple juice originally used to make the concentrate.

D. The 12.8° Brix Standard.

I am adopting a minimum soluble solids content for pineapple juice from concentrate of 12.8° Brix. The ALJ concluded that he could not adopt a standard between 12.5° Brix and 13.5° Brix because the Notice of Hearing did not state that such a standard was being considered. Initial Decision, 12. I conclude that the Notice of Hearing does not deprive me of authority to establish a Brix standard between 12.5° and 13.5° and that the evidence supports a finding that the appropriate standard is 12.8° Brix.

1. *The Notice of Hearing.* The relevant portion of the Notice of Hearing states:

[I]t is ordered that a public hearing be held on whether it will promote honesty and fair dealing in the interest of consumers to set the minimum soluble solids requirement for pineapple juice made from concentrate at a Brix level of 13.5° or at a lower level between 12.0° and 12.5° Brix.

45 FR 6173; January 25, 1980. JB argues that the Notice of Hearing, 21 U.S.C. 371(e)(3), and 21 CFR 12.35(b) render an intermediate standard outside the jurisdiction of the ALJ, and presumably outside by jurisdiction as Commissioner. Section 371(e)(3) of the act requires FDA to hold a hearing on objections to a formal rule to review evidence "relevant and material to the issues raised by such objections", and § 12.35(b) establishes that "[t]he statement of the issues determines the scope of the hearing and the matters on which evidence may be introduced." Neither of these provisions prohibits me from establishing an intermediate Brix standard.

I conclude that JB's objection to PGAH's proposal—that the standard should be between 12.0° and 12.5° Brix instead of 13.5° Brix—raises the issue of whether the Brix standard should be set at some value between 12.5° and 13.5° Brix. All persons who have an interest in the standard being set between 12.0° and 13.5° Brix were given adequate notice by the Notice of Hearing reasonably designed to elicit their participation at the hearing and should

have participated.¹⁰ Moreover, I do not conclude, as did the ALJ, that JB would be prejudiced by a standard between 12.5° and 13.5° Brix, because JB did not present any evidence to support or refute an intermediate standard. Initial Decision, 12. Because PGAH wants a 13.5° Brix standard and JB wants a 12.5° or lower Brix standard, each party presented and interpreted all data that would skew the average to as high or low a figure as possible. Neither party has identified any data that it would have presented had the Notice of Hearing stated that a standard between 12.5° and 13.5° might be established. In addition, neither party has demonstrated or attempted to demonstrate in its brief how its rights would be prejudiced in any other manner by establishing an intermediate Brix standard in this proceeding.

2. *The evidence presented at the hearing.* There is substantial evidence in the record that a 12.8° Brix standard "will promote honesty and fair dealing in the interest of consumers." This conclusion is based upon two subsidiary findings: The relative amounts of frozen pineapple juice concentrate from various countries and Hawaii that are used in the United States for reconstitution for consumption and the Brix levels of the single strength juice used to make that frozen concentrate.¹¹ Both JP and PGAH submitted evidence relevant to these two factors. JB surveyed companies that market pineapple juice made from concentrate.¹² PGAH presented estimates made by the Institutional and Industrial Sales Department of Castle & Cook of the probable uses of frozen concentrate by companies that purchase the concentrate from Castle & Cook and the probable quantity of the concentrate used by the purchasing companies for reconstitution. H-110 at 1.

a. *Sources of concentrate used for reconstitution.* I adopt the ALJ's finding, in Table A on page 8 of the Initial

¹⁰ PGAH and JB are the only parties who submitted written comments to the agency on the proposed 13.5° Brix standard initially proposed, demonstrating that other persons do not have an interest in the issue strong enough to cause them to participate in this proceeding. (41 FR 21768; May 28, 1976), H-13, H-14.

¹¹ "Because the quality of concentrate deteriorates when it is held at ambient temperatures, [nonfrozen] concentrate is not ordinarily used to manufacture reconstituted pineapple juice." H-106 at 4.

¹² The companies responding to JB's survey were: Coca Cola Foods; Kraft, Inc.; Ohio Pure Foods, Inc.; Lincoln Foods; Juice Bowl Products, Inc.; Lykes Pasco Packing Co.; Home Juice Co.; Tropicana Products, Inc.; Southern Fruit Distributors, Inc.; Ventura Coastal Corp.; Adams Packing Ass'n, Inc.; Citrus Central, Inc.; Dairy Service Corp.; Tree Sweet Products Co.; Great Northern Juice, Inc.; and Sunkist Growers, Inc. J-55 at 2.

Decision, of the percentages of the total supply from various sources of concentrate used for reconstitution in the United States in 1979:

	Percent
Philippines.....	65.1
Mexico.....	30.3
Hawaii.....	4.5

The ALJ based this finding on data submitted by JB. J-55 at 3. He excluded from consideration JB's data on the gallons of concentrate imported into the United States in 1979 from Honduras and Thailand because it was not frozen concentrate and, thus, not used for reconstitution. Neither party has objected to the exclusion from consideration of those data.

The ALJ's finding that JB's evidence concerning the sources of concentrate for reconstitution is more reliable than PGAH's evidence is supported by the record. JB's survey canvassed 16 companies that reconstituted pineapple juice from concentrate. J-55 at 2. The companies surveyed by JB were able to determine accurately the amount of concentrate from each source used by them for reconstitution because the labeling of the concentrate stated its source. J-51 at 8. PGAH's data are derived only from estimates made by one company, Castle & Cook, of what buyers of its concentrate do with the concentrate and PGAH has admitted that it "could not obtain exact figures from our buyers." H-110 at 1. JB's broader and more precise survey justifies the ALJ's decision to base his findings as to the sources of frozen concentrate used for reconstitution on JB's data.

b. *The average Brix of the sources of concentrate used for reconstitution.* In making a finding as to the average Brix of the sources of concentrate used for reconstitution, I assumed that for each pineapple juice packer the average Brix of pineapple juice which is canned as single strength juice and of juice used for concentrate is the same. I have also assumed that a simple, and not a weighted, average of the Brix of pineapple juice from various growers within each source country or Hawaii must be used. Initial Decision, 7. These assumptions are necessary because no evidence was presented to demonstrate that the Brix level of juice directly canned and juice that is concentrated are different and no evidence was presented relating to the percentage of a source country's or Hawaii's pineapple juice production that is provided by a specific grower.

The ALJ found that, in 1979, the average Brix of concentrate used for reconstitution from the Philippines was 13.15° "with the caveat that the actual average is probably lower." Initial Decision, 7. I find that the 13.15° finding is not supported by substantial evidence and that the average for Philippine concentrate is actually 12.80° Brix. The ALJ's finding is based on data submitted by PGAH as to the average daily Brix of pineapple juice processed by two companies in the Philippines: Dole Philippines and the Philippine Packing Corporation. H-106. The ALJ erred in considering the Philippine Packing Corp. figure because, as PGAH's witness testified, that company does not have the capacity to pack frozen concentrate. *Id.* at 5. The average Brix of pineapple juice from Dole Philippine in 1979 was 13.06°.

PGAH, however, submitted data on the average Brix of Dole Philippine for a 5-year period, from 1975-1979, which was 12.80° Brix. Because the Brix of pineapple juice varies considerably over time (J-53 at 1-2; H-106 at 2), the 5-year average is a more reliable figure than the average for 1979 alone.

The ALJ found that the average Brix for Mexican pineapple juice is 12.62° and for Hawaiian pineapple juice, 14.0°. Initial Decision, 7; J-13; H-62, 63, and 64.¹³ Neither party disputes these two figures so I adopt them.

Using these findings as to the sources and Brix levels of pineapple juice concentrate used for reconstitution, I find the average Brix to be 12.79°.

Source	Percent of total by source	Average brix
Philippines	65.1	12.80
Mexico	30.3	12.62
Hawaii	4.5	14.00
Weighted Average Brix from all sources		12.79

PGAH argues that the average Brix level of pineapple juice concentrate for reconstitution is at least 13.22° and actually closer to 13.4°. Adopting either of these averages would require

¹³ The average Brix of Mexican pineapple juice is based upon statements by officials of three companies that pack pineapple juice in Mexico as to the average Brix of these products: 12.5°, 12.7° to 13.0°, and 12.5°. J-31 at 1-3. The ALJ apparently used a Brix value of 12.85° for the company that provided the range within which its average Brix falls instead of a single figure. The simple average of 12.5°, 12.85°, and 12.5° is 12.62°.

The average Brix of Hawaiian pineapple juice is based upon information provided by officials of three companies that pack pineapple juice in Hawaii as to the average Brix of their products: 14.1°, 13.53°, and 14.36°. H-62, 63, and 64. The simple average of these figures is 14.0°.

assumptions that are not supported in the record. Both these averages use the ALJ's finding that the average Brix of Philippine pineapple juice is 13.15° when the evidence supports a value of 12.80°. Moreover, they require reliance on PGAH's estimates as to the percentage of concentrate supplied by each source country or Hawaii. As discussed above, the ALJ was justified in concluding that JB's data were more reliable than PGAH's estimates.

In sum, there is substantial evidence in the record supporting a finding that the average Brix for pineapple juice that is concentrated and used for reconstitution is 12.79° Brix. Because it would be difficult for manufacturers to comply with a numerical Brix requirement to two decimal places, I am ordering that the standard of quality for canned pineapple juice, 21 CFR 146.185(b)(1)(i), be amended to require pineapple juice from concentrate to have a minimum soluble solids content of 12.8° Brix.

E. PGAH's Remaining Exceptions.

PGAH has taken exception to several other findings and conclusions in the Initial Decision, all of which I reject. PGAH contends that the potential cost savings to consumers was the sole basis upon which the ALJ set the minimum Brix requirement for pineapple juice from concentrate at 12.5° instead of 13.5° to follow and that "reduced prices" is not a proper basis for establishing a food standard. PGAH Brief, 16. The ALJ stated that "[a]ll other things being equal, the increase in the price paid by the consumer for juice made with 13.5° Brix, as compared to juice made with 12.5° Brix would be the only source available upon which to make a decision." Initial Decision, 16 (emphasis added). It is unclear whether the ALJ was merely making an observation or in fact based his decision in part on this factor. However, I am not basing my decision on the potential cost savings to consumers. I am adopting the 12.8° standard because it most accurately reflects the actual average Brix of the sources of the concentrate used for reconstitution.

PGAH also objects to the ALJ's finding that proper labeling enables the consumer to make an intelligent choice between nonreconstituted and reconstituted juice. Initial Decision, 16. I do not read this finding, as does PGAH, as a basis upon which the ALJ adopted the 12.5° Brix standard and I am not basing the 12.8° Brix standard on this finding. The ALJ was simply explaining that nonreconstituted and reconstituted juices are different products and proper

labeling will enable consumers to distinguish them.

Finally, PGAH takes exception to the ALJ's decision not to give weight to the Codex Commission's recommendation and the Philippine government's requirement of a 13.5° minimum Brix for pineapple juice from concentrate. The ALJ was correct in not giving any weight to these factors. On page 17 of the Initial Decision he stated:

The Codex Committee report is not sufficiently specific as to sources, types, and uses of concentrate to give assurance that that Committee's recommendation could accurately reflect the current pineapple juice from concentrate market in the United States.

Concerning the Philippine government's requirement, the ALJ correctly concluded that "there is no dispute that the characteristics of pineapple juice which is sold in foreign countries is irrelevant to this proceeding" (Initial Decision, 13) and "[t]he Philippine government's endorsement of the 13.5° Brix standard is not controlling in an FDA food standard hearing in the United States." Initial Decision, 15.

III. Conclusion

Based on the foregoing findings, conclusions, and discussions, I modify the Initial Decision as set forth above and conclude that the promotion of honesty and fair dealing in the interest of consumers, as required by section 401 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 341), is best served by setting the minimum soluble solids content requirement for pineapple juice made from concentrate at a Brix level of 12.8°, and I have ordered, accordingly, that 21 CFR 146.185(b)(1)(i) be amended to require the minimum Brix of pineapple juice made from concentrate to be set at 12.8° Brix.

Dated: November 15, 1982.

Arthur Hull Hayes, Jr.,
Commissioner of Food and Drugs.

[FR Doc. 82-31994 Filed 11-22-82; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 82-0333]

Directly Set Cottage Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Safeway Milk Plant, Garland, TX, to market test directly set cottage cheese

made with food-grade sodium bisulfate. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than February 22, 1983.

FOR FURTHER INFORMATION CONTACT:

E. T. McGarrahan, Bureau of Foods (HFF-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1155.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), notice is given that a temporary permit has been issued to Safeway Milk Plant.

The permit covers limited interstate marketing tests of directly set cottage cheese that deviates from the standard of identity for cottage cheese, which provides for directly set cottage cheese in § 133.128 (21 CFR 133.128). The directly set dry curd (defined in 21 CFR 133.129), from which the test product will be made, will be formed with food-grade sodium bisulfate, which is not currently permitted for use in directly set dry curd formation. The test product meets all requirements of § 133.128, with the exception of this deviation. The permit provides for the temporary marketing of 3 million pounds of the product packaged in 1-, 1½-, or 5-pound containers to be distributed in the States of Arkansas, Louisiana, and Texas.

The test product is to be manufactured at Safeway Milk Plant, Garland, TX.

The principal display panel of the label states the products' name, and each of the ingredients used in the food, specifically including sodium bisulfate, is stated on the label as required by the applicable sections of 21 CFR Part 101, with the exceptions stated in § 133.128(e). This permit is effective for 15 months, beginning on the date the new food is introduced or caused to be introduced into interstate commerce, but no later than February 22, 1983.

Dated: November 15, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-31843 Filed 11-22-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82N-0311; DESI No. 11935]

Drugs for Human Use; Drug Efficacy Study Implementation; Revocation of Exemption for Certain Effective Oral Prescription Drugs Offered for Relief of Symptoms of Cough, Cold, or Allergy ("Paragraph XIV/Category 15"); Followup Notice and Opportunity for Hearing

Correction

In FR Doc. 82-29028 beginning on page 47085 of the issue for Friday, October 22, 1982, the following changes should be made:

1. On page 47086, the third column, the first complete paragraph, the third line from the bottom, the word "relted" should read "related".

2. On page 47087, the first column, the third complete paragraph, the third line should read "505, 52 Stat. 1050-1053, as amended".

BILLING CODE 1505-01-M

International Multifoods' Dixie Booster Pak-Tylan 1600 Medicated; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) providing for use of Dixie Booster Pak-Tylan 1600 Medicated, an 0.8-gram-per-pound tylosin premix, in manufacturing complete swine feeds. The sponsor, International Multifoods' Dixie Mills Co., requested the withdrawal of approval.

EFFECTIVE DATE: December 3, 1982.

FOR FURTHER INFORMATION CONTACT: Howard Meyers, Bureau of Veterinary Medicine (HFV-218), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: International Multifoods' Corp., 8th and Marquette Sts., Minneapolis, MN 55402, is the sponsor of NADA 100-744 originally sponsored by Dixie Mills Co., 10th and Walnut Sts., East St. Louis, IL 62202. Dixie Mills and the NADA are now owned by International Multifoods. The NADA provides for use of an 0.8-gram-per-pound tylosin premix to make complete swine feeds used for increased rate of weight gain and improved feed efficiency.

The application originally became effective on August 8, 1975. By letter of August 25, 1982, the sponsor requested withdrawal of approval of the NADA

because the product is not being manufactured or marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115, *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 100-744 and all supplements for Dixie Booster Pak-Tylan 1600 Medicated is hereby withdrawn, effective December 3, 1982.

Dated: November 17, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-31996 Filed 11-22-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the Annual Report for the following Health Resources and Services Administration Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Council on Migrant Health.

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, D.C., or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, North Building, Room 1436, 330 Independence Avenue, SW., Washington, D.C. 20201, Telephone (202) 245-6791. Copies may be obtained from Dr. Michael E. Samuels, Executive Secretary, National Advisory Council on Migrant Health, Room 7A-55, Parklawn Building, 5700 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-1153.

Dated: November 17, 1982.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 82-31997 Filed 11-22-82; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-82-1184]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Ch. 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained for David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Urban Development Action Grant Program (Closeout Procedures)

Office: Community Planning and Development

Form Number: None

Frequency of Submission:

Nonrecurring

Affected Public: State or Local Governments

Estimated Burden Hours: 58,760

Status: Revision

Contact: Hugh Allen, HUD, (202) 755-6250, Robert Neal, OMB, (202) 395-8880

(Sec. 3507 Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: October 27, 1982.

Judith L. Tardy,

Assistant Secretary for Administration.

[FR Doc. 82-32113 Filed 11-22-82; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-82-1185]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Ch. 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the

office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Wood Destroying Insect Information—Existing Construction.

Office: Housing.

Form Number: HUD-95053.

Frequency of Submission: On Occasion.

Affected Public: Businesses or Other Institutions (except farms).

Estimated Burden Hours: One.

Status: Reinstatement.

Contact: Marion E. Davis, HUD, (202) 755-6702; Robert Neal, OMB, (202) 395-8880.

(Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

Dated: November 3, 1982.

Judith L. Tardy,

Assistant Secretary for Administration.

[FR Doc. 82-32114 Filed 11-22-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A 18144]

Arizona; Realty Action; State Exchange

AGENCY: Bureau of Land Management—Phoenix District Office, Interior.

ACTION: Notice of Realty Action A 18144, Exchange of public lands for State lands, in Maricopa and Pinal Counties, Arizona.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under Section 207 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. The proposed exchange will provide land for facilities for the Central Arizona Project. The anticipated use of the acquired public land is for the continuation and expansion of the Talley Industries facility near Mesa, Arizona.

Gila and Salt River Meridian, Maricopa County, Arizona

T. 2 N., R. 6 E.

Section 33: NE¼NE¼ and the E¼NW¼NE¼, comprising 60.00 acres of public land. In exchange for these lands, the Federal Government will acquire State of Arizona land, described as follows:

Gila and Salt River Meridian, Maricopa and Pinal Counties, Arizona

T. 3 N., R. 5 W.

Section 1: Beginning at the Northwest corner of said Section 1; thence from said point of beginning and along the north boundary of said Section 1 South 89°28'08" East 308.17 feet; thence leaving said north boundary South 20°46'22" West 648.17 feet; thence South 52°48'34" West 103.87 feet to a point on the west boundary of said Section 1, thence along said west boundary North 00°22'51" East 761.69 feet to the point of beginning, comprising 2.79 acres, more or less, in Maricopa County, Arizona;

T. 5 N., R. 2 W.

Section 29: (Three parcels) *Parcel One*—Beginning at the Southwest corner of the Northwest Quarter of the Southeast Quarter in the north-south midsection line of said Section 29 that bears North 00°16'54" East 1320.46 feet from the South Quarter corner of said Section 29; thence along said midsection line North 00°16'54" East 796.40 feet; thence leaving said midsection line North 42°57'39" East 684.66 feet; thence North 47°02'21" West 225.00 feet; thence North 42°57'39" East 226.63 feet to a point in the southwesterly right-of-way boundary of U.S. Highway 60-89; thence along said right-of-way boundary South 46°37'26" East 925.02 feet; thence leaving said boundary South 42°57'39" West 792.96 feet; thence South 55°53'52" West 715.26 feet to the point of beginning. Parcel One contains 20.25 acres, more or less; and

Parcel Two—Beginning at a point in the southwesterly right-of-way boundary of U.S. Highway 60-89 that bears North 26°51'57" East 2561.02 feet from the South Quarter corner of said Section 29; thence from said point of beginning and along said boundary North 46°37'26" West 500.01 feet; thence leaving said boundary North 42°57'39" East 350.00 feet to a point in the northeasterly right-of-way boundary of the Atchison, Topeka, and Santa Fe Railway; thence along said northeasterly right-of-way boundary South 46°37'26" East 500.01 feet; thence leaving said boundary South 42°57'39" West 350.00 feet to the point of beginning. Parcel Two contains 4.02 acres, more or less; and

Parcel Three—Beginning at the East Quarter corner of said Section 29; thence from said point of beginning and along the east boundary of said Section 29 South 00°17'50" West 111.23 feet; thence leaving said boundary North 72°18'12" West 889.44 feet; thence South 42°57'39" West 455.56 feet to the northeasterly right-of-way boundary of the Atchison, Topeka, and Santa Fe Railway; thence along said right-of-way boundary North 46°37'26" West 1657.57 feet thence leaving said right-of-way boundary North 71°48'42" East 1093.69 feet; thence South 44°28'32" East 979.07 feet; thence North 70°52'53" East 679.61 feet to a point in the east boundary of said Section 29; thence along said east boundary South 00°16'46" West 830.00 feet to the point of beginning. Parcel Three contains 41.34 acres, more or less.

These three parcels comprise a total of 65.61 acres, more or less, in Maricopa County, Arizona;

T. 3 N., R. 5 E.

Section 15: Beginning at the Southwest corner of said Section 15; thence from said Southwest corner and along the west boundary of said Section 15 North 00°03'36" West 1048.51 feet; thence leaving said west boundary North 61°52'26" East 517.58 feet; thence North 28°48'27" East 725.00 feet; thence South 21°22'55" East 1171.42 feet; thence South 00°55'59" East 403.10 feet; thence South 73°48'09" West 141.41 feet; thence South 02°31'49" East 396.83 feet to a point on the south boundary of said Southwest Quarter; thence along said south boundary North 89°54'05" West 1120.09 feet to the point of beginning, comprising 37.63 acres, more or less, in Maricopa County, Arizona;

T. 3 S., R. 8 E.

Section 12: Beginning at a point on the north boundary of Section 12 that bears North 88°57'42" East 1368.79 feet from the Northwest section corner of said Section 12; thence from said point of beginning and along said north boundary North 88°57'42" East 2815.71 feet to a point that bears South 88°57'42" West 1267.08 feet from the Northeast section corner of said Section 12; thence leaving said north boundary South 41°38'21" East 1950.46 feet to a point on the east boundary of said Section 12 that bears South 01°07'31" East 1480.90 feet from said Northeast section corner; thence along said east boundary South 01°07'31" East 1164.58 feet to the East Quarter of said Section 12; then from said East Quarter corner continuing along said east boundary South 01°07'20" East 2621.19 feet to a point that bears North 01°07'20" West 24.07 feet from the Southeast section corner of Section 12; thence leaving said east boundary North 40°05'07" West 6251.94 feet; thence North 21°20'43" West 438.51 feet to said point of beginning, comprising 253.39 acres, more or less, in Pinal County, Arizona;

T. 4 S., R. 9 E.

Section 9: The Easterly 100 feet of the Northerly 400 feet of said West Half of said Section 9, comprising 0.92 acres, more or less, in Pinal County, Arizona;

T. 4 S., R. 10 E.

Section 22: Beginning at the North Quarter corner of said Section 22; thence from said North Quarter corner and along the north boundary of said Section 22 South 89°36'32" East 107.82 feet to a point that bears North 89°36'32" West 2512.77 feet from the Northeast corner of said Section 22; thence leaving said north boundary South 01°18'32" West 1088.97 feet; thence South 45°29'25" West 118.05 feet to a point in the west boundary of said East Half of said Section 22; thence along said west boundary North 00°03'37" East 1172.18 feet to the point of beginning, comprising 2.48 acres, more or less, in Pinal County, Arizona;

T. 3 N., R. 5 W.

Section 1: Beginning at the Northeast corner of said Section 1; thence along the east boundary of said Section 1 South 00°29'09" West 354.77 feet; thence leaving said east boundary North 19°40'48" West 378.05 feet to a point in the north boundary of said Section 1; thence along said north boundary South 89°28'09" East 130.33 feet to the point of beginning, comprising 0.53 acres, more or less, in Maricopa County, Arizona;

T. 4 N., R. 5 W.

Section 36: (2 parcels) *Parcel One*—Beginning at the Southeast corner of Section 36; thence along the south boundary of said Section 36 North 89°28'09" West 130.33 feet; thence leaving said south boundary North 19°40'48" West 1193.24 feet to a point in the southerly boundary of that area described in that certain Deed of Relinquishment from the State of Arizona to the United States of America dated December 19, 1977, and recorded in Docket 12770 at pages 128-130, records of Maricopa County Arizona; thence along said southerly boundary South 80°30'23" East 177.52 feet; thence leaving said southerly boundary South 19°40'48" East 1062.35 feet to a point in the east boundary of said Section 26; thence along east boundary South 00°24'51" West 95.17 feet to the point of beginning. Said Parcel One contains an area of 4.16 acres, more or less, in Maricopa County, Arizona;

Parcel Two—Beginning at the Point of Intersection of the northerly boundary of that area described in that certain Deed of Relinquishment from the State of Arizona to the United States of America dated December 19, 1977, and recorded in Docket 12770 at pages 128-130, records of Maricopa County, Arizona, AND the east boundary of said Section 36, said point bears North 00°24'51" East 1741.69 feet from the Southeast corner of said Section 36; thence from said point of beginning and proceeding along said northerly boundary South 30°22'52" West 318.27 feet; thence North 80°30'23" West 199.88 feet; thence leaving said northerly boundary of that area described in that Deed of Relinquishment North 28°22'20" East 761.16 feet to a point in the east boundary of said Section 26; thence along said east boundary South 00°24'51" West 427.28 feet to said point of beginning. Said Parcel Two contains an area of 2.43 acres, more or less, in Maricopa County, Arizona;

These two parcels comprise a total of 6.59 acres, more or less, in Maricopa County, Arizona;

T. 5 N., R. 1 E.

Section 15: (2 Parcels) Parcel One—Beginning at a point in the east boundary of said Northwest Quarter that bears South 00°11'11" West 552.25 feet from the North Quarter corner of said Section 15; thence from said point of beginning and along said east boundary South 00°11'11" West 613.01 feet to a point in the Central Arizona Project (Granite Reef Aqueduct) northeasterly right-of-way boundary; thence leaving said east boundary and along last said northeasterly boundary North 76°30'13" West 402.10 feet; thence leaving said northeasterly boundary North 37°07'26" East 651.13 feet to the point of beginning. Said Parcel One contains an area of 2.75 acres, more or less, in Maricopa County, Arizona;

Parcel Two—Beginning at a point in the east boundary of said Northwest Quarter that bears South 00°11'11" West 1422.17 feet from the North Quarter corner of said Section 15; said point of beginning also being a point in the Central Arizona Project (Granite Reef Aqueduct) southwesterly right-of-way boundary; thence from said point of beginning, leaving said southwesterly boundary, and along said east boundary South 00°11'11" West 444.56 feet; thence leaving said east boundary South 30°59'07" West 463.82 feet to a point in the easterly right-of-way boundary for the Maricopa County Highway known as Lake Pleasant Road; thence leaving said easterly boundary North 76°30'13" West 66.04 feet to a point in the westerly right-of-way boundary of said Lake Pleasant Road; thence leaving said westerly boundary North 08°45'50" West 864.42 feet; thence North 76°30'13" West 880.56 feet to a point in said Granite Reef Aqueduct southwesterly right-of-way boundary; thence along said right-of-way boundary North 66°37'14" East 124.98 feet; thence continuing along said boundary South 76°30'13" East 1211.12 feet to the point of beginning. Said Parcel Two contains an area of 7.91 acres, more or less, in Maricopa County, Arizona;

These two parcels comprise a total of 10.66 acres, more or less, in Maricopa County, Arizona;

All of the above described parcels of State of Arizona land in Maricopa and Pinal Counties, Arizona, total 362.60 acres, more or less.

SUPPLEMENTARY INFORMATION:

The purpose of the exchange is to acquire State of Arizona lands that are needed by the Bureau of Reclamation for Central Arizona Project purposes. In return, the State will receive 60 acres of public land. The exchange is consistent with the Bureau of Land Management's land use policies and has been discussed with Maricopa and Pinal County and State of Arizona government officials. The public interest will be well served by making the exchange.

The value of the lands to be exchanged are approximately equal and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

The terms and conditions applicable to the exchange are:

1. Excepting and reserving to the United States a right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. Excepting and reserving to the United States the rights-of-way described as follows:

a. A powerline right-of-way for Salt River Project, PHX 086756, 50 feet total width;

b. A railroad right-of-way for Arizona Extension Railroad, PHX 031105, 200 feet total width;

c. A telephone line right-of-way for Mountain States Telephone, AR 05373, 10 feet total width.

3. Federal lands transferred to the State of Arizona will be subject to commercial/industrial leases #14-06-300-1246 and #14-06-300-1247, Talley Industries, Inc.

4. The reservation to the United States for oil and gas on the lands being transferred out of federal ownership.

5. Mineral values on those lands where the State of Arizona holds the mineral estate will transfer to the United States.

DATES: For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 2929 West Clarendon Avenue, Phoenix, Arizona 85017. 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 this Department. The exchange, if consummated, will occur after January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report, is available for review at the Phoenix District Office, 2929 West Clarendon, Phoenix, Arizona 85017.

Dated: November 12, 1982.

William K. Barker,
District Manager.

[FR Doc. 82-32001 Filed 11-22-82; 8:45 am]

BILLING CODE 4310-84-M

Oregon; Draft Owyhee River Management Plan

Notice is hereby given that the draft Owyhee River Management Plan is now available for public review and comment. Copies of the draft management plan can be obtained by contacting the following BLM Districts: Vale District Office, Post Office Box 700, Vale, OR 97918.

Boise District Office, 3948 Development Avenue, Boise, ID 83705.

Elko District Office, 2002 Idaho Street, Elko, NV 89801.

Public comment on the draft management plan will be accepted by each of the aforementioned districts from November 15, 1982 to February 5, 1983.

David Lodzinski,

Assistant District Manager.

[FR Doc. 82-32002 Filed 11-22-82; 8:45 am]

BILLING CODE 4310-84-M

[OR 20547]

Oregon; Proposed Continuation of Withdrawal

The Science and Education Administration, U.S. Department of Agriculture, proposes that the existing land withdrawal made by Executive Order No. 8911 of September 27, 1941, as modified by Public Land Order No. 1333 of August 27, 1956, be continued in its entirety for a term of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714.

The withdrawn lands are located approximately 40 miles west of Burns, Oregon, and aggregate a total of approximately 14,000 acres within T. 24 S., Rgs. 25 and 26 E., Willamette Meridian, Harney County, Oregon.

The purpose of the withdrawal is to protect the agricultural research activities and facilities associated with the Squaw Butte Range Experiment Station. The lands are currently segregated from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal continuation. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal continuation must submit a written request to the undersigned officer within 90 days from the date of publication of

this notice. If the State Director, Bureau of Land Management, determines that a public meeting will be held, the time and place will be announced.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. He will review the withdrawal rejustification to insure that continuation would be consistent with the statutory objectives of the programs for which the land is dedicated; the area involved is the minimum essential to meet the desired needs; the concurrent utilization of the land is provided for; and an agreement is reached on the concurrent management of the land and its resources. He will also prepare a report for consideration by the Secretary of the Interior, the President, and

Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

All communications in connection with this proposed withdrawal continuation should be addressed to the undersigned officer, Bureau of Land Management, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

Dated: November 12, 1982.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-32053 Filed 11-23-82; 8:45 am]

BILLING CODE 4310-84-M

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Diapir Field Outer Continental Shelf
Sale No. 87
Call for Information for Oil and Gas Leasing

Purpose of Call

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1343), as amended (92 Stat. 629). Potential bidders are requested to outline broad areas where they believe hydrocarbons may occur or where they have an interest in leasing in the Diapir Field. The Secretary is also requesting comments from all interested parties--Federal, State, and local governments, environmental groups, the general public, and potential bidders--on possible environmental effects and use conflicts in the Call area, and on the appropriateness of initial lease terms longer than 5 years and lease tracts larger than 5,760 acres (2,331 hectares).

Use of Information from Call

Information submitted in response to this Call will be considered in selecting the areas of hydrocarbon potential to be proposed for leasing and analyzed in the environmental impact statement (EIS) as the proposed Federal action. This information will also be used in identifying alternatives to the proposed action. Comments received on possible environmental effects and use conflicts may be used in the analysis of local environmental conditions within the Call area so that the potential effects of oil and gas exploration and development, other than the benefits accruing to the Nation as a result of inventorying and producing oil and gas, can be assessed. These comments may also be useful in developing special lease terms and conditions designed to assure safe offshore operations. Comments submitted regarding length of lease term and size of lease tract may be used in the assessment of the appropriate initial lease term and appropriate tract size, pursuant to section 8 of the OCS Lands Act, as amended (43 U.S.C. 1337).

Description of Area

The general area of this Call extends north up to about 237 miles from the Federal/State Three Geographical-Mile Line to 73° N. latitude and extends eastward to the limit of U.S. jurisdiction and is bounded on the west by 162° W. longitude. The general location is offshore the State of Alaska in the Beaufort Sea and the Arctic Ocean. Indications of interest and comments may be considered for any area within the boundaries of the Call. Boundaries of the Call area are shown on the map at the end of this Call.

The following list identifies the Official Protraction Diagrams included in this Call. The diagrams may be purchased for \$2.00 each from the Minerals Manager, Alaska OCS Region, P.O. Box 1159, 620 East 10th Avenue, Anchorage, Alaska 99510.

NS 4-7	--	(Approved April 25, 1978)
NS 4-8	--	(Approved January 21, 1981)
NS 5-7	--	(Approved April 25, 1978)
NS 5-8	--	(Approved January 21, 1981)
NS 6-7	Laurentian Basin	(Approved April 25, 1978)
NS 6-8	--	(Approved January 21, 1981)
NS 7-7	Beaufort Terrace	(Approved March 17, 1982)
NR 4-1	--	(Approved October 12, 1977)
NR 4-2	Barrow	(Approved August 23, 1976)
NR 5-1	Dease Inlet	(Approved June 3, 1976)
NR 5-2	--	(Approved May 5, 1976)
NR 6-1	--	(Approved June 3, 1976)
NR 6-2	--	(Approved June 5, 1976)
NR 7-1	MacKenzie Canyon	(Approved October 26, 1979)
NR 7-2	--	(Approved October 26, 1979)
NR 5-3	Teshkepuk	(Approved June 3, 1976)
NR 5-4	Harrison Bay	(Approved May 13, 1982)
NR 6-3	Beechey Point	(Approved February 25, 1982)
NR 6-4	Flaxman Island	(Approved April 29, 1975)
NR 7-3	Barter Island	(Approved October 26, 1979)
NR 7-4	--	(Approved October 26, 1979)
NR 7-5	Demarcation Point	(Approved October 26, 1979)
NR 7-6	--	(Approved October 26, 1979)

Instructions on Call

Indications of interest from potential bidders should be limited to the areas included in the Official Protraction Diagrams described above. Those indicating interest are requested to do so on a standard Call for Information Map, available free from the Regional Manager, Alaska OCS Region, at the address stated in the second paragraph under "Description of Area," telephone (907) 276-2955. This map shows the Call area and highlights the area identified by the Minerals Management Service (MMS) as having potential for the discovery of oil and gas. Respondents may suggest areas of potential interest within or beyond those identified by MMS. Although individual indications of interest are considered to be privileged and confidential information, the names of persons or entities indicating interest or submitting comments will be of public record.

Respondents are requested to rank areas according to priority of interest (e.g., priority 1, 2, and 3). Priority information by company will be held confidential, and will be used as a criterion in determining the area identification. If a company does not choose to assign a priority to its nominations, those areas delineated will be assigned a medium, or priority 2, nomination.

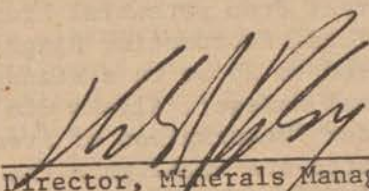
In addition to indications of interest, we are seeking comments from all interested parties about particular geological, environmental, biological, archaeological, or socioeconomic conditions or problems, or other information which might bear upon potential leasing and development of particular areas. Comments should preferably address broad areas but may be restricted to designated blocks of particular concern.

Comments are also being sought from all interested parties on the appropriateness of initial lease periods longer than 5 years and on the need, if any, for lease tracts larger than 5,760 acres (2,331 hectares). Such comments should describe why such modifications would be appropriate and identify where such modifications should be applied. Those making comments are requested to mark the area on the standard Call for Information Map discussed above.

Indications of interest and comments must be submitted no later than 30 days following publication of this document in the Federal Register in envelopes labeled "Indications of Interest for Leasing in the Outer Continental Shelf, Diapir Field" or "Comments on Leasing in the Outer Continental Shelf, Diapir Field," as appropriate. They must be submitted to the Minerals Manager, Alaska OCS Region, at the address stated in the second paragraph under "Description of Area." A copy should be sent to the Chief, Offshore Resource Evaluation Division, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 643, Reston, Virginia 22091.

Final delineation of the area for competitive bidding will be made only at a later date after compliance with established departmental procedures, all requirements of the National Environmental Policy Act of 1969, and the OCS Lands Act, as amended. A final Notice of Sale, detailing areas to be offered for competitive bidding, will be published in the Federal Register stating the conditions and terms for leasing and the place, date, and hour at which bids will be received and opened.

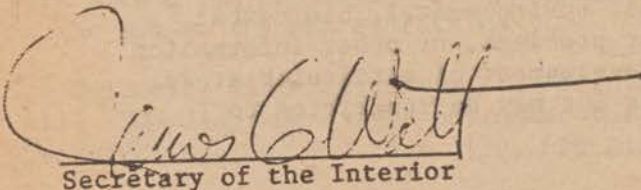
Date:

11/17/82

Director, Minerals Management Service

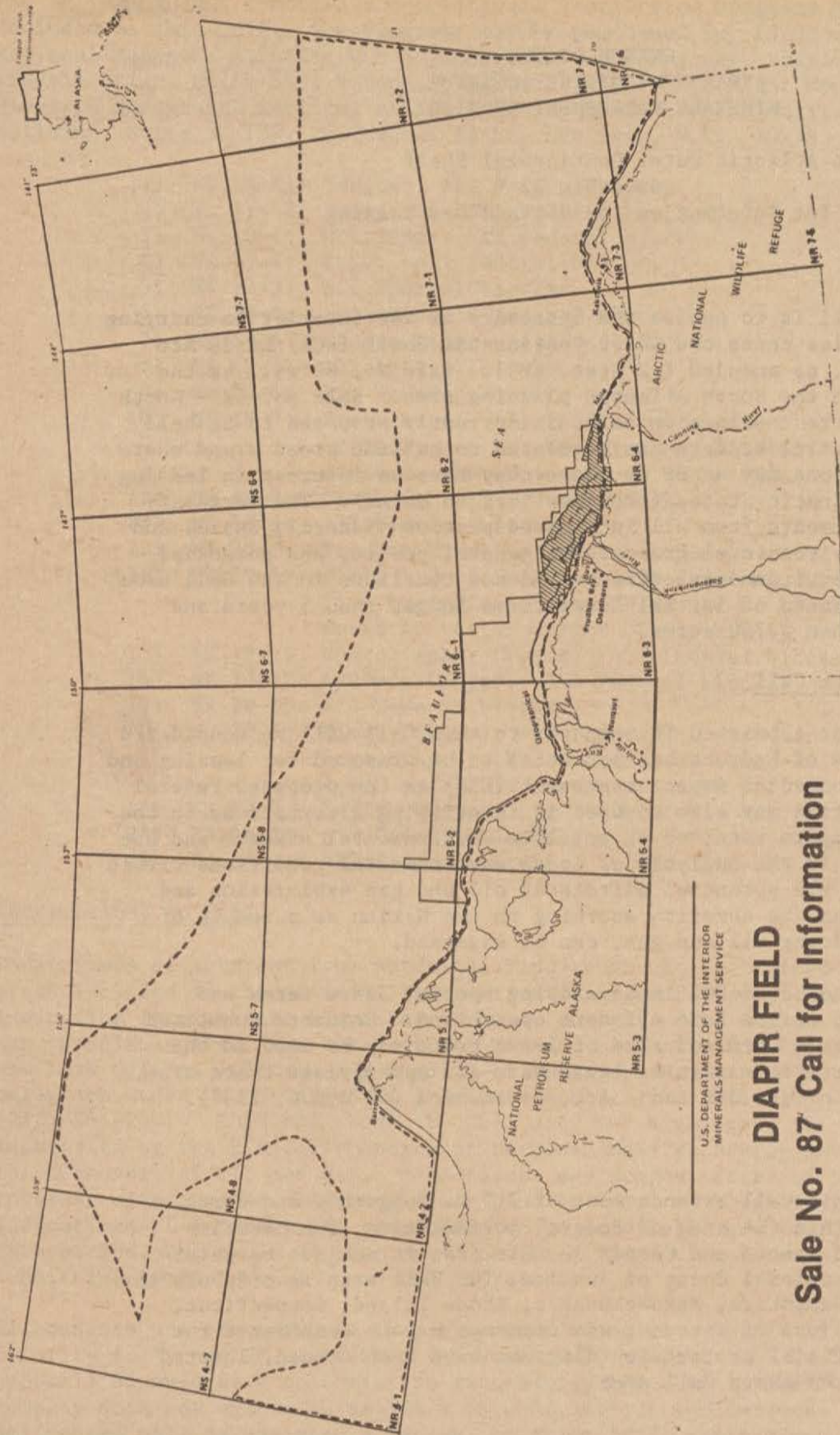
Harold Doley

Approved



Secretary of the Interior

James C. Watt



4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

North Atlantic Outer Continental Shelf
Sale No. 82
Call for Information for Oil and Gas Leasing

Purpose of Call

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1343), as amended (92 Stat. 629). Sale No. 82 will be the first areawide sale in the North Atlantic planning area. Sale No. 52 - North Atlantic, which is a tract selection sale, is currently proposed to be held in March, 1983. Potential bidders are requested to outline broad areas where they believe hydrocarbons may occur or where they have an interest in leasing offshore the North Atlantic States (from New York to Maine). The Secretary is also requesting comments from all interested parties--Federal, State, and local Governments, environmental groups, the general public, and potential bidders--on possible environmental effects and use conflicts in the Call area, and on the appropriateness of initial lease terms longer than 5 years and lease tracts larger than 5,760 acres.

Use of Information from Call

Indications of interest submitted in response to this Call will be considered in selecting the areas of hydrocarbon potential to be proposed for leasing and analyzed in the environmental impact statement (EIS) as the proposed Federal action. This information may also be used in identifying alternatives to the proposed action. Comments received on possible environmental effects and use conflicts may be used in the analysis of local environmental conditions within the Call area so that the potential effects of oil and gas exploration and development, other than the benefits accruing to the Nation as a result of inventorying and producing oil and gas, can be assessed.

These comments may also be useful in developing special lease terms and conditions designed to assure safe offshore operations. Comments submitted regarding length of lease term and size of lease tract may be used in the assessment of the appropriate initial lease term and appropriate tract size, pursuant to section 8 of the OCS Lands Act, as amended (43 U.S.C. 1337).

Description of Area

The general area of this Call extends east of 71° W. longitude and north of the 39th parallel, within the area of Federal jurisdiction. The maritime boundary of the United States and Canada in this area is subject to determination by the International Court of Justice. The Call area is offshore the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York. Indications of interest and comments may be considered for any area for which official protraction diagrams have been issued, located within the limits of the above Call area.

The following list identifies the Official Protraction Diagrams and blocks included in this Call. The diagrams may be purchased for \$2.00 each from the Regional Manager, Atlantic OCS Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180 or from the New York Office, Minerals Management Service, Atlantic OCS Region, Jacob K. Javits Federal Building, Suite 32-120, 26 Federal Plaza, New York, N.Y. 10278.

- 1) NL 19-11: Bangor: All Federal blocks.
- 2) NL 19-12: Eastport: All Federal blocks.
- 3) NK 19-1: Portland: All Federal blocks.
- 4) NK 19-2: Bath: All Federal blocks.
- 5) NK 19-3: All Federal blocks.
- 6) NK 19-4: Boston: All Federal blocks.
- 7) NK 19-5: Cashes Ledge: All Federal blocks.
- 8) NK 19-6: All Federal blocks.
- 9) NK 20-4: All Federal blocks.
- 10) NK 19-7: Providence: All Federal blocks east of a line beginning at the SW corner of block 594, thence south to the SW corner of block 990.
- 11) NK 19-8: Chatham: All Federal blocks.
- 12) NK 19-9: All Federal blocks.
- 13) NK 20-7: Fundian Rise: All Federal blocks.
- 14) NK 19-10: Block Island Shelf: All Federal blocks east of a line beginning at the NW corner of block 28, thence south to the SW corner of block 996.
- 15) NK 19-11: Hydrographer Canyon: All Federal blocks.
- 16) NK 19-12: Lydonia Canyon: All Federal blocks.
- 17) NK 20-10: All Federal blocks.
- 18) NJ 19-1: Block Canyon: All Federal blocks east of a line beginning at the NW corner of block 29, thence south to the SW corner of block 997.
- 19) NJ 19-2: Veatch Canyon: All Federal blocks.
- 20) NJ 19-3: All Federal blocks.
- 21) NJ 20-1: All Federal blocks.

Instructions on Call

Indications of interest from potential bidders should be limited to the areas included in the Official Protraction Diagrams described above. Those indicating interest are requested to do so on a standard Call for Information Map, available free from the Regional Manager, Atlantic OCS Region, or the New York Office, Atlantic OCS Region, at the addresses stated in the second paragraph under "Description of Area," telephone (703) 285-2168 or (212) 264-2401. This map shows the Call area and highlights the area identified by the Minerals Management Service (MMS) as having potential for the discovery of oil and gas. Respondents may suggest areas of potential interest within or beyond those identified by MMS. Although individual indications of interest are considered to be privileged and confidential information, the names of persons or entities indicating interest or submitting comments will be of public record.

Respondents are requested to rank areas according to priority of interest (e.g., priority 1, 2, and 3). Priority information by company will be held confidential and will be used as a criterion in determining the area identification. If a company does not choose to assign a priority to its nominations, those areas delineated will be assigned a medium, or priority 2, nomination.

In addition to indications of interest, we are seeking comments from all interested parties about particular geological, environmental, biological, archaeological, socioeconomic conditions or problems, or other information which might bear upon potential leasing and development of particular areas. Comments should preferably address broad areas but may be restricted to designated blocks of particular concern.

Comments are also being sought from all interested parties on the appropriateness of initial lease periods longer than 5 years and on the need, if any, for lease tracts larger than 5,760 acres. Such comments should describe why such modifications would be appropriate and identify where such modifications should be applied. Those making comments are requested to mark the area on the standard Call for Information Map discussed above.

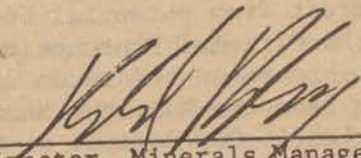
Indications of interest and comments must be submitted in envelopes labeled "Indications of Interest for Leasing in the Outer Continental Shelf, North Atlantic," or "Comments on Leasing in the Outer Continental Shelf, North Atlantic," as appropriate, no later than 30 days following publication of this document in the Federal Register. They must be submitted to the Regional Manager, Atlantic OCS Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180. A copy should be sent to the Chief, Offshore Resource Evaluation Division, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 643, Reston, Virginia 22091.

Final delineation of the area for competitive bidding will be made only at a later date after compliance with established departmental procedures, all requirements of the National Environmental Policy Act of 1969, and the OCS Lands Act, as amended.

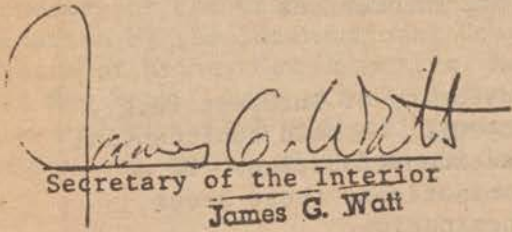
A final Notice of Sale, detailing areas to be offered for competitive bidding, will be published in the Federal Register stating the conditions and terms for leasing and the place, date, and hour at which bids will be received and opened.

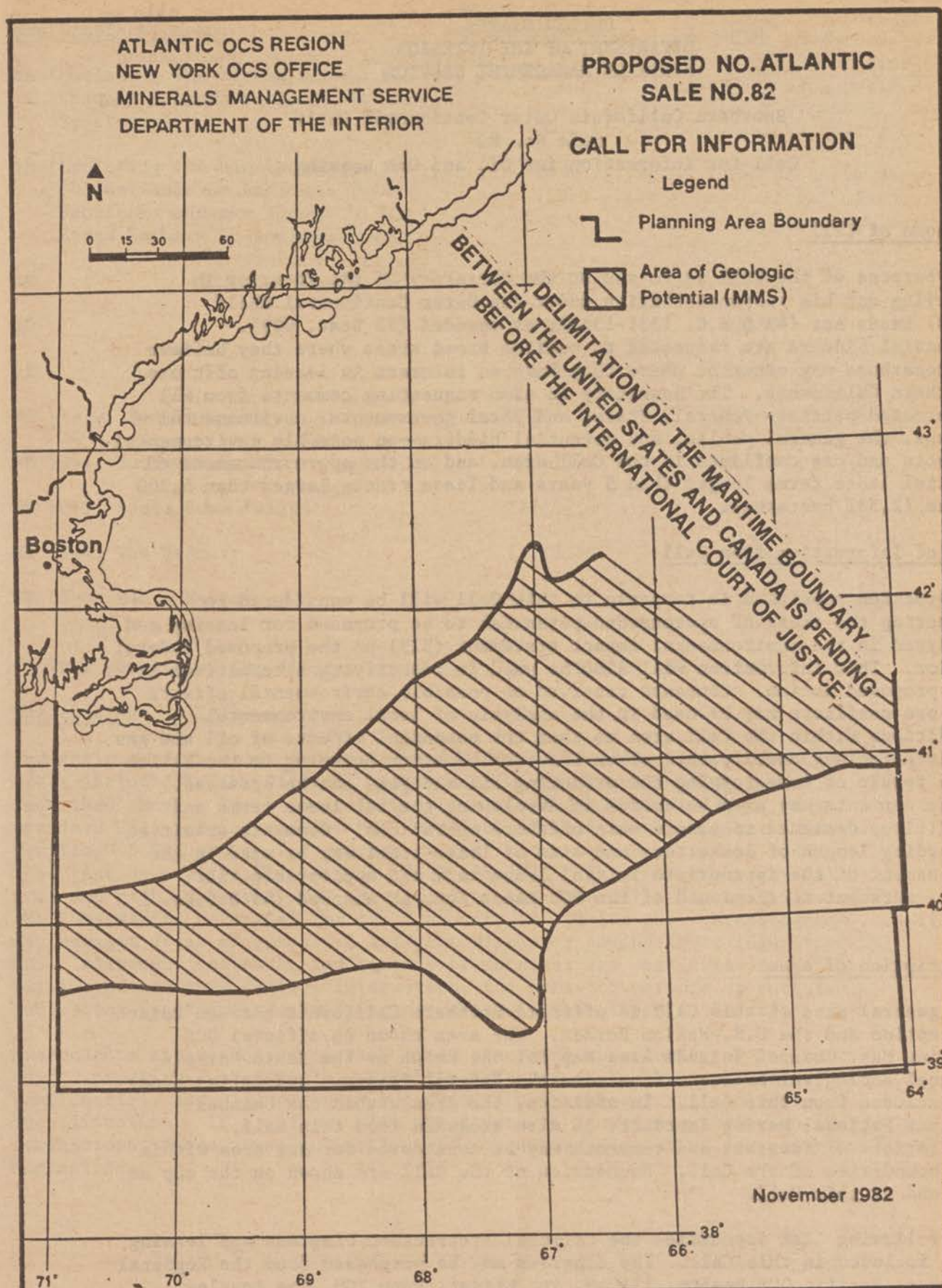
Date:

11/17/82


Director, Minerals Management Service
Harold Doley

Approved


Secretary of the Interior
James G. Watt



4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Southern California Outer Continental Shelf
Sale No. 80
Call for Information for Oil and Gas Leasing

Purpose of Call

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1343), as amended (92 Stat. 629). Potential bidders are requested to outline broad areas where they believe hydrocarbons may occur or where they have an interest in leasing offshore Southern California. The Secretary is also requesting comments from all interested parties--Federal, State, and local governments, environmental groups, the general public, and potential bidders--on possible environmental effects and use conflicts in the Call area, and on the appropriateness of initial lease terms longer than 5 years and lease tracts larger than 5,760 acres (2,331 hectares).

Use of Information from Call

Information submitted in response to this Call will be considered in selecting the areas of hydrocarbon potential to be proposed for leasing and analyzed in the environmental impact statement (EIS) as the proposed Federal action. This information will also be used in identifying alternatives to the proposed action. Comments received on possible environmental effects and use conflicts may be used in the analysis of local environmental conditions within the Call area so that the potential effects of oil and gas exploration and development, other than the benefits accruing to the Nation as a result of inventorying and producing oil and gas, can be assessed. These comments may also be useful in developing special lease terms and conditions designed to assure safe offshore operations. Comments submitted regarding length of lease term and size of lease tract may be used in the assessment of the appropriate initial lease term and appropriate tract size, pursuant to section 8 of the OCS Lands Act, as amended (43 U.S.C. 1337).

Description of Area

The general area of this Call is offshore Southern California between Point Conception and the U.S.-Mexico Border. The area shown on official OCS Leasing Map, Channel Islands Area Map No. 6B, known as the Santa Barbara Channel Ecological Preserve (includes the Federal Preserve and Buffer Zone) is excluded from this Call. In addition, the area within the Channel Islands National Marine Sanctuary is also excluded from this Call. Indications of interest and comments may be considered for any area within the boundaries of the Call. Boundaries of the Call are shown on the map at the end of this Call.

The following list identifies the Official Protraction Diagrams and leasing maps included in this Call. The diagrams may be purchased from the Regional Manager, Pacific OCS Region, 1340 W. 6th Street, Room 200, Los Angeles, CA 90017.

<u>Map/Protraction No.</u>	<u>Latest Approval or Revision Date</u>	<u>Cost</u>
6A (Excluding the blocks within the Channel Islands National Marine Sanctuary)	7/24/67	\$1.00
6B (Excluding the blocks within the Channel Islands National Marine Sanctuary and the blocks in the Santa Barbara Ecological Preserve)	7/24/67	\$1.00
6C	4/25/77	\$2.00
6D	8/8/66	\$1.00
6E	8/8/66	\$1.00
NI 11-10, San Clemente	9/27/77	\$2.00
NH 11-1, Bushnell Knoll	12/12/79	\$2.00
NI 10-9, Santa Rosa Island	12/12/79	\$2.00
NH 11-4, The Rampart	12/12/79	\$2.00
NI 10-6, Santa Maria*	3/26/76	\$2.00

* That portion of the diagram south of N.796. (Blocks 485 to 995)

Instructions on Call

Indications of interest from potential bidders should be limited to the areas included in the Official Protraction Diagrams and leasing maps described above. Those indicating interest are requested to do so on a standard Call for Information Map, available free from the Regional Manager, Pacific OCS Region, at the address stated in the second paragraph under "Description of Area," telephone (213) 688-7234. This map shows the Call area and highlights the area identified by the Minerals Management Service (MMS) as having potential for the discovery of oil and gas. Respondents may suggest areas of potential interest within or beyond those identified by MMS. Although individual indications of interest are considered to be privileged and confidential information, the names of persons or entities indicating interest or submitting comments will be of public record.

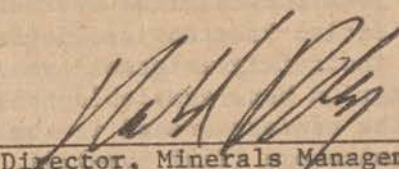
Respondents are requested to rank areas according to priority of interest (e.g., priority 1, 2, and 3). Priority information by company will be held confidential, and will be used as a criterion in determining the area identification. If a company does not choose to assign a priority to its nominations, those areas delineated will be assigned a medium, or priority 2, nomination.

In addition to indications of interest, we are seeking comments from all interested parties about particular geological, environmental, biological, archaeological, socioeconomic conditions or problems, or other information which might bear upon potential leasing and development of particular areas. Comments should preferably address broad areas, but may be restricted to designated blocks of particular concern.

Comments are also being sought from all interested parties on the appropriateness of initial lease periods longer than 5 years, and on the need, if any, for lease tracts larger than 5,760 acres (2,331 hectares). Such comments should describe why such modifications would be appropriate and identify where such modifications should be applied. Those making comments are requested to mark the area on the standard Call for Information Map discussed above.

Indications of interest and comments must be submitted no later than 30 days following publication of this document in the Federal Register in envelopes labeled "Indications of Interest for Leasing in the Outer Continental Shelf, Southern California" or "Comments on Leasing in the Outer Continental Shelf, Southern California," as appropriate. They must be submitted to the Regional Manager, Pacific OCS Region, at the address stated in the second paragraph under "Description of Area." A copy should be sent to the Chief, Offshore Resource Evaluation Division, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 643, Reston, Virginia 22091.

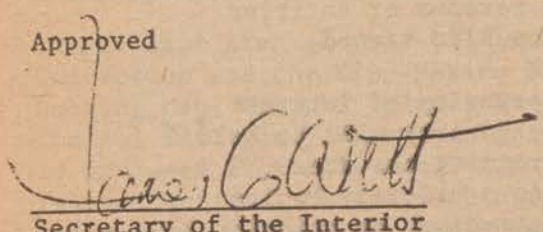
Final delineation of the area for competitive bidding will be made only at a later date after compliance with established departmental procedures, all requirements of the National Environmental Policy Act of 1969, and the Outer Continental Shelf Lands Act, as amended. A final Notice of Sale, detailing areas to be offered for competitive bidding, will be published in the Federal Register stating the conditions and terms for leasing and the place, date, and hour at which bids will be received and opened.



Director, Minerals Management Service
Harold Doley

Date: NOV 17 1982

Approved

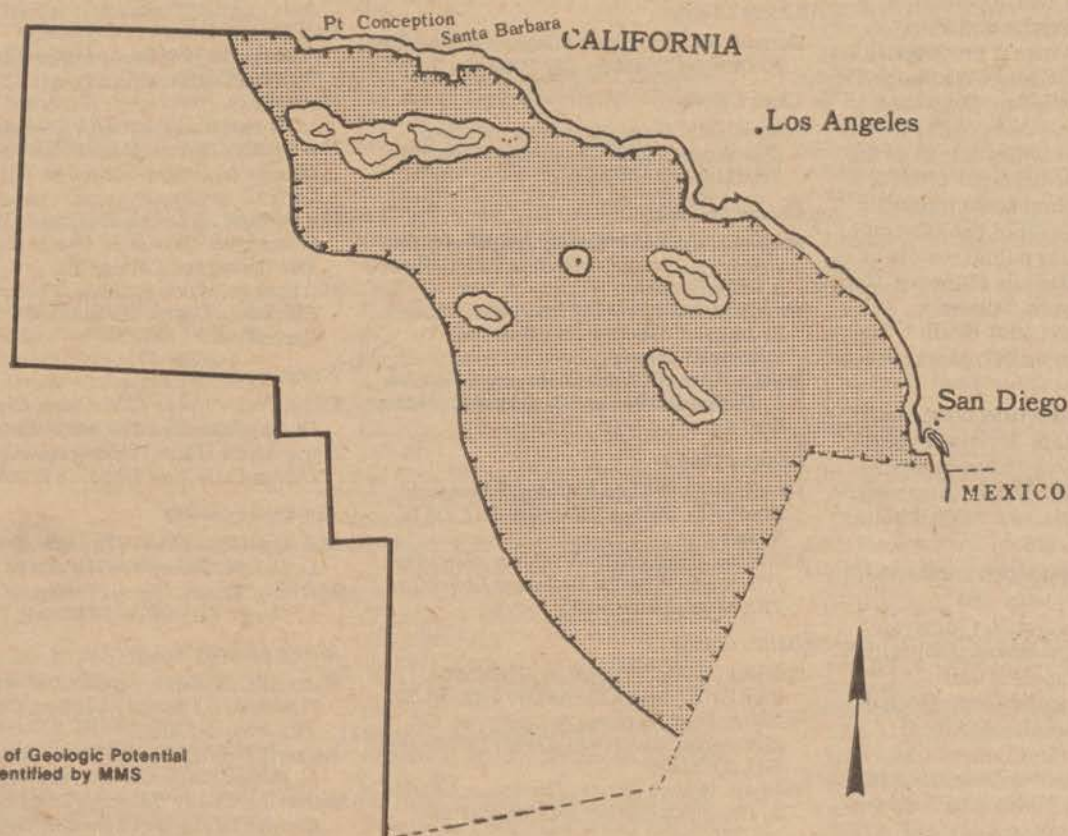


Secretary of the Interior
James G. Watt

U.S. DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE



CALL FOR INFORMATION
Sale No. 80 - Southern California



[FR Doc. 82-31987 Filed 11-22-82; 8:45 am]
BILLING CODE 4310-MR-C

Minerals Management Service**Oil and Gas and Sulphur, Operations in the Outer Continental Shelf**

AGENCY: Minerals Management Service, U.S. Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Getty Oil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 4493, Block 17, Chandeleur Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 15, 1982.

John L. Rankin.

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-31999 Filed 11-22-82; 8:45 am]

BILLING CODE 4310-31-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 November 12, 1982. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service,

U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by December 8, 1982.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS**Ashley County**

Portland, *Dean House* (Thompson, Charles L., Design Collection TR), Off US 165

Portland, *Pugh House* (Thompson, Charles L., Design Collection TR), Off US 165

Chicot County

Dermott, *Walker House* (Thompson, Charles L., Design Collection TR), 606 Main St.

Clark County

Arkadelphia, *Domestic Science Building* (Thompson, Charles L., Design Collection TR), 11th and Haddock

Columbia County

Magnolia, *Columbia County Jail* (Thompson, Charles L., Design Collection TR), Calhoun & Jefferson Sts.

Magnolia, *Jackson Hall* (Thompson, Charles L., Design Collection TR), Southern Arkansas University

Waldo, *Bank of Waldo* (Thompson, Charles L., Design Collection TR), Locust and Main Sts.

Conway County

Morrilton, *Coca-Cola Building* (Thompson, Charles L., Design Collection TR), 211 N. Moose

Morrilton, *First National Bank of Morrilton* (Thompson, Charles L., Design Collection TR), Main at Moose St.

Dallas County

Carthage, *Bank of Carthage* (Thompson, Charles L., Design Collection TR), AR 229

Fordyce, *Fordyce Home Accident Ins. Co.* (Thompson, Charles L., Design Collection TR), 300 Main

Fordyce, *Waters House* (Thompson, Charles L., Design Collection TR), 515 Oak St.

Desha County

Arkansas City, *Thane House* (Thompson, Charles L., Design Collection TR), Levy and First Sts.

Dumas, *Merchants & Farmers Bank* (Thompson, Charles L., Design Collection TR), Waterman and Main Sts.

Faulkner County

Conway, *Brown House* (Thompson, Charles L., Design Collection TR), 1804 Caldwell St.

Conway, *Farmers State Bank* (Thompson, Charles L., Design Collection TR), 1001 Front St.

Conway, *First Baptist Church* (Thompson, Charles L., Design Collection TR), Davis and Robinson Sts.

Conway, *Fraunthal House* (Thompson, Charles L., Design Collection TR), 631 Western

Conway, *Galloway Hall* (Thompson, Charles L., Design Collection TR), Hendrix College Campus

Conway, *Martin Hall* (Thompson, Charles L., Design Collection TR), Hendrix College Campus

Conway, *President's House* (Thompson, Charles L., Design Collection TR), Hendrix College Campus

Conway, *Smith, S. G., House* (Thompson, Charles L., Design Collection TR), 1837 Caldwell St.

Garland County

Hot Springs, *First Presbyterian Church* (Thompson, Charles L., Design Collection TR), 213 Whittington

Hot Springs, *Fordyce House* (Thompson, Charles L., Design Collection TR), 746 Park Ave.

Hot Springs, *Interstate Orphanage* (Thompson, Charles L., Design Collection TR), 339 Combs

Hot Springs, *Park Hotel* (Thompson, Charles L., Design Collection TR), 210 Fountain

Hot Springs, *Riviera Hotel* (Thompson, Charles L., Design Collection TR), 719 Central

Hot Springs, *St. Luke's Episcopal Church* (Thompson, Charles L., Design Collection TR), Spring and Cottage Sts.

Hot Springs, *Wade Building* (Thompson, Charles L., Design Collection TR), 231 Central

Hempstead County

Hope, *Foster House* (Thompson, Charles L., Design Collection TR), 303 N. Hervey St.

Hope, *McRae House* (Thompson, Charles L., Design Collection TR), 1113 E. 3rd St.

Hot Spring County

Malvern, *Clark House* (Thompson, Charles L., Design Collection TR), 1324 S. Main St.

Malvern, *Strauss House* (Thompson, Charles L., Design Collection TR), 528 E. Page St.

Independence County

Batesville, *St. Paul's Parish Church* (Thompson, Charles L., Design Collection TR), 5th and Main

Batesville, *Adler House* (Thompson, Charles L., Design Collection TR), 292 Boswell St.

Batesville, *Dondy Building* (Thompson, Charles L., Design Collection TR), 154 S. Third

Batesville, *Mitchell House* (Thompson, Charles L., Design Collection TR), 1138 Main St.

Jackson County

Newport, *First Presbyterian Church* (Thompson, Charles L., Design Collection TR), 4th and Main Sts.

Newport, *Gregg House* (Thompson, Charles L., Design Collection TR), 412 Pine St.

Newport, *Newport Junior & Senior High School* (Thompson, Charles L., Design Collection TR), Rammel Park

Jefferson County

New Gascony, *Gracie House* (Thompson, Charles L., Design Collection TR), Off AR 88

Pine Bluff, *Russell House* (Thompson, Charles L., Design Collection TR), 1617 S. Olive St.

Pine Bluff, *Austin House* (Thompson, Charles L., Design Collection TR), 704 W. 5th Ave.

Pine Bluff, *Caldwell Hall* (Thompson, Charles L., Design Collection TR), University Drive

Pine Bluff, Collier House (Thompson, Charles L., Design Collection TR), 1227 W. 5th St.
 Pine Bluff, Fox House (Thompson, Charles L., Design Collection TR), 1303 S. Olive St.
 Pine Bluff, Hospital and Benevolent Ass'n (Thompson, Charles L., Design Collection TR), 11th and Cherry

Pine Bluff, Howson House (Thompson, Charles L., Design Collection TR), 1700 S. Olive St.

Pine Bluff, Hudson House (Thompson, Charles L., Design Collection TR), 304 W. 15th St.

Pine Bluff, Johnson House (Thompson, Charles L., Design Collection TR), 315 Martin St.

Pine Bluff, Katzenstein House (Thompson, Charles L., Design Collection TR), 902 W. 5th St.

Pine Bluff, Puddephatt House (Thompson, Charles L., Design Collection TR), 1820 S. Olive St.

Pine Bluff, Temple House (Thompson, Charles L., Design Collection TR), 1702 S. Oak St.

Johnson County

Clarksville, Davis House (Thompson, Charles L., Design Collection TR), 212 Fulton St.

Clarksville, Dunlap House (Thompson, Charles L., Design Collection TR), 101 Grandview

Clarksville, McKennon House (Thompson, Charles L., Design Collection TR), 115 Grandview

Lee County

Marianna, McClintock House (Thompson, Charles L., Design Collection TR), 43 Magnolia

Lonoke County

Lonoke, Eagle House (Thompson, Charles L., Design Collection TR), 217 Ash St.

Lonoke, Shull House (Thompson, Charles L., Design Collection TR), 418 Park

Lonoke, Trimble House (Thompson, Charles L., Design Collection TR), 518 Center St.

Lonoke, Walls House (Thompson, Charles L., Design Collection TR), 406 Jefferson St.

Lonoke, Wheat House (Thompson, Charles L., Design Collection TR), 600 Center St.

Miller County

Texarkana, First Methodist Church (Thompson, Charles L., Design Collection TR), 400 E. 6th

Texarkana, Kittrell House (Thompson, Charles L., Design Collection TR), 1103 Hickory St.

Monroe County

Brinkley, Gazzola and Vaccaro Building (Thompson, Charles L., Design Collection TR), 131-133 W. Cypress

Brinkley, Lo Beele House (Thompson, Charles L., Design Collection TR), 312 New York Ave.

Clarendon, Merchants and Planters Bank (Thompson, Charles L., Design Collection TR), 214 Madison

Nevada County

Prescott, Bemis Florist Shop (Thompson, Charles L., Design Collection TR), 117 E. Second

Prescott, McRae, D. L., House (Thompson, Charles L., Design Collection TR), 424 E. Main St.

Prescott, McRae, T.C., House (Thompson, Charles L., Design Collection TR), 506 E. Elm St.

Phillips County

Helena, White House (Thompson, Charles L., Design Collection TR), 1015 Perry St.

Prairie County

Des Arc, Bethel House (Thompson, Charles L., Design Collection TR), Erwin and 2nd Sts.

Pulaski County

Little Rock, Al-Amin Temple (Thompson, Charles L., Design Collection TR), 2100 Main St.

Little Rock, Associated Reformed Presbyterian Church (Thompson, Charles L., Design Collection TR), 3323 W. 12th

Little Rock, BPOE Elks Club (Thompson, Charles L., Design Collection TR), 4th and Scott Sts.

Little Rock, Back House (Thompson, Charles L., Design Collection TR), 1523 Cumberland St.

Little Rock, Baer House (Thompson, Charles L., Design Collection TR), 1010 Rock St.

Little Rock, Beyerlein House (Thompson, Charles L., Design Collection TR), 412 W. 14th St.

Little Rock, Boone House (Thompson, Charles L., Design Collection TR), 4014 Lookout

Little Rock, Bush House (Thompson, Charles L., Design Collection TR), 1516 Ringo St.

Little Rock, Central Presbyterian Church (Thompson, Charles L., Design Collection TR), 1921 Arch

Little Rock, Cornish House (Thompson, Charles L., Design Collection TR), 1800 Arch St.

Little Rock, Croxson House (Thompson, Charles L., Design Collection TR), 1901 Gaines St.

Little Rock, Darragh House (Thompson, Charles L., Design Collection TR), 2412 Broadway

Little Rock, Dunaway House (Thompson, Charles L., Design Collection TR), 2022 Battery

Little Rock, England House (Thompson, Charles L., Design Collection TR), 2121 Arch St.

Little Rock, Farrell House (Thompson, Charles L., Design Collection TR), 2111 Louisiana

Little Rock, Farrell House (Thompson, Charles L., Design Collection TR), 2115 Louisiana

Little Rock, Farrell House (Thompson, Charles L., Design Collection TR), 2121 Louisiana

Little Rock, Fletcher House (Thompson, Charles L., Design Collection TR), 909 Cumberland St.

Little Rock, Florence Crittenton Home (Thompson, Charles L., Design Collection TR), 3600 W. 11th St.

Little Rock, Forrey-Smith Apartments (Thompson, Charles L., Design Collection TR), 10717 W. 4th St.

Little Rock, Forrey-Smith Apartments (Thompson, Charles L., Design Collection TR), 409 Ringo St.

Little Rock, Forrey-Smith Apartments (Thompson, Charles L., Design Collection TR), 1019 W. 4th St.

Little Rock, Frauenthal House (Thompson, Charles L., Design Collection TR), 2008 Arch St.

Little Rock, French-England House (Thompson, Charles L., Design Collection TR), 1700 Broadway

Little Rock, Hall House (Thompson, Charles L., Design Collection TR), 32 Edgehill

Little Rock, Hardy House (Thompson, Charles L., Design Collection TR), 2400 Broadway

Little Rock, Healey and Roth Mortuary Building (Thompson, Charles L., Design Collection TR), 815 Main

Little Rock, Hemmingway House (Thompson, Charles L., Design Collection TR), 1720 Arch St.

Little Rock, Johnson House (Thompson, Charles L., Design Collection TR), 514 E. 8th St.

Little Rock, Johnson House (Thompson, Charles L., Design Collection TR), 516 E. 8th St.

Little Rock, Johnson House (Thompson, Charles L., Design Collection TR), 518 E. 8th St.

Little Rock, Keith House (Thompson, Charles L., Design Collection TR), 2200 Broadway

Little Rock, Little Rock Boys Club (Thompson, Charles L., Design Collection TR),

Little Rock, 8th & Scott Sts.

Little Rock, Marshall House (Thompson, Charles L., Design Collection TR), 2009 Arch St.

Little Rock, McLean House (Thompson, Charles L., Design Collection TR), 470 Ridgeway

Little Rock, Mehaffey House (Thompson, Charles L., Design Collection TR), 2101 Louisiana

Little Rock, Mitchell House (Thompson, Charles L., Design Collection TR), 1415 Spring St.

Little Rock, Moore House (Thompson, Charles L., Design Collection TR), 20 Armistead

Little Rock, Mount Holly Mausoleum (Thompson, Charles L., Design Collection TR), 12th and Broadway

Little Rock, Nash House (Thompson, Charles L., Design Collection TR), 601 Rock St.

Little Rock, Nash House (Thompson, Charles L., Design Collection TR), 409 E. 6th St.

Little Rock, Reid House (Thompson, Charles L., Design Collection TR), 1425 Kavanaugh St.

Little Rock, Rimmel Apartments (Thompson, Charles L., Design Collection TR), 1704-1706 Spring St.

Little Rock, Rimmel Apartments (Thompson, Charles L., Design Collection TR), 1708-1710 Spring St.

Little Rock, Rimmel Apartments (Thompson, Charles L., Design Collection TR), 409-411 W. 17th St.

Little Rock, Rimmel Flats (Thompson, Charles L., Design Collection TR), 1700-1702 Spring St.

Little Rock, Retan House (Thompson, Charles L., Design Collection TR), 2510 Broadway
 Little Rock, Rogers House (Thompson, Charles L., Design Collection TR), 400 W. 18th St.

Little Rock, Roselawn Memorial Park Gatehouse (Thompson, Charles L., Design Collection TR), 2801 Asher

Little Rock, Saffers House (Thompson, Charles L., Design Collection TR), 2205 Arch St.

Little Rock, Sanders House (Thompson, Charles L., Design Collection TR), 2100 Gaines St.

Little Rock, Schaer House (Thompson, Charles L., Design Collection TR), 1862 Arch St.

Little Rock, Skillern House (Thompson, Charles L., Design Collection TR), 2522 Arch St.

Little Rock, Snyder House (Thompson, Charles L., Design Collection TR), 4004 S. Lookout

Little Rock, St. Edwards Church (Thompson, Charles L., Design Collection TR), 823 Sherman

Little Rock, Stewart House (Thompson, Charles L., Design Collection TR), 1406 Summit St.

Little Rock, Thurston House (Thompson, Charles L., Design Collection TR), 923 Cumberland St.

Little Rock, Turner House (Thompson, Charles L., Design Collection TR), 1701 Center St.

Little Rock, Vanetten House (Thompson, Charles L., Design Collection TR), 1012 Cumberland

Little Rock, Vaughan House (Thompson, Charles L., Design Collection TR), 2201 Broadway

Little Rock, Winfield Methodist Church (Thompson, Charles L., Design Collection TR), 1601 Louisiana

North Little Rock vicinity, Immaculate Heart of Mary Church (Thompson, Charles L., Design Collection TR), N. of North Little Rock off AR 365

North Little Rock, North Little Rock Post Office (Thompson, Charles L., Design Collection TR), 420 N. Main St.

Sebastian County

Ft. Smith, Christ The King Church (Thompson, Charles L., Design Collection TR), Greenwood Ave. at S. S St.

St. Francis County

Forrest City, Mann House (Thompson, Charles L., Design Collection TR), 422 Forest St.

Wheatly, Smith House (Thompson, Charles L., Design Collection TR), Memphis Ave.

Union County

El Dorado, SAU at El Dorado (Thompson, Charles L., Design Collection TR), Summit at Block Sts.

Washington County

Fayetteville, Carnell, Ella, Hall (Thompson, Charles L., Design Collection TR), Arkansas Ave. and Maple St.

White County

Searcy, Deener House (Thompson, Charles L., Design Collection TR), 310 E. Center Ave.

Searcy, Lightle House (Thompson, Charles L., Design Collection TR), 605 Race Ave.

Woodruff County

Augusta, Woodruff County Courthouse (Thompson, Charles L., Design Collection TR), 500 N. 3rd St.

CONNECTICUT

Fairfield County

Darien, Boston Post Road Historic District, 567-728 Boston Post Rd., 1-25 Brookside Rd., and 45-70 Old Kingshighway N.

Litchfield County

Bethlehem, Bethlehem Green Historic District, Parts of N. Main St., S. Main St., East St., West Rd., and Munger Lane

GEORGIA

Coffee County

Douglas, Union Banking Company Building, 102 Peterson Ave.

Wilkes County

Washington, Fitzpatrick Hotel, 18 W. Public Square

IOWA

Benton County

Vinton, Ray, Frank G., House & Carriage House, 912 First Ave.

Davis County

Bloomfield, Wilson, Asa, House, 207 S. Washington

Iowa County

Parnell vicinity, St. Michael's Church, Cemetery, Rectory and Ancient Order of Hibernians Hall, E of Parnell on F 52

Jefferson County

Fairfield, Henn Mansion (Ewing Hall), Maharishi International University Campus

Johnson County

Iowa City, Chicago, Rock Island and Pacific Railroad Passenger Station, 115 Wright St.

Iowa City, Englert-Pownall House, 1602 N. Dubuque St.

Marion County

Pella, Scholte, Dominie Henry P., House, 739 Washington St.

Muscatine County

Muscatine, Fuller, W. Joseph, House, 1001 Mulberry Ave.

Pottawattamie County

Hancock, Hancock Savings Bank, 311 Main St.

LOUISIANA

East Feliciana Parish

Clinton vicinity, Avondale Plantation Home, E of Clinton off LA 10

MASSACHUSETTS

Hampden County

Springfield, Apremont Triangle Historic District (Downtown Springfield MRA), Jct. Pearl, Hillman, Bridge, and Chestnut.

Springfield, Bangs Block (Downtown Springfield MRA), 1119 Main St.

Springfield, Baystate Corset Block (Downtown Springfield MRA), 395-405 Dwight St. and 99 Taylor St.

Springfield, Bicycle Club Building (Downtown Springfield MRA), 264-270 Worthington St.

Springfield, Burbach Block (Downtown Springfield MRA), 1113-1115 Main St.

Springfield, Carlton House Block (Downtown Springfield MRA), 9-13 Hampden St.

Springfield, Chapin National Bank Building (Downtown Springfield MRA), 1675-1677 Main St.

Springfield, Colonial Block (Downtown Springfield MRA), 1139-55 Main St.

Springfield, Cutler and Porter Block (Downtown Springfield MRA), 109 Lyman St.

Springfield, Downtown Springfield Railroad District (Downtown Springfield MRA), Roughly bounded by Lyman, Main, Murray, and Spring Sts.

Springfield, Driscoll's Block (Downtown Springfield MRA), 211-13 Worthington St.

Springfield, Fitzgerald's Stearns Square Block (Downtown Springfield MRA), 300-308 Bridge St.

Springfield, French Congregational Church (Downtown Springfield MRA), 33-37 Bliss St.

Springfield, Fuller Block (Downtown Springfield MRA), 1531-1545 Main St.

Springfield, Guenther & Handel's Block (Downtown Springfield MRA), 7-9 Stockbridge St.

Springfield, Hampden Savings Bank (Downtown Springfield MRA), 1665 Main St.

Springfield, Haynes Hotel Waters Building (Downtown Springfield MRA), 1386-1402 Main St.

Springfield, Henking Hotel and Cafe (Downtown Springfield MRA), 15-21 Lyman St.

Springfield, Hibernian Block (Downtown Springfield MRA), 345-349 Worthington St.

Springfield, Kellogg's Envelope Block (Downtown Springfield MRA), 338-344 Worthington St.

Springfield, McIntosh Building (Downtown Springfield MRA), 158-64 Chestnut St.

Springfield, McKinney Building (Downtown Springfield MRA), 1121-27 Main St.

Springfield, Milton-Bradley Company (Downtown Springfield MRA), Park, Cross, and Willow Sts.

Springfield, Morgan Block (Downtown Springfield MRA), 313-333 Bridge St.

Springfield, Old Post Office (Downtown Springfield MRA), 442 Dwight St.

Springfield, Olmsted/Hixon/Albion Block (Downtown Springfield MRA), 1645-1659 Main St.

Springfield, Patton Building (Downtown Springfield MRA), 15-19 Hampden St.

Springfield, *Patton and Loomis Block* (Downtown Springfield MRA), 1628-40 Main St.

Springfield, *Produce Exchange Building* (Downtown Springfield MRA), 194-206 Chestnut and 115-125 Lyman St.

Springfield, *Radding Building* (Downtown Springfield MRA), 143-147 State St.

Springfield, *Smith Carriage Company District* (Downtown Springfield MRA), Bounded by Main, Peabody, Willow, and Park Sts. [both sides].

Springfield, *Smith's Building* (Downtown Springfield MRA), 201-207 Worthington St.

Springfield, *Springfield District Court* (Downtown Springfield MRA), 1800 E. Columbus Ave.

Springfield, *Springfield Fire & Marine Insurance Co.* (Downtown Springfield MRA), 195 State St.

Springfield, *Springfield Steam Power Company Block* (Downtown Springfield MRA), 51-59 Taylor St.

Springfield, *St. Joseph's Church* (Downtown Springfield MRA), Howard St. and E. Columbus Ave.

Springfield, *Stacy Building* (Downtown Springfield MRA), 41-43 Taylor St.

Springfield, *Stearns Building* (Downtown Springfield MRA), 289-309 Bridge St.

Springfield, *Trinity Block* (Downtown Springfield MRA), 266-84 Bridge St.

Springfield, *United Electric Co. Building* (Downtown Springfield MRA), 73 State St.

Springfield, *WCA Boarding House* (Downtown Springfield MRA), 19 Bliss St.

Springfield, *Walker Building* (Downtown Springfield MRA), 1228-1244 Main St.

Springfield, *Wells Block* (Downtown Springfield MRA), 250-264 Worthington St.

Springfield, *Whitcomb Warehouse* (Downtown Springfield MRA), 32-34 Hampden St.

Springfield, *Willy's Overland Block* (Downtown Springfield MRA), 151-157 Chestnut and 10-20 Winter Sts.

Springfield, *Worthy Hotel* (Downtown Springfield MRA), 1571 Main St.

MICHIGAN

Monroe County

Monroe, *River Raisin Battlefield Site* (20MR227), Bounded by River Raisin, Detroit Ave., Mason Run, and S at Noble Ave.

Wayne County

Dearborn, *Dearborn Inn and Colonial Homes*, 20301 Oakwood Blvd.

Detroit, *Cass Avenue Methodist Episcopal Church*, 3901 Cass Ave.

NEW YORK

New York County

New York, *Chelsea Historic District* (Boundary Increase), Roughly W. 22 to W. 23 STs. and 8th to 10th Aves.

OKLAHOMA

Delaware County

Grove, *Corey House/Hotel*, N. Main at 2nd St.

Rogers County

Chelsea, *Hogue House*, 1001 S. Olive St.

Oologah, *Oologah Pump*, Maple and Cooweescoowee Sts.

Tulsa County

Tulsa, *St. John Vianney Training School for Girls*, 4001 E. 101st St.

PENNSYLVANIA

Berks County

Birdsboro, *St. Michael's Protestant Episcopal Church, Parish House and Rectory*, Mill and Church Sts.

TENNESSEE

Shelby County

Memphis, *Tennessee Trust Building*, 81 Madison Ave.

UTAH

San Juan County

Bluff, *Scorup, John Albert, House*, UT 47

VERMONT

Chittenden County

Burlington, *Champlain School*, 809 Pine St.

Burlington, *Wells-Jackson Carriage House Complex*, 192-194 Jackson Court and 370 Maple St.

Charlotte, *Tavern on Mutton Hill*, Church Hill Rd.

Windsor County

Bethel, *Locust Creek House Complex*, VT 12
[FR Doc. 82-32051 Filed 11-22-82; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Decision-Notice; Finance Applications

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the *Federal Register*. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral

hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of \$10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: November 17, 1982.

By the Commission, Heber P. Hardy,
Director, Office of Proceedings.
Agatha L. Mergenovich,
Secretary.

No. MC-F-14979, filed October 19, 1982. LODI TRANSPORT, INC. (Lodi) (656 Wooster St., Lodi, OH 44254)—Purchase (Portion)—SIGMA-4 EXPRESS, INC. (Sigma-4) (1006 East 38th St., Erie, PA 16540).

Lodi seeks authority to purchase MC-125023 (Sub 86) from Sigma-4. Condor Carrier, Inc. (Condor), a carrier operating pursuant to authority under Docket Nos. MC-138054 and MC-144513, and which controls Lodi through stock ownership, and Hamilton W. Lord, Jr. and Betty Jean Lord, who control Condor through stock ownership, seek to acquire control of Sigma-4's Sub 86 operating rights through the transaction. The Sub 86 certificate authorizes the transportation, by irregular routes, of *general commodities* (except household goods as defined by the Commission and Classes A and B explosives), between points in the U.S., restricted to traffic originating at or destined to the facilities of Hammermill Paper Company, Inc. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501.

Note.—No TA application has been filed.

MC-F-14985, filed October 27, 1982. MILAN EXPRESS CO., INC. (MEC) (P.O. Box 699, Milan, TN 38358)—Control and Merger—MILAN EXPRESS, INC. (ME); LEXINGTON-PARIS MOTOR FREIGHT, INC. (L-PMF); and THORNE TRUCK LINES, INC. (Thorne) (P.O. Box 699, Milan, TN 38358). Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. MEC seeks to acquire all of the interstate operating authority of ME, L-PMF, and Thorne through merger. The parties state that transferors are now commonly controlled by Tommy Ross, who controls MEC and joins in this application seeking to control MEC through the transaction. ME is authorized to conduct operations pursuant to MC-134768 and subs thereunder, Thorne conducts operations pursuant to MC-87951 and subs thereunder. No TA application has been filed.

MC-F-14972, filed October 8, 1982, MIDWEST EMERY FREIGHT SYSTEM, INC. (Midwest) (5501 West 79th Street, Burbank, IL 60459)—PURCHASE (PORTION)—BELFORD TRUCKING CO., INC. (Belford) (1759 S.W. 12th Street, Ocala, FL 32678). Midwest seeks authority to purchase a portion of the interstate rights of Belford. Midwest, and in turn, Rentar Industries, Inc., and in turn, Ratner Enterprises, Inc., and, in

turn Milton D. Ratner, seek authority to acquire control of said rights through the transaction. Belford is authorized to operate as a motor common carrier in Certificate No. MC-105813 (Sub-No. 180) which authorizes the transportation of general commodities (except household goods and classes A and B explosives) between points in Columbiana County, OH, on the one hand, and on the other, points in NC, SC, GA and FL. Midwest is authorized to operate as a motor common carrier in Certificate No. MC-114019 and subnumbers thereunder. Midwest is affiliated with (1) Little Audrey's Transportation Co., Inc., a motor common carrier operating under MC-108053; (2) High Cube Contract Carrier Corp., a contract carrier operating under MC-148647; (3) Red Arrow Heavy Hauling, Inc., a motor common carrier operating under MC-102162, and (4) Red Arrow Freight Lines, Inc., a motor common carrier operating under MC-2226. Representative: Arnold L. Burke, 180 N. LaSalle St., Room 3520, Chicago, IL 60601. Condition: Rentar Industries, Inc., controls applicant, and Rentar Enterprises, Inc., controls Rentar Industries, Inc. These parties are required by 49 U.S.C. 11343, to obtain Commission approval for control of the involved operating authority, as did Milton D. Ratner. As a condition to our approval, these parties each must file a request for joinder in the application.

[FR Doc. 82-32007 Filed 11-22-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by 49 CFR 1160.1-1160.23 of the Commission's Rules of Practice. These rules were established in the *Federal Register* of December 31, 1980, at 45 FR 86771 and redesignated at 47 FR 49583, November 1, 1982. 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 1160.40-1160.49. 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.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries to Team 3, (202) 275-5223.

Vol. No. OP3-19

Decided: November 15, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 14955 (Sub-2), filed November 1, 1982. Applicant: GEIGER TRANSFER & STORAGE COMPANY, INC., 401 NW., 2nd St., P.O. Box 3936, Evansville, IN 47737. Representative: Lawrence D. Miller (same address as applicant), (812)

425-9027. Transporting *such commodities* as are dealt in or used by department stores, between points in IL, IN, KY, and OH.

MC 16334 (Sub-26), filed October 29, 1982. Applicant: DEBRICK TRUCK LINE COMPANY, P.O. Box 421, Paola, KS 66071. Representative: John T. Pruitt, 9832 Connell, Overland Park, KS 66212, (913) 888-3386. Transporting *metal products*, between points in AL, CA, CO, GA, IL, IN, MA, MD, MI, MO, NC, NY, OH, PA, TX, UT, VA and WA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 107515 (Sub-1426), filed November 1, 1982. Applicant: RTC TRANSPORTATION, INC., P.O. Box 308, Forest Park, GA 30050. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., NE., Suite 520, Atlanta, GA 30326, (404) 262-7855. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Lykes Pasco Corp. of Dade City, FL.

MC 121814 (Sub-2), filed November 1, 1982. Applicant: TURNPIKE TRANSIT, INC., 2943 N. Toledo, Tulsa, OK 74115. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154 (405) 424-3301. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in OK, on the one hand, and, on the other, points in AR, CO, KS, LA, NM, OK, and TX.

MC 136234 (Sub-7), filed November 1, 1982. Applicant: BURKHART ENTERPRISES, INC., Box 6131, Asbury Rd., Knoxville, TN 37914. Representative: Ray T. Burkhart, Jr. (same address as applicant) (615) 523-6157. Transporting *commodities in bulk and those commodities which because of their size or weight require the use of special handling or equipment*, between points in TX, OK and KS, on the one hand, and, on the other, those points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the International boundary line between the U.S. and Canada (except NY, CT, MA, VT, NH and ME).

MC 138175 (Sub-2), filed October 29, 1982. Applicant: JOSEPH E. MCCARTNEY, 22 Pier Rd., Parrsboro, Nova Scotia, Canada B0M1S0. Representative: Joseph E. McCartney (same address as applicant) (902) 254-2043. Transporting *food and related*

products, between ports of entry on the International Boundary line between the U.S. and Canada, on the one hand, and, on the other, points in AL, AR, CA, CT, CO, DE, FL, GA, IA, IL, IN, KS, KY, LA, ME, MD, MA, MI, MS, MN, MO, NH, NY, NJ, NV, NC, OH, PA, RI, SC, TN, VT, VA, WI, and WV, under continuing contract(s) with M. W. Graves & Company, Ltd. and Oxford Foods, Ltd., of Nova Scotia, Canada.

Note.—This decision has been made in accordance with the statutory provisions of the Bus Regulatory Reform Act of 1982 with great weight being given to the mandates set forth in the National Transportation Policy.

MC 138505 (Sub-21), filed November 1, 1982. Applicant: METROPOLITAN CONTRACT SERVICES, INC., 6000 So. Ulster, Suite 206, Englewood, CO 80111. Representative: Joseph E. Rebman, 314 N. Broadway, Suite 1300, St. Louis, MO 63102 (314) 421-0845. 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 a continuing contract(s) with Central Hardware Co., of Bridgeton, MO.

MC 146885 (Sub-8), filed October 29, 1982. Applicant: BEN CAPOBIANCO TRUCKING, INC., P.O. Box 43, Fairfield, OH 45014. Representative: Jerry B. Sellman, 50 W. Broad St., Columbus, OH 43215 (614) 464-4103. Transporting *machinery*, between points in Shelby, Seneca, Auglaize, and Adams Counties, OH, Rush County, IN, Morgan County, AL, and Cleveland County, NC, on the one hand, and, on the other, points in AR, AZ, CA, CO, NM, OR, TX, and UT.

MC 146885 (Sub-9), filed November 1, 1982. Applicant: BEN CAPOBIANCO TRUCKING, INC., P.O. Box 43, Fairfield, OH 45014. Representative: Jerry B. Sellman, 50 West Broad Street, Columbus, OH 43215 (614) 464-4103. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of glass containers, (1) between points in OH, IN, and those in PA on and west of U.S. Hwy 219, on the one hand, and, on the other, points in the U.S., and (2) between points in TX, IN, OH, CA, CT, GA, MS, and those in PA on and west of U.S. Hwy 219.

MC 147974 (Sub-3), filed October 26, 1982. Applicant: NOEL TERRY BORDEN, d.b.a. BORDEN AND SON'S CRANE AND RIGGING, 1112 E. Service Rd., Ceres, CA 95307. Representative: Noel Terry Borden (same address as applicant) (209) 537-5663. Transporting *molded fiber glass pools*, between points in Santa Clara and Alameda County, CA, on the one hand, and, on the other, Portland, OR, and points in San Benito, Mendocino, Lake, San

Joaquin, Yolo, Sacramento, Sutter, Placer and Riverside County, CA, Marion, Polk, and Jackson County, OR, and King, Snohomish, and Spokane County, WA.

MC 151915 (Sub-3), filed November 1, 1982. Applicant: KELWORTH TRUCKING COMPANY, INC., Hwy 59 South, Hodgen, OK 74939. Representative: Don A. Smith, P.O. Box 43, Fort Smith, AR 72902 (501) 782-1001. Transporting *clay, concrete, glass or stone products*, between (1) points in AR, KS, LA, MS, MO, OK, and TX, on the one hand, and, on the other, points in AL, GA, and TN, and (2) points in AL, GA, and TN.

MC 152365 (Sub-3), filed October 29, 1982. Applicant: PETROLEUM PUMP & TRANSPORT SERVICE, INC., P.O. Box 3803, Odessa, TX 79763. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112 (817) 457-0804. Transporting *Mercur commodities*, between points in NM, OK and TX.

MC 159815, filed November 1, 1982. Applicant: LAUREL PHILLIPS, d.b.a. L. PHILLIPS TRUCKING, 11570 Ponderosa Dr., Fontana, CA 92335. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633 (714) 738-3889. Transporting *paper and paper products*, between points in CA, AZ, OR, WA, MT, ID, NV, UT, CO, NM, TX, OK and WY.

MC 160774 (Sub-3), filed November 1, 1982. Applicant: TRANSCO SERVICE, INC., P.O. Box 20133, Phoenix, AZ 85036. Representative: David Robinson, 2228 W. Northern Ave., Suite B201, Phoenix, AZ 85021 (602) 864-0999. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except HI).

MC 164375, filed October 21, 1982. Applicant: C D L TRANSPORT, INC., 8 So. River Rd., Bedford, NH 03102. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, D.C. 20036 (202) 785-0024. 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 LaFleur's Trucking Service, Inc. of Bedford, NH.

MC 164464, filed October 27, 1982. Applicant: JAGTRUX, INC., Box 111-A, R.D. 4, Elizabethtown, PA 17022. Representative: Ralph A. Germak, Box 249, McAlisterville, PA 17049 (717) 463-3686. Transporting *wood products, insulating materials, and building materials*, between points in DE, MD, NJ, NY, NC, OH, PA, VA, WV, and DC.

MC 164475, filed October 29, 1982. Applicant: DUANE EAKIN TRUCKING, INC., 1740 E. Kensington Ave., Salt Lake City, UT 84108. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Ave., Portland, OR 97210 (503) 226-3755. Transporting (1) *livestock, stable supplies and equipment* used in the care and exhibition of livestock, *mascots, personal effects* of attendants, trainers and exhibitors, and (2) *farm products*, between points in OR, WA, CA, ID, AZ, NM, IL, OK, TX and KY.

MC 164485, filed October 29, 1982. Applicant: DONALD FORCUM AND HENRY M. STANLEY, JR., A PARTNERSHIP, d.b.a. OHIO AUTO DELIVERY, 3905 Jackson Pike, P.O. Box 220, Grove City, OH 43123. Representative: James R. Stiverson, 1396 W. Fifth Ave., P.O. Box 12241, Columbus, OH 43212 (614) 481-8821. Transporting *motor vehicles*, between points in IN, KY, MI, NY, OH, PA, and WV, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX.

Vol. No. OP-21

Decided: November 15, 1982.

By the Commission, Review Board No. 2, members Carleton, Williams, and Ewing.

MC 66724 (Sub-5), filed November 2, 1982. Applicant: FRANCOIS TRUCKING, INC., Route 4, Box 58, Centralia, IL 62801. Representative: Joseph E. Rebman, 314 N. Broadway, Suite 1300, St. Louis, MO 63102 (314) 421-0845. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between St. Louis, MO and points in IL.

MC 67234 (Sub-64), filed November 2, 1982. Applicant: UNITED VAN LINES, INC., One United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105 (314) 727-0777. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (including AK and HI), under continuing contract(s) with American Airlines, Inc., of Dallas, TX.

MC 67234 (Sub-65), filed November 3, 1982. Applicant: UNITED VAN LINES, INC., One United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105 (314) 277-0777. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (including AK and HI), under continuing contract(s) with Rockwell International, of Pittsburgh, PA.

MC 77584 (Sub-1), filed November 2, 1982. Applicant: GRAY VAN EXPRESS, INC., 44 Strong St., P.O. Box 1106, Pittsfield, MA 01202. Representative: Joseph B. Carr, Jr., 41 State St., Albany, NY 12207 (518) 462-7481. Transporting *General commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Albany, Schenectady, Rensselaer and Columbia Counties, NY, on the one hand, and, on the other, points in Berkshire, Hampden and Hampshire Counties, MA.

MC 146435 (Sub-7), filed November 2, 1982. Applicant: SMITH TRUCK BROKERAGE, INC., P.O. Box 974, Willmar, MN 56201. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440 (612) 542-1121. Transporting *food and related products*, between points in the U.S., (except AK and HI), under continuing contract(s) with Borden Confectionary Products of Chicago, IL and Frankford Candy and Chocolate Co., Inc. of Philadelphia, PA.

MC 149094 (Sub-4), filed November 2, 1982. Applicant: JAMES PRINCL, dba. JAMES PRINCL TRUCKING, 1641 Carole Lane, Green Bay, WI 54303. Representative: Richard A. Westley, 4506 Regent St., Suite 100, P.O. Box 5086, Madison, WI 53705-0086 (608) 238-3119. Transporting *petroleum, natural gas and their products*, between Chicago, IL, on the one hand, and, on the other, points in WI.

MC 154735 (Sub-2), filed November 2, 1982. Applicant: JAKE'S CRANE & RIGGING, INC., 6109 S. Industrial Road, Las Vegas, NV 89118. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701. (702) 882-5649. Transporting *mining and construction materials, equipment and supplies, machinery and supplies, pipe, and Mercer Commodities*, between points in WA, OR, NM, CO, OK, TX, MT, WY, ID, NE, KS, ID, MO, MI, SD, NC, MN, IN, PA, WI, NC and SC.

MC 161254 (Sub-1), filed November 3, 1982. Applicant: EMMETT VIRE, 24 150th S.W., Lynnwood, WA 98036. Representative: Jim Pitzer, 15 So. Grady Way Suite 321, Renton, WA 98055 (206) 235-1111. Transporting *lumber and wood products, metal products, and machinery*, between points in WA, OR, CA, MT, ID, NV, UT, AZ, NM, CO, WY and TX.

MC 164505, filed November 1, 1982. Applicant: TIGER TRANSIT, INC., 6th and Delaware, P.O. Box 2361, Bartlesville, OK 74003. Representative: Thomas F. Sedberry, 2600 Austin Nat'l Bank Tower, Austin, TX 78701. Transporting *motor vehicles*, between points in the U.S. (except AK and HI),

under continuing contract(s) with Phillips Petroleum Corporation, or Bartlesville, OK.

MC 164514, filed October 29, 1982. Applicant: T-LINES, INC., P.O. Box 4101, Youngstown, OH 44515. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202 (505) 589-5400. Transporting (A) (1) *shipment 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 (2) 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, and (B) *metal products*, between points in OH, PA, NJ, WV, VA, MI, IL, NY, OK, TX, KY, CT, IN, and MD, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 164515, filed November 1, 1982. Applicant: FRANK HAHN & CO., INC., 59-46 56 Rd., Maspeth, NY 11378. Representative: Walter Hildebrandt, 1 Quail Run, S. Burlington, VT 05401 (802) 862-2393. Transporting *food and related products*, between points in NJ, NY, and VT, under continuing contract(s) with Universal Foods Corporation, of Milwaukee, WI.

MC 164525, filed November 2, 1982. Applicant: CLEARANCE SUND, d.b.a. B & C TRUCKING, P.O. Box 973, Minot, ND 58702. Representative: Clearance Sund (same address as applicant) (701) 838-6984. Transporting *chemicals and related products*, between points in CA, CO, GA, IL, MN, MO, MT, ND, OH, UT, and WY.

MC 164534, filed November 3, 1982. Applicant: TEXAS EXPRESS, INC., 14325 Gillis Rd., Dallas, TX 75234. Representative: Paul D. Angenend, P.O. Box 2207, 1806 Rio Grande, Austin, TX 78768 (512) 476-6391. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in Dallas county, TX, on the one hand, and, on the other, points in AR, LA, OK, NM, and TX.

Vol. No. OP-22

Decided: November 16, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 14215 (Sub-100), filed November 4, 1982. Applicant: SMITH TRUCK SERVICE, INC., 1118 Commercial, Mingo Junction, OH 43938. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215 (614) 228-1541. Transporting *carbon products*, between those points

in the U.S. in and east of MN, IA, MO, AR and TX.

MC 15735 (Sub-61), filed November 4, 1982. Applicant: ALLIED VAN LINES, INC., P.O. Box 4403, Chicago, IL 60680. Representative: Richard V. Merrill (same address as applicant) (312) 681-8378. Transporting *general commodities* (except commodities in bulk and classes A and B explosives), between points in the U.S. (except AK and HI), under continuing contract(s) with (1) Colt Industries, Inc., of Pittsburgh, PA, (2) Garlock, Inc., of Longview, TX, (3) F. D. Farnam Division, of Necedah, WI, (4) Manasco, Inc., of Burbank, CA, and (5) Colt Industries Credit Corp., of New York, NY.

MC 123765 (Sub-18), filed November 4, 1982. Applicant: BARRY TRANSFER & STORAGE CO., INC., 120 East National Ave., Milwaukee, WI 53204. Representative: William P. Dineen, 710 North Plankinton Ave., Milwaukee, WI 53203 (414) 273-7410. Transporting *such commodities* as are dealt in by department stores, between points in the U.S. (except AK and HI), under continuing contract(s) with department store businesses.

MC 124905 (Sub-11), filed November 4, 1982. Applicant: GARY W. GRAY TRUCKING, INC., P.O. Box 48, Delaware, NJ 07823. Representative: Raymond Talipski, 121 S. Main St., Taylor, PA 18517 (717) 344-8030. Transporting *coal and coal products*, between points in Luzerne, Schuylkill, Northumberland, Clarion, Centre, Clearfield, Jefferson, Cambria, Indiana, Armstrong and Butler Counties, PA, on the one hand, and, on the other, points in RI, MA, CT, ME, NH, NY, NJ and VT.

MC 147665 (Sub-8), filed November 4, 1982. Applicant: BASSETT FURNITURE INDUSTRIES OF NORTH CAROLINA, INC., d.b.a. BASSETT TRUCKING COMPANY, P.O. Box 47, Newton, NC 28658. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Bldg., Charlotte, NC 28204 (704) 372-6730. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Carrier Freight Lines, Inc., of Hickory, NC.

MC 148064 (Sub-2), filed November 3, 1982. Applicant: H. T. TRUCKING, INC., Rt. 2, Zimmerman, MN 55398. Representative: John B. Van de North, Jr., 2200 First National Bank Bldg., St. Paul, MN 55101 (612) 291-1215. 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 Customs Products of Litchfield, Inc. of Litchfield, MN, Fabridyne, Inc. and Defiance Wood Stoves, Inc. both of Litchfield, MN.

MC 155435 (Sub-3), filed November 11, 1982. Applicant: STILES TRUCK LINE, INC., 1901 Jasmine St., Pasadena, TX 77503. Representative: C. W. Ferebee, 3910 FM 1960 West, Suite 106, Houston, TX 77068 (713) 537-8156. Transporting *building materials*, between points in AL, AR, GA, LA, MS, OK, and TX.

MC 157214 (Sub-1), filed November 4, 1982. Applicant: AMI FOODS, INC., P.O. Drawer "E", Preble Road, Preble, NY 31341. Representative: Michael A. Wargula, 128 Sherburn Drive, Hamburg, NY 14075 (716) 648-0481. Transporting *food and related products*, between points in Essex County, NJ, Albany County, NY, New Castle County, DE, and Baltimore, MD, on the one hand, and, on the other, points in NY, MA, NH, VT, CT, ME, RI, and PA.

MC 162574, filed November 4, 1982. Applicant: INTERNATIONAL INVESTMENTS CORP., d.b.a. UNIVERSAL TRUCKING, Rt. 1, Argonne, WI 54511. Representative: Richard A. Westley, 4506 Regent St., Suite 100, P. O. Box 5086, Madison, WI 53705-0086, (608) 238-3119. Transporting *lumber and wood products and building materials*, between points in the U.S. (except AK and HI), under continuing contract(s) with North Star Forest Materials, Inc., of South St. Paul, MN.

MC 164554, filed November 2, 1982. Applicant: D'ANJOU TRANSPORT, INC., 373 Temiscouata, Riviere-du-Loup, Quebec, Canada G5R 2Y9. Representative: John C. Lightbody, 30 Exchange St., Portland, ME 04101, (207) 773-5651. Transporting *pulp, paper and related products*, between ports of entry on the International Boundary line between the U.S. and Canada at Madawaska, ME, on the one hand, and, on the other, points in Aroostook County, ME, under continuing contract(s) with Frazer Paper Ltd. of Madawaska, ME.

Note.— This decision has been made in accordance with the statutory provisions of the Bus Regulatory Reform Act of 1982 with great weight being given to the mandates set forth in the National Transportation Policy.

MC 164564, filed November 4, 1982. Applicant: CENTRAL STATES NON-STOCK CO-OPERATIVE ASSOCIATION, 1745 N. Airport Rd., P.O. Drawer V, Fremont, NE 68025. Representative: Tom Ladehoff (same address as applicant), (402) 721-2898. Transporting *fertilizer*, between points in Eddy County, NM, on the one hand, and, on the other, points in IA, NE, and SD.

MC 164574, filed November 4, 1982. Applicant: ZEPHYR TRANSPORT, INC., P.O. Box 1823, Waterloo, IA 50704. Representative: Carl L. Steiner, 135 So. LaSalle 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 the U.S. (except AK and HI).

MC 164565, filed November 4, 1982. Applicant: GREENWELL TRUCKING CORP., 619 Scott Street, Kansas City, KS 66105. Representative: John T. Pruitt, 9832 Connell, Overland Park, KS 66212, (913) 888-3386. Transporting *farm products, chemicals and related products, food and related products, petroleum and petroleum products, vehicles parts and accessories*, between points in the U.S. (except, AK and HI).

For the following, please direct status inquiries to team 1 (202) 275-7992.

Volume No. OP1-204

Decided: November 16, 1982

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 75471 (Sub-9), Filed November 2, 1982. Applicant: ELSTON RICHARDS STORAGE CO., 3739 Patterson SE., Grand Rapids, MI 49508. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503, (616) 459-61621. 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 111201 (Sub-56), filed November 4, 1982. Applicant: J. N. ZELLNER & SON TRANSFER CO., P.O. Box Z, Atlanta, GA 30364-0390. Representative: Archie B. Culbreth, Suite 570, 2200 Century Parkway, Atlanta, GA 30345, (404) 321-1765. Transporting *containers and container closures, pulp, paper and related products, chemicals and related products, plastic and plastic products, starch, paper waste or scrap, machinery, reels, lumber and wood products, and metal buildings and parts*, between those points in the U.S. in and east of MN, IA, MO, OK, and TX.

MC 123091 (Sub-39), filed November 4, 1982. Applicant: NICK STRIMBU, INC., 3500 Parkway Road, Brookfield, OH 44403. Representative: Neal A. Jackson, 1156 15th St., N.W., Washington, D.C. 20005, (202) 223-6680. Transporting *metal products, building and construction materials, clay, concrete, glass or stone products, machinery, and such commodities* as are dealt in or used by wholesale and retail hardware stores and outlets, between those points

in the U.S. in and east of MN, IA, NE, KS, OK, and TX.

MC 128270 (Sub-54), filed November 4, 1982. Applicant: REDIEHS EXPRESS, INC., 1477 Ripley Street, Lake Station, IN 46405, (219) 962-1101. Representative: Richard A. Kerwin, 180 North LaSalle Street, Chicago, IL 60601, (312) 332-5106. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S.

MC 154230 (Sub-2), filed November 8, 1982. Applicant: ALLEN B. FRANKLIN, 317 Vaughn St., Aurora, CO 80011. Representative: Edward C. Hastings, 666 Sherman St., Denver, CO 80203, (303) 837-1204. Transporting *such commodities* as are dealt in or used by grocery stores, between points in the U.S. (except AK and HI).

MC 145990 (Sub-7), filed November 8, 1982. Applicant: LAWRENCEBURG TRUCKING, INC., 21 Catalpa Ave., Lawrenceburg, IN 47025. Representative: John R. Bagileo, 918 16th St., N.W., Washington, DC 20006, (202) 785-3700. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IL, IN, KY, MI, MO, OH, PA, TN, and WI.

MC 158930 (Sub-9), filed November 2, 1982. Applicant: U.S. TRANSPORTATION, INC., 585 W. Valley Blvd., Bloomington, CA 92316. Representative: Frederick J. Coffman, 1834 N. Kelly Ave., P.O. Box 1455, Upland, CA 91786. Transporting *general commodities* (except classes A and B explosives and household goods), between points in Los Angeles, Orange, and Alameda Counties, CA, Cook County, IL, Hudson County, NJ, Baltimore County, MD, De Kalb, Cobb and Fulton Counties, GA, Platte, Clay and Jackson Counties, MO, King County, WA, Shelby and Davison Counties, TN, Harris, Dallas and Tarrant Counties, TX, and Philadelphia County, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159550, filed November 3, 1982. Applicant: ODYSSEY TRAILS & ODYSSEY TRAINS CHARTER COACHES, INC., d.b.a. ROCKMORE'S DISCOVERY TOURS, 1367 A West Clarke Street, Milwaukee, WI 53206. Representative: Eric Rockmore, (same address as applicant), (414) 445-2354. Transporting *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, between Milwaukee, Racine, and Kenosha, WI, on the one hand, and, on the other, point in the U.S. (except AK, HI, MT, and WI).

MC-161481, filed November 9, 1982. Applicant: NORTHWEST ADVENTURES, INC., North 8884 Government Way, Hayden, ID 83835. Representative: Ken Rogers (same address as applicant), (208) 772-7531. Transporting *passengers and their baggage*, in special and charter operations, between points in Kootenai, Bonner, Boundary, Shoshone, Benewah, Nez Perce, Clearwater, Latah and Lewis Counties, ID, Spokane County, WA, and Sanders County, MT.

MC 162380 (Sub-3), filed November 5, 1982. Applicant: CMM TRANSPORTATION, INC., Abbott Park, North Chicago, IL 60064. Representative: Edward G. Bazelon, 135 South LaSalle 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 the U.S. (except AK and HI), under continuing contract(s) with Rust-Oleum Corp., of Vernon Hills, IL, B. Heller & Company and its subsidiary, J. A. Jenks, of Bedford Park, IL, The B. F. Goodrich Company, of Akron, OH, Fearn International Inc., of Franklin Park, IL, Chef Bakeries, of King of Prussia, PA, Stokely Van Camp, of Columbus, OH, Amstar Corporation, of New York, NY, and Bausch & Lomb, Inc., of Rochester, NY.

MC 164051, filed November 9, 1982. Applicant: ALASKA LOGISTICS, INC., 601 Yakutat St., Anchorage, AK 99501. Representative: Robert L. Scavron, 3661 Burl Court, Anchorage, AK 99504, (907) 333-8033. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AK.

MC 164531, filed November 2, 1982. Applicant: TARA MOTOR FREIGHT, INC., 1340 Forest Park Way, Lake City, GA 30272. Representative: Alva Moore (same address as applicant), (404) 363-1539. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. (except HI), under continuing contract(s) Marine Intermodal Cooperative Association, of Portland, OR.

MC 164600, filed November 8, 1982. Applicant: FLATEGRAFF WOOD PRODUCTS, INC., P.O. Box 28, Pine River, MN 56474. Representative: Stanley C. Olsen, Jr., 5200 Willson Road, Suite 307, Edina, MN 55424, (512) 927-8855. Transporting *lumber and wood products*, between points in CA, OR, WA, ID, MT, WY, SD, MN and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 164630, filed November 9, 1982. Applicant: C & T FERTILIZER AND

EQUIPMENT, INC., 5800 N. Prince, Clovis, NM 88101. Representative: Alan F. Wohlstetter, 1700 K Street NW., Suite 301, Washington, DC 20006 (202) 833-8884. Transporting *fertilizers, grain, seed, animal feed, farm machinery, and propane and anhydrous ammonia, products*, between points in NM, TX, OK, CO, AZ, KS and NE.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-32009 Filed 11-22-82; 8:45 am]

BILLING CODE 7035-01-M

Water Carrier Temporary Authority Applications

The following were filed with the Regional Offices. Petition for Reconsideration is to be filed, within 20 days of this publication with the Regional office noted in each caption summary. Replies to petition may be filed within 20 days of the date petition is filed.

The following application was filed in region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 North 7th St., Rm. 620, Philadelphia, PA 19106.

WC 1344 (Sub-II-5TA), filed October 7, 1982. Applicant: LOCKWOOD BROTHERS, INC., P.O. Box 564, Hampton, VA 23669. Representative: Keith G. O'Brien, 1729 H St., N.W., Washington, D.C. 20006. Contract, water: *Articles exceeding 19 ft. in height, or 12 ft. in width, or 90 ft. in length, or 100 net tons in weight, component parts thereof, and related equipment*, between Wiscasset, ME and Charleston, SC, under continuing contract(s) with Maine Yankee Atomic Power Co., for 180 days. Supporting shipper: Maine Yankee Atomic Power Co., Edison St., Augusta, ME.

The following application was filed in region 4. Send protests to: ICC, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

W-1310 (Sub-4-2), filed November 9, 1982. Applicant: PADEL FORD PACKET BOAT CO., INC., Harriet Island, St. Paul, MN 55107. Representative: Andrew R. Clark, 1600 TCF Tower, Minneapolis, MN 55402. *Passengers and their baggage* in self-propelled vessels between Miami, FL, Flamingo, FL and points located on the Florida Keys. There are two supporting shippers.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-32008 Filed 11-22-82; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Public Information Collection Requirements Submitted to OMB for Review

The International Development Cooperation Agency submitted the following public information collection requirement to OMB, for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission may be obtained from the Agency for International Development Clearance Officer by calling (202) 632-0084. Comments regarding this information collection should be addressed to the Reports Management Officer, Ms. Melita E. Yearwood, DM/IM, Room 714, SA-12, Washington, D.C. 20523; and to the OMB reviewer listed at the end of the entry no later than December 3, 1982.

Date Submitted: November 2, 1982.

Submitting Bureau: Agency for International Development.

OMB Number: N/A

Form Number: AID 1620-7

Type of Submission: New.

Title: AID Science and Technology Marketing Roster Questionnaire.

Purpose: Questionnaire will enable AID to compile a roster of qualified individuals to serve both AID and Missions for short-term technical assistance and project development in the marketing field.

OMB Reviewer: Francine Picoult (202) 395-7531, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Dated: November 4, 1982.

Linwood A. Rhodes,

Chief, Information Management Division.

[FR Doc. 82-32006 Filed 11-22-82; 8:45 am]

BILLING CODE 6116-01-M

sets forth operating and maintenance and personnel training requirements designed to control relief valve discharges of vinyl chloride into the atmosphere.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Air Products and Chemicals, Inc., et al.*, D.J. Ref. 90-5-2-1-360.

The proposed decree may be examined at the office of the United States of America Attorney, Western District of Kentucky, 601 West Broadway, Louisville, Kentucky, and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, include a check in the amount of \$2.60 (\$0.10 per page reproduction charge) payable to the Treasurer of the United States.

Anthony C. Liotta,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 82-32050 Filed 11-22-82; 8:45 am]

BILLING CODE 4410-01-M

The proposed consent decree may be examined at (1) the Office of the United States Attorney, 14th Floor, 219 South Dearborn Street, Chicago, Illinois; (2) the Office of the Environmental Protection Agency, Office of Regional Counsel, 230 South Dearborn Street, Chicago, Illinois 60604; and (3) the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$3.10 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be directed to the Assistant Attorney General for the Land and Natural Resources Division of the Department of Justice, Ninth and Pennsylvania Avenue, NW., Washington, D.C. 20530 and should refer to *United States of America v. American Brick Corporation*, DOJ Reference #90-5-2-1-133.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 82-32049 Filed 11-22-82; 8:45 am]

BILLING CODE 4410-01-M

Proposed Consent Judgment in Action to Abate Improper Disposal of Hazardous Wastes

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on November 18, 1982, a proposed consent judgment in *United States, et al. v. Velsicol Chemical Corporation*, Civil Action No. 82-10,303, was lodged with the United States District Court for the Eastern District of Michigan, Northern Division. The proposed judgment provides for remedial activities with respect to several sites used for the disposal of hazardous waste in south central Michigan.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the proposed judgment. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources

DEPARTMENT OF JUSTICE

Consent Decree Lodging Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on October 22, 1982, a proposed consent decree in *United States v. Air Products and Chemicals, Inc., et al.*, was lodged with the United States District Court for the Western District of Kentucky. This case arises under the Clean Air Act and the National Emission Standard for Vinyl Chloride, for violations of the relief valve discharge standard, 40 CFR 61.65(a) at a polyvinyl chloride manufacturing plant located in Calvert City, Kentucky. The proposed decree

Proposed Modification to Consent Judgment Requiring Control of Air Pollutants at American Brick Company in Illinois

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 27, 1982, a proposed modification to an existing consent decree in *United States of America v. American Brick Corporation*, Civil Action No. 78-C-5188, has been lodged with the District Court for the Northern District of Illinois. The proposed modification requires the defendant to cease operation or install pollution control technology to control particulate, sulfur dioxide, and visible emissions at defendant's brickmaking plants in Dolton, Illinois and Munster, Indiana.

Division, U.S. Department of Justice, Washington, D.C. 20530, and refer to *United States et al. v. Velsicol Chemical Corporation*, D. J. Ref. 900-7-1-105.

The proposed consent decree may be examined at the office of the United States Attorney, 817 Federal Building & U.S. Courthouse, 231 West Lafayette, Detroit, Michigan 48226; at the Region V Office of the Environmental Protection Agency, Office of Regional Counsel, 16th Floor, Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604; and at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice (Room 1515), Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice. In requesting a copy, Please enclose a check in the amount of \$10.20 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 82-32109 Filed 11-22-82; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

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: December 7, 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, November 16, 1982.

Signed at Washington, D.C. this 16th day of November 1982.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 82-32084 Filed 11-22-82; 8:45 am]

BILLING CODE 4510-28-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 8, 1982–November 12, 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-13,277; *Servall Manufacturing Corp., Fall River, MA*

TA-W-13,351; *Marvel Undergarment Co., Inc., Brooklyn, NY*

TA-W-13,385; *Classic Dress Co., Dickson City, PA*

TA-W-13,395; *Cold Metal Products Co., Youngstown, OH*

TA-W-13,153; *Inferno Fashions, Inc., New York, NY*

TA-W-13,364; *The Gang's All Here, Inc., New York, NY*

TA-W-13,271; *Delaware Alloy Forge Co., Philadelphia, PA*

TA-W-13,018; *L. E. Smith Glass Co., Inc., Mount Pleasant, PA*

TA-W-13,446; *Guterl Special Steel Corp., Lockport, NY*

TA-W-13,429; *Franklin Apparel Co., Franklin, NH*

TA-W-13,414; *Manhattan Fashions, Inc., Union City, NJ*

TA-W-13,341; *Grayslake Gelatin Co., Grayslake, IL*

In the following cases the investigation recalled that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-12,855; *Black Pine Mine Co., Phillipsburg, MT*

TA-W-13,011; *National Packing Co., Ponce, PR*

TA-W-13,359; *ASARCO, Inc., Corpus Christi, TX*

TA-W-13,378; *Little Prince Corp., Columbia, PA*

TA-W-13,168; *Breckenridge, Inc., Boston, MA*

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified,

TA-W-13,417; *Reactor Laboratories, Paterson, NJ*

Aggregate U.S. imports of finishing agents are negligible.

TA-W-13,102; *Peter Stamping Co., Fayette, OH*

Aggregate U.S. imports of brake levers are negligible.

TA-W-13,371; *CCS Industries, Inc., Hatfield Wire & Cable Div., Linden, NJ*

Aggregate U.S. imports of insulated copper wire and cable did not increase as required for certification.

TA-W-13,333; *G and R Knitting Mills, Inc., Brooklyn, NY*

Aggregate U.S. imports of knit fabric and all fabrics did not increase as required for certification.

TA-W-13,452; *Shannon Pocahontas Mining Co., Shannon Branch Mine, Capels, WV*

Aggregate U.S. imports of metallurgical coal did not increase as required for certification.

TA-W-13,405; *International Mill Service, Georgetown, SC*

Aggregate U.S. imports of steel scrap are negligible. Other operations are services which are not included as articles within the meaning of Section 222(3) of the Trade Act of 1974.

TA-W-13,381; *McDonald Dairy Co., Fluid Milk Plant, Flint, MI*

Aggregate U.S. imports of milk and milk products did not increase as required for certification.

TA-W-13,457; Anaconda Minerals Co., Tooele, UT

Aggregate U.S. imports of copper concentrate have not increased during the period under investigation.

TA-W-13,389; Raritan River Steel Co., Perth Amboy, NJ

The investigation revealed that criterion (2) has not been met. Sales and production have increased in 1981 and in the January-July period of 1982.

Affirmative Determinations

TA-W-13,093; Shakespeare of Arkansas, Inc., Fayetteville, AR

A certification was issued in response to a petition received on November 3, 1981 covering all workers engaged in employment related to the production of fishing reels who became separated on or after March 7, 1981.

TA-W-13,177; United Togs, Inc., Long Island City, NY

A certification was issued in response to a petition received on January 4, 1982 covering all workers separated on or after June 13, 1981 and before February 27, 1982.

TA-W-13,190; Matsushita Industrial Co., Franklin Park, IL

A certification was issued in response to a petition received on January 22, 1982 covering all workers separated on or after November 1, 1981 and before August 31, 1982.

TA-W-13,380; Maury Manufacturing Co., Columbia, TN

A certification was issued in response to a petition received on March 30, 1982 covering all workers separated on or after November 6, 1981.

TA-W-13,449; The Hanna Furnace Corp., Buffalo, NY

A certification was issued in response to a petition received on April 20, 1982 covering all workers separated on or after April 16, 1981.

TA-W-13,434; Stackpole Machinery Co., Johnsonburg, PA

A certification was issued in response to a petition received on April 19, 1982 covering all workers separated on or after December 1, 1981 and before September 1, 1982.

TA-W-13,111; Elliott Sportswear, Elliott, MS

A certification was issued in response to a petition received on November 27, 1981 covering all workers separated on or after September 12, 1981.

TA-W-13,154; Tri Star Manufacturing, Fort Smith, AR

A certification was issued in response to a petition received on December 15, 1981 covering all workers separated on or after September 12, 1981.

TA-W-13,155; Vardaman Sportswear, Vardaman, MS

A certification was issued in response to a petition received on December 15, 1981 covering all workers separated on or after September 12, 1981.

TA-W-13,155A; Belmont Sportswear, Tchula, MS

A certification was issued in response to a petition received on December 15, 1981 covering all workers separated on or after September 12, 1981.

TA-W-13,155B; Midstate Sportswear, Sumner, MS

A certification was issued in response to a petition received on December 15, 1981 covering all workers separated on or after September 12, 1981.

TA-W-13,155C; Pinebrook Sportswear, Durant, MS

A certification was issued in response to a petition received on December 15, 1981 covering all workers separated on or after September 12, 1981.

TA-W-13,155D; Durant Sportswear, Durant, MS

A certification was issued in response to a petition received on December 15, 1981 covering all workers separated on or after September 12, 1981.

TA-W-13,155E; Warehousing Corp., Kosciusko, MS

A certification was issued in response to a petition received on December 15, 1981 covering all workers separated on or after September 12, 1981.

TA-W-13,155F; Shutzer Industries, Inc., Lawrence, MA

A certification was issued in response to a petition received on December 15, 1981 covering all workers separated on or after September 12, 1981.

I hereby certify that the aforementioned determinations were issued during the period November 8, 1982—November 12, 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 person who write to the above address.

Dated: November 16, 1982.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-32082 Filed 11-22-82; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-82-58-C]

Virginia Lee Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Virginia Lee Coal Company, Browning Acres, Apt. 18, Harlan, Kentucky 40831 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15-11982) located in Harlan County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment, and loading machine.

2. The mine is located above the water table and petitioner states that no methane has ever been detected by inspectors or by foremen during pre-shift or on-shift inspections.

3. In lieu of installing a methane monitor on a cutting machine, petitioner proposes to use hand-held methane detectors to continuously check for methane while the machine is in operation. The operator is within three to four feet of the face at all times and believes that an adequate check for methane can be done by this method.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 23, 1982. Copies of the petition are available for inspection at that address.

Dated: November 15, 1982.

Patricia W. Silvey,
Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-32085 Filed 11-22-82; 8:45 am]

BILLING CODE 4510-43-M

Office of Pension and Welfare Benefit Programs

Grant of Individual Exemptions

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the *Federal Register* of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective 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 notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are 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.

Statutory Findings

In accordance with section 408(a) of the Act and/or 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 findings:

- (a) The exemptions are administratively feasible;
- (b) They are in the interests of the plans and their participants and beneficiaries; and
- (c) They are protective of the rights of the participants and beneficiaries of the plans.

[Prohibited Transaction Exemption 82-187; Exemption Application Nos. D-2878, D-2879, & D-2880]

First Alliance Mortgage Company Pension Plan, First Alliance Mortgage Company Profit Sharing Plan, and First Alliance Mortgage Company Defined Benefit Pension Plan (the Plans) Located in Santa Ana, California

Exemption

The restrictions of section 406(a) and (b) 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 (F) of the Code, shall not apply to (1) the placement by First Alliance Mortgage Company (the Employer) of second trust deeds with the Plans for a period of five years, and (2) the Employer's guarantee of the payment of principal and interest in conformity with the terms of the notes, provided that the terms of each transaction are at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party.

Temporary Nature of the Exemption: This exemption is temporary in nature and will expire five years after the date of grant. In order that the Employer's guarantee of payment of principal and interest on the notes will not be frustrated by the temporary nature of the exemption, exemptive relief is extended after the five year term of the exemption for such guarantees with respect to notes placed with the Plans during the five year period.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 3, 1982 at 47 FR 39013.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund or Mr. Edward Peterson of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-188; Exemption Application Nos. D-3072 and D-3073]

Raznick & Sons, Inc. Pension and Profit Sharing Plans (the Plans) Located in Woodland Hills, CA

Exemption

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, (1) for a period of five years, to the proposed purchases by the Plans of first mortgages and first deeds of trust (the

Contracts) from partnerships which are or will be 50% or more owned by Raznick & Sons, Inc., (the Employer) the sponsor of the Plans; and (2) to the guarantees by the Employer and by Mr. and Mrs. Arnold L. Raznick, parties in interest with respect to the Plans, to repurchase Contracts which are in default.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 21, 1982 at 47 FR 41659.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8972. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-189; Exemption Application No. D-3090]

The Falley's Inc. Profit Sharing Plan Trust (the Plan) Located in Topeka, Kansas

Exemption

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 purchase by the Plan of an interest in certain real property from Falley's Inc. (the Employer) and the leaseback of such interest to the Employer, provided the terms and conditions of the transactions are at least as favorable as those which the Plan could receive in similar transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 3, 1982 at 47 FR 39011.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-190; Exemption Application No. D-3147]

The Greater Cleveland Hospital Association Retirement Plan (the Plan) Located in Cleveland, Ohio

Exemption

The restrictions of sections 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 sections 4975(c)(1) (A) through (E) of the Code, shall not apply to a loan of \$1,200,000 by the Plan to 1226 Huron Road Co., Ltd., under the terms and conditions set forth in the notice of

pendency, provided that the terms of the transactions are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time of the consummation of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 8, 1982 at 47 FR 24879.

Written Comments and Hearing Requests

The Department received one letter commenting on the proposed exemption and requesting a public hearing. The request for a public hearing was subsequently withdrawn.

The commentator stated that he did not believe that the proposed transaction would be in the interest of certain Plan participants, i.e., those participants retiring in the next 20 years, since those employees could not possibly gain from any appreciation in the subject real property. The commentator also indicated that he considered the promise of a portion of appreciation 20 years from now to be a speculative investment, not in keeping with fiduciary standards.

The Department received a letter from the Plan's independent fiduciary which responded to these comments. He stated that the Plan is a defined benefit pension plan, so that the benefits of all participants are determined under the formula spelled out in the Plan. Thus, a good or bad investment result from a particular transaction will not increase or decrease the benefits of any participant or group of participants. With regard to the comment that the transaction is speculative, the fiduciary stated that the loan involves only 1.3% of Plan assets. It is secured by a first mortgage on a quality property, in a good location, to be occupied by the Greater Cleveland Hospital Association, which is a fine tenant. In addition to the fixed interest, which is reasonable and attractive having regard to all the circumstances, the Plan has an equity participation. Exactly what amount the Plan will ultimately realize on account of its equity participation is, of course, impossible to state at the inception of the loan. Thus, admittedly, the equity portion of the investment can perhaps be said to be speculative in the sense that any equity investment is speculative. As independent fiduciary for the Plan, however, he reaffirmed that, having regard to all factors, the subject loan is in keeping with fiduciary standards and the standards of prudent investment of plan funds.

The Department, after consideration of the entire record, has determined that the exemption should be granted as proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-191; Exemption Application No. D-3168]

The Gary Retirement Plan (the Plan) Located in Denver, Colorado

Exemption

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 a loan (the Loan) of \$1,000,000 by the Plan to Gary Energy Corporation, provided the terms and conditions of the Loan are at least as equal to those which the Plan could receive in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 24, 1982 at 47 FR 42201.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-192; Exemption Application No. D-3214]

John H. Herrick Consulting Engineers, Inc. Defined Benefit Pension Plan and Trust (the Plan) Located in Portland, Oregon

Exemption

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 to the proposed contribution (the Contribution) of certain limited partnership interests (the LP Interests) to the Plan by John H. Herrick Consulting Engineers, Inc. (the Employer), the sponsor of the Plan, at a value of \$44,923 provided: (a) That this amount is no more than the fair market value the LP Interests at the time of the Contribution; and (b) the Employer's federal tax deduction for the Contribution is not greater than the fair market value of the LP Interests on the date of the Contribution.

For a more complete statement of the facts and representations supporting the Department's decision to grant this

exemption refer to the notice of proposed exemption published on August 6, 1982 at 47 FR 34247.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, telephone (202) 523-7222. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-193; Exemption Application No. L-3267]

Washington Automotive Wholesalers Association Health and Welfare Trust (the Plan) Located in Seattle, Washington

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act shall not apply to the proposed leasing (the Lease) of a certain building located in Seattle, Washington by the Plan to the Washington Automotive Wholesalers Association, the sponsor of the Plan, provided that the terms and conditions of the Lease are at least as favorable to the Plan as those which the Plan could receive from an unrelated party in a similar transaction.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 3, 1982 at 47 FR 39038.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, telephone (202) 523-7222. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-194; Exemption Application Nos. L-3348 and L-3347]

Southeast Florida Laborer's District Council Severance Pay Trust Fund (the Severance Plan) and the Southeast Florida District Council Dental, Vision and Preventive Care Trust Fund (the DVP Plan) Located in Miami, Florida

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the proposed transfer by the Severance Plan of approximately \$18,975 in residual assets to the DVP Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 14, 1982 at 47 FR 40506.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, telephone (202) 523-7222. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-195; Exemption Application Nos. D-3385 and D-3386]

South Bay Psychiatric Medical Group Profit Sharing Plan and the South Bay Psychiatric, Medical Group Money Purchase Plan (collectively, the Plans) Located in Los Angeles, California

Exemption

The restrictions of 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 Plans of certain limited partnership interests to Dr. Edwin Caine (Caine), a disqualified person with respect to the Plans, for cash in the amount of \$95,000 provided that this amount is at least the fair market value of such limited partnership interests at the time of sale.¹

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 24, 1982 at 47 FR 42205.

FOR FURTHER INFORMATION CONTACT:

Richard Small of the Department, telephone (202) 523-7222. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-196; Exemption Application No. D-3500]

Darby Graphics, Inc. Employees Profit Sharing Plan and Trust (the Plan) Located in Chicago, Illinois

Exemption

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 by the Plan to Citizens Bank and Trust Company as trustee under Trust Agreement 66-4325 of the lesser of \$175,030 or 40% of the Plan's assets, based on the terms and conditions set forth in the notice of proposed exemption, and to the personal guarantee of repayment by the principals of Rockwell Enterprises, provided that the terms of the transactions are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of

proposed exemption published on September 24, 1982 at 47 FR 42194.

FOR FURTHER INFORMATION CONTACT:

Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-197; Exemption Application No. D-3589]

Janney Montgomery Scott, Inc. Employees Stock Ownership Plan (the Plan) Located in Philadelphia, Pennsylvania

Exemption

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, effective July 15, 1982, to (1) the sale of certain stock, as described in the notice of proposed exemption, by the Plan to Penn Mutual Equity Services, Inc.; and (2) other transactions described in the Agreement, as described in the notice of proposed exemption, executed or to be executed in accordance with the sale, provided the terms of the transactions are no less favorable to the Plan than those available in an arm's-length transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 3, 1982 at 47 FR 39023.

EFFECTIVE DATE: This exemption is effective July 15, 1982.

FOR FURTHER INFORMATION CONTACT:

Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-198; Exemption Application No. D-3610]

Key Employee Retirement Plan (the Plan) Located in Pensacola, Florida

Exemption

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 cash sale of an unimproved parcel of real property, as described in the notice of proposed exemption, to Mr. Anthony Ciano for \$209,000, provided that this amount is not less than the fair market value of the property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of

proposed exemption published on September 24, 1982 at 47 FR 42198.

FOR FURTHER INFORMATION CONTACT:

Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-199; Exemption Application No. D-3669]

Misener Marine Profit Sharing Plan (the Plan) Located in St. Petersburg, Florida

Exemption

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 cash sale, for \$90,000, of certain real property (the Real Property) by the Plan to Mr. and Mrs. Donald Hudson, provided the amount paid for the Real Property is not less than its fair market value on the date the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 24, 1982 at 47 FR 42199.

FOR FURTHER INFORMATION CONTACT:

Ms. Jan Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-200; Exemption Application No. L-3675]

Wells Fargo & Company Group Life Insurance Plan (the Plan) Located in San Francisco, California

Exemption

The restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Central Western Insurance Company from the group life insurance contracts sold by the Equitable Life Assurance Society to Wells Fargo & Company to provide benefits to the Plan, subject to the conditions set forth in the notice of proposed exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 24, 1982 at 47 FR 42196.

FOR FURTHER INFORMATION CONTACT:

Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

¹ Because Caine is the only participant in the Plans, and the sole shareholder of the South Bay Psychiatric Medical Group, the sponsor of 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(c) (1). However there is jurisdiction under Title II of the Act under section 4975 of the Code.

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or 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/or 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or 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 or whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 18th day of November 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. 82-32063 Filed 11-22-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-186; Exemption Application No. D-3286]

Exemption From the Prohibitions for Certain Transactions Involving BREA Real Estate Fund-I Located in Minneapolis, Minnesota

AGENCY: Pension and Welfare Benefit Programs Office, Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits a collective investment fund, BREA Real Estate Fund-I (Fund-I), that is managed by Banco Real Estate Advisers (BREA), in which employee benefit plans (the Plans) participate, to engage in certain

transactions provided specified conditions are met.

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, NW., Washington, D.C. 20216 (202) 523-8195. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: On July 23, 1982, notice was published in the Federal Register (47 FR 31987) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406 and 407(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) of the Code, for the transactions described herein. 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 proposed exemption required BREA to notify the appropriate fiduciary of each Plan that had subscribed to invest in Fund-I, on or before August 2, 1982, of the proposed exemption. The applicant has stated that as of that date, no units of Fund-I had been sold, therefore there were no Plan fiduciaries to notify 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 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 following exemption is hereby granted 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.

Section I—Exemption for Certain Transactions Involving Fund-I

(a) The restrictions of section 406(a), 406(b) (1) and (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 (E) 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 Fund-I and a party in interest with respect to a Plan that has invested in Fund-I, or any acquisition or holding by Fund-I of employer securities or employer real property, if the party in interest is not BREA or one of its affiliates; or the acquisition or sale of units of Fund-I to a Plan if a Banco bank has discretionary authority or control over Plan assets, provided that a fiduciary who is independent of BREA and its affiliates expressly approves such acquisition or sale, if at the time of any such transaction, acquisition, holding or sale, the interest of the Plan together with the interests of any other Plans maintained by the same employer or employee organization in Fund-I does not exceed 5 percent of the total of all assets in Fund-I.

(2) *Special Transactions Not Meeting the Criteria of Section 401(a)(1) Between Employers of Employees Covered by a Multiple Employer Plan and Fund-I.* Any transaction between Fund-I and an employer (or an affiliate of an employer) of employees covered by a multiple employer plan that has invested in Fund-I, or any acquisition or holding by Fund-I of employer real property, if at the time of the transaction, acquisition or holding—

(A) The interest of the multiple employer plan in Fund-I does not exceed 10 percent of the total assets in Fund-I, and the employer is not a "substantial employer with respect to the plan (within the meaning of section 4001(a)(2) of the Act), or

(B) The interest of the multiple employer plan in Fund-I exceeds 10 percent of the total assets in Fund-I, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" within the meaning of section 4001(a)(2) of the Act, if "5 percent" were substituted for "10 percent" in that definition.

(3) *Acquisition, Sale or Holding 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 Fund-I which does not meet the requirements of paragraphs (a)(1) and (a)(2) of Section I, if no commission is paid to BREA or to the employer or to any affiliate of BREA or the employer in connection with 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 Fund-I are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The property of Fund-I that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither BREA 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. Fund-I owns the obligation at the time the Plan acquires an interest in Fund-I, and interests in Fund-I are offered and redeemed in accordance with valuation procedures of Fund-I applied on a uniform or consistent basis.

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. BREA, its affiliates and any collective investment fund maintained by BREA or its affiliates shall be considered to be persons independent of the issuer if BREA is not an affiliate of the issuer.

(B) In the case of a 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 or real property with respect to which BREA or its affiliates has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Plan with respect to which BREA or its affiliates has investment discretion.

(C) For the purpose 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), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) through (E) shall not apply to 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 transactions between Fund-I and a person who is a party in interest with respect to a Plan if—

(A) The person is a party in interest (including a fiduciary) solely by reason of providing services to the 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 had any discretionary authority, control, responsibility or influence with respect to the investment of the Plan's assets in, or held by, Fund-I, and

(B) The person is not an affiliate of BREA.

(2) *Certain Leases and Goods.* The furnishing of goods to Fund-I by a party in interest with respect to a Plan or the leasing of real property owned by Fund-I to such party in interest and the incidental furnishing of goods to such party in interest by Fund-I, if—

(A) In the case of goods, they are furnished to or by Fund-I in connection with real property owned by Fund-I.

(B) The party in interest is not BREA or any affiliate of BREA, 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 Fund-I with the same party in interest, or any affiliate thereof) does not exceed the greater of \$25,000 or 0.5 percent.

(3) *Loan Origination Services.* Loan origination services provided by the Commercial Loan Division of Banco Mortgage Company with respect to the investments made by Fund-I, provided that the terms and conditions of such services are embodied in the Servicing Agreement.

(4) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities or any goods incidental to such services and facilities by a place of public accommodation in which Fund-I has an investment to a party in interest with respect to a Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

Section II—Excess Holding Exemption for the 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 a Plan with respect to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through Fund-I), if—

(1) The acquisition or holding contravenes the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407(a) of the Act solely by reason of being aggregated with employer securities or employer real property held by Fund-I.

(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 BREA or its affiliates, the terms of the transaction are not less favorable to Fund-I than the terms generally available in arms-length transactions between unrelated parties.

(b) BREA or its affiliates 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 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 BREA or its affiliates, 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 assessed under section 501(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 sections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section 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 Plan who has authority to acquire or dispose of the interests in Fund-I of the Plan or any duly authorized employee or representative of such fiduciary.

(C) Any contributing employer to any Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any 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 BREA or its affiliates, or commercial or financial information which is privileged or confidential.

Section IV—Definitions and General Rules

(a) 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 or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) 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.

(d) The term "multiple employer plan" means an employee benefit plan that satisfies at least the requirements of section 3(37)(A)(i), (ii) and (v) of the Act and section 414(f)(1)(A), (B) and (E) of the Code.

(e) 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 date of granting of this exemption, or a renewal that requires the consent of Fund-I occurs on or after the date of granting of this exemption, and the requirements of this exemption are satisfied at the time the transactions are 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 to apply to a holding exempt by virtue of Section I(a)(1) at such time as the interest of the 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 Fund-I by the Plan. For this purpose, assets allocated do not include the reinvestment of Fund-I earnings. Nothing in this paragraph shall be construed as exempting a transaction entered into by Fund-I 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.

(f) Each Plan shall be considered to own the same proportionate undivided interest in each asset of Fund-I as its proportionate interest in the total assets of Fund-I as calculated on the most recent preceding valuation date of Fund-I.

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 the exemption.

Signed at Washington, D.C., this 18th day of November, 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. 82-32060 Filed 11-22-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-185; Exemption Application No. D-3124]

Exemption From the Prohibitions for Certain Transactions Involving LNM Acceptance Corporation and the Aetna Casualty & Surety Company Located in New York, New York

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits certain transactions involving the sale to and holding by employee benefit plans (the Plans) of notes (the Guaranteed Notes) issued by LNM Acceptance Corporation (LNMAC) and guaranteed by The Aetna Casualty and Surety

Company (Aetna), which Guaranteed Notes are collateralized by mortgage pools (Mortgage Pools), when LNMAC, Aetna or the Mortgage Pool sponsor or trustee may be a party in interest with respect to one or more of the Plans.

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, NW., Washington, D.C. 20216. (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 3, 1982, notice was published in the *Federal Register* (47 FR 39015) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406(b) (1) and (2) and 407(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 (E) of the Code, for the transactions described below. 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 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 following exemption is hereby granted pursuant to the authority granted under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedure set forth in ERISA Procedure 75-1.

I. Transactions

A. Effective January 1, 1975, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving the Guaranteed Notes and Mortgage Pools acquired by LNMAC with the proceeds thereof:

(1) The direct or indirect sale, exchange or transfer of Guaranteed Notes in the initial issuance thereof between LNMAC and a Plan when LNMAC, Aetna or the sponsor or any trustee of the related Mortgage Pool is a party in interest with respect to such Plan, provided that the Plan pays no more than fair market value for such Guaranteed Notes;

(2) The continued holding of Guaranteed Notes acquired pursuant to subparagraph (1), above, by a Plan.

B. Effective January 1, 1975, the restrictions of sections 406(a), 406(b)(1) and (2) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the following transactions involving the Guaranteed Notes and related Mortgage Pools:

(1) The direct or indirect sale, exchange or transfer of Guaranteed Notes in the initial issuance thereof between LNMAC and a Plan when LNMAC, Aetna or the sponsor or any trustee of the related Mortgage Pools is a fiduciary with respect to the Plan assets invested in such Guaranteed Notes, provided:

(a) Such sale, exchange or transfer is expressly approved by a fiduciary independent of LNMAC, Aetna or the pool sponsor or trustee who has authority to manage and control those Plan assets being invested in such Guaranteed Notes;

(b) The Plan pays no more for the Guaranteed Notes than would be paid in an arm's-length transaction with an unrelated party;

(c) Other than LNMAC's placement fee, no investment management, advisory or underwriting fee or sales commission or similar compensation is paid to LNMAC with regard to such sale, exchange or transfer or to such Mortgage Pool sponsor with regard to its sale to LNMAC of the related Mortgage Pool;

(d) The total value of Guaranteed Notes purchased by a Plan does not exceed 25 percent of the amount of the issue; and

(e) At least 50 percent of the aggregate amount of the issue is acquired by persons independent of LNMAC, Aetna or the sponsor or any trustee of the related Mortgage Pool.

C. Effective January 1, 1975, the restrictions of section 406(b) (1) and (2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to transactions in connection with the servicing and operation of any Mortgage Pool acquired

by LNMAC with the proceeds of its Guaranteed Notes, nor to transactions in connection with the guaranty of such Notes delivered by Aetna, provided that: (1) Such transactions are carried out in accordance with the terms of a binding servicing agreement or, in the case of the guaranty, other appropriate documentation; and (2) such servicing agreement or other documentation, as the case may be, is made available to investors before they purchase the related Guaranteed Notes.

D. Effective January 1, 1975, the restrictions of sections 406(a) and 407 of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a Plan by virtue of providing services to the Plan (or who has a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act), solely because of the ownership by such plan of any of LNMAC's Guaranteed Notes.

II. General Conditions

A. The relief provided under section I, above, is available only if the following conditions are met:

(1) The Aetna guaranty extends to the timely payment of 100 percent of the principal of, and interest on, the Guaranteed Notes; and

(2) The sum of all payments made to and retained by LNMAC, Aetna or to the sponsor of the related Mortgage Pool, in connection with such Mortgage Pool and the issuance of the related Guaranteed Notes, and all funds inuring to the benefit of such Mortgage Pool sponsor as a result of the administration of such Mortgage Pool, must represent not more than adequate consideration for selling the Guaranteed Notes or the mortgage loans (or LNMAC's participation therein) or, as the case may be, reasonable compensation for services provided by such Mortgage Pool sponsor to the Mortgage Pool.

III. Definitions

A. For the purposes of this exemption the terms "sponsor" or "Mortgage Pool sponsor" mean:

(1) The entity which organized, and either continues to service or supervises the provision of services to, a Mortgage Pool comprised of mortgage loans either made or purchased by such entity and interests in which shall be acquired (either directly, or by acquisition of an obligation secured thereby) by LNMAC; and

(2) Any successor thereto.

B. For the purposes of this exemption, the term "Mortgage Pool" means an investment pool the corpus of which

(1) Is held in trust or otherwise is distinctly identifiable; and

(2) Consists solely of

(a) Interest-bearing obligations secured by first mortgages or deeds of trust on single-family, residential property;

(b) Property which has secured such obligations and which has been acquired by foreclosure; and

(c) Undistributed cash.

C. For the purposes of this exemption, the term "affiliate" of another person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

D. For the purposes of this exemption, the term "single-family, residential property" means non-farm property comprising one to four dwelling units, and also includes condominiums.

E. For purposes of clause (e) of subparagraph I(B)(1) of this exemption, a person will be "independent of LNMAC, Aetna or the Mortgage Pool sponsor or any trustee" only if:

(1) Such person is not an affiliate (as defined in paragraph III(C) of this exemption) of LNMAC, Aetna or such Mortgage Pool sponsor or trustee; and

(2) Neither LNMAC, Aetna or such Mortgage Pool sponsor or trustee, nor any affiliate thereof, is a fiduciary who has investment management authority or renders investment advice with respect to any of the assets of such person.

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 18th day of November, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration.

[FR Doc. 82-32061 Filed 11-22-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3574]

Withdrawal of Proposed Exemption Involving the J. D. Posillico, Inc. Profit Sharing Plan (the Plan) Located in Farmingdale, New York

On September 3, 1982, the Department of Labor (the Department) published in the Federal Register (47 FR 39019) a notice of pendency of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The notice of pendency concerned an application filed on behalf of the Fairway Leasing Company, a party in interest with respect to the Plan.

By letter dated November 1, 1982, the applicant notified the Department that it was no longer seeking an exemption for the transaction described in the above cited notice. Accordingly, the applicant requested that the application for exemption be withdrawn from consideration by the Department.

The notice of pendency is hereby withdrawn.

Signed at Washington, D.C., this 18th day of November, 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. 82-32062 Filed 11-22-82; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Reactors; Meeting

The ACRS Subcommittee on Advanced Reactors will hold a meeting on December 8, 1982, Room 1167, 1717 H Street, NW, Washington, D.C. The Subcommittee will discuss the NRC Research Program for FY 1984 and 1985 on advanced reactors.

In accordance with the procedures outlined in the Federal Register on October 1, 1982 (47 FR 43474), oral or written statements may be presented by

members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss proprietary and industrial security and/or Unclassified Safeguards information. One or more closed sessions may be necessary to discuss such information. (SUNSHINE ACT EXEMPTIONS 3 & 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Wednesday, December 8, 1982—2:00 p.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding the topics to be discussed.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect proprietary and industrial security and/or Unclassified Safeguards Information. The authority for such closure is Exemptions (3) and (4) to the Sunshine Act, 5 U.S.C. 552b(c)(3)(4).

Dated: November 16, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-32027 Filed 11-22-82; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Sequoyah Nuclear Plant; Meeting

The ACRS Subcommittee on Sequoyah Nuclear Plant will hold a meeting on December 7, 1982, Room 1046, 1717 H Street, NW, Washington, D.C. The Subcommittee will review the status of the development of a hydrogen control system for Sequoyah.

In accordance with the procedures outlined in the Federal Register on October 1, 1982 (47 FR 43474), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Cognizant Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss proprietary and industrial security and/or Unclassified Safeguards information. One or more closed sessions may be necessary to discuss such information. (Sunshine Act Exemptions 3 and 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Tuesday, December 7, 1982—8:30 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Tennessee Valley Authority, NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allocated therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be

necessary to close some portions of this meeting to protect proprietary, and industrial security and/or Unclassified Safeguards information. The authority for such closure is Exemptions (3) and (4) to the Sunshine Act, 5 U.S.C. 552b(c)(3), (4).

Dated: November 16, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-32026 Filed 11-22-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-488, STN 50-489, STN 50-490]

Duke Power Co.; Withdrawal of Application for Construction Permits

The Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, by Motion dated March 2, 1982, has requested withdrawal of its application for licenses to construct and operate the Perkins Nuclear Station, Units 1, 2 and 3, pressurized water reactors at its site located in Davie County, North Carolina, about 30 miles east southeast of Mocksville, North Carolina. A copy of the Motion and a subsequent Motion, to Withdrawal Application Without Prejudice, dated April 19, 1982, is available for inspection in the NRC's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555. By order dated September 20, 1982, the Atomic Safety and Licensing Board granted Duke Power Company's request to withdraw its application and terminate the proceedings before it. Accordingly, the Nuclear Regulatory Commission grants the applicant's request for withdrawal of its application to construct and operate the Perkins Nuclear Station, Units 1, 2 and 3.

Notice of receipt of the application was published in the Federal Register on July 19, 1974 (39 FR 26471).

Dated at Bethesda, Maryland, this 17th day of November 1982.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 82-32022 Filed 11-22-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-70]

General Electric Co.; Issuance of Amendments to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued to General Electric Company Amendment Nos. 9 and 10 to Facility

Operating License No. TR-1. Amendment No. 9 revised the Technical Specifications and Amendment No. 10 revised the Physical Security Plan for operation of the General Electric Test Reactor (the facility or GETR) located in Pleasanton, California at the General Electric Vallecitos Atomic Laboratory.

Amendment No. 9 consists of a revision to the Technical Specifications by deletion of the requirement to perform certain tests and calibrations while the GETR is in cold (defueled) shutdown condition. Amendment No. 9 when issued on October 15, 1982 erroneously stated that notice was not necessary.

Amendment No. 10 revises the Commission-approved physical security plan and adds certain conditions to that plan.

The applications for amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve significant hazards considerations.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to Amendment No. 9, see (1) the application for amendment dated February 4, 1982, as supplemented by letters dated March 11, 1982 and April 15, 1982, and (2) Amendment No. 9 dated October 15, 1982 to License No. TR-1.

For further details with respect to Amendment No. 10, see (1) the application dated July 14, 1982, and (2) Amendment No. 10 dated November 17, 1982 to License No. TR-1.

These items are available for public inspection at the Commission's Public Document Room, at 1717 H Street, NW., Washington D.C. 20555. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 17th day of November 1982.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Acting Chief, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 82-32023 Filed 11-22-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-362]

Southern California Edison Company, et al.; San Onofre Nuclear Generating Station Unit 3; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission), has issued Facility Operating License No. NPF-15 (the license), to Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California, and the City of Anaheim, California (the licensees). This license authorizes operation of the San Onofre Nuclear Generating Station, Unit 3 (the facility), by Southern California Edison Company at reactor core power levels not in excess of 3390 megawatts thermal in accordance with the provisions of the license, the technical specifications and the environmental protection plan. However, the license contains a condition limiting operation to five percent of full power (169.5 megawatts thermal) pending specific Commission approval to operate at greater than five percent power.

San Onofre Nuclear Generating Station, Unit 3 is a pressurized water nuclear reactor located at the licensees' site at Camp Pendleton, San Diego County, California approximately 62 miles southeast of Los Angeles and 51 miles north of San Diego. The license is effective as of the date of issuance and shall expire at midnight on October 18, 2013.

The application for the license, as amended, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. Issuance of this license has been authorized by the Atomic Safety and Licensing Board by its Partial Initial Decision dated January 11, 1982, and in its Initial Decision dated May 14, 1982. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the Federal Register on April 7, 1977 (42 FR 18460).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement and its Errata since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement and its Errata.

For further details with respect to this action, see (1) Facility Operating License No. NPF-15, with technical specifications (NUREG-0952) and environmental protection plan; (2) the reports of the Advisory Committee on Reactor Safeguards dated February 10, 1981, and March 17, 1981; (3) the Commission's Safety Evaluation Report dated February, 1981; Supplement No. 1 dated February 1981; Supplement No. 2 dated May 1981; Supplement No. 3 dated September 1981; Supplement No. 4 dated January 1982; Supplement No. 5 dated February 1982; Supplement No. 6 dated June 1982; and the Safety Evaluation issued with Facility Operating License No. NPF-15; (4) The Final Safety Analysis Report and amendments thereto; and (5) the Environmental Report and amendments thereto and (6) the Final Environmental Statement dated April 1981 and the Errata to the Final Environmental Statement dated June 1981, and (7) the Partial Initial Decision issued by the Atomic Safety and Licensing Board dated January 11, 1982 and the Initial Decision issued by the Board on May 14, 1982.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington D.C., and the San Clemente Library, 242 Avenida Del Mar, San Clemente, California, 92672. A copy of Facility Operating License No. NPF-15 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements 1 through 6 (NUREG-0712) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders can call 301-492-9530.

Dated at Bethesda, Maryland, the 15th day of November 1982.

For the Nuclear Regulatory Commission.
George W. Knighton,
Chief, Licensing Branch No. 3, Division of
Licensing.

[FR Doc. 82-32024 Filed 11-22-82; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory
Commission.

ACTION: Notice of the Office of
Management and Budget review of
information collection.

SUMMARY: The Nuclear Regulatory
Commission has recently submitted to
the Office of Management and Budget
(OMB) for review the following proposal
for the collection of information under
the provisions of the Paperwork
Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision
or extension: Extension.
2. The title of the information
collection: Compliance Determination
Procedures for 40 CFR Part 190
Environmental Radiation Protection
Standards for Nuclear Power
Operations—Uranium Milling.
3. The form number if applicable: Not
applicable.
4. How often the collection is
required: Quarterly.
5. Who will be required or asked to
report: Two NRC-licensed uranium
milling facilities.
6. An estimate of the number of
responses: Four (two from each
licensee).
7. An estimate of the total number of
hours needed to complete the
requirement or request: 80 (20 per
report).
8. An indication of whether Section
3504 (h), Pub. L. 96-511 applies: Not
applicable.
9. Abstract: Reported environmental
monitoring data will enable NRC to
determine licensee compliance with
EPA environmental radiation protection
standards. This extension is for the
purpose of obtaining reports from two
licensees for whom the reporting period
was delayed.

Copies of the submittal may be
inspected or obtained for a fee from the
NRC Public Document Room, 1717 H
Street, N.W., Washington, DC 20555.

Comments and questions should be
directed to the OMB reviewer, Jefferson
B. Hill, (202) 395-7340.

The NRC Clearance Officer is R.
Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 17th day
of November 1982.

For the Nuclear Regulatory Commission.
Patricia G. Norry,
Director, Office of Administration.
[FR Doc. 82-32025 Filed 11-22-82; 8:45 am]
BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD.

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board

ACTION: In accordance with the
Paperwork Reduction Act of 1980 (44
U.S.C. Chapter 35), the board has
submitted the following proposal(s) for
the collection of information to the
Office of Management and Budget for
review and approval.

SUMMARY OF PROPOSAL(S):

- (1) Collection title: Placement service
- (2) Form(s) submitted: ES-1a, ES-20a,
ES-20b, ES-21, ES-21c, ES-22.
- (3) Type of request: Extension.
- (4) Frequency of use: On occasion.
- (5) Respondents: Unemployed railroad
workers, railroad and nonrailroad
employers, state employment service
offices.
- (6) Annual responses: 42,500.
- (7) Annual reporting hours: 1,912.
- (8) Collection description: Under the
RUIA, the Board provides job placement
assistance for unemployed railroad
workers. The collection obtains
information from a job applicant and/or
claims agent for use in placement,
provides referrals for job openings and
reports referrals results.

ADDITIONAL INFORMATION OR COMMENTS:

Copies of the proposed forms and
supporting documents may be obtained
from Pauline Lohens, the agency
clearance officer (312-751-4692).
Comments regarding the information
collection should be addressed to
Pauline Lohens, Railroad Retirement
Board, 844 Rush Street, Chicago, Illinois
60611 and the OMB reviewer, Milo
Sunderhaus (202-395-6880), Office of
Management and Budget, Room 3201,
New Executive Office Building,
Washington, D.C. 20503.

William A. Oczkowski,
Director of Planning and Information
Management.

[FR Doc. 82-32021 Filed 11-22-82; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 12815; 812-5283]

DFC New Zealand, Inc.; Filing of an Application

November 16, 1982.

Notice is hereby given that DFC New
Zealand, Inc. ("Applicant"), 100 West
Tenth Street, Wilmington, DE 19899, a
Delaware corporation, filed an
application on August 20, 1982, and an
amendment thereto on October 19, 1982,
for an order of the Commission,
pursuant to Section 6(c) of the
Investment Company Act of 1940
("Act"), exempting Applicant from all
provisions of the Act. All interested
persons are referred to the application
on file with the Commission for a
statement of the representations
contained therein, which are
summarized below.

Applicant represents that its sole
business will consist of selling
Applicant's commercial paper notes and
advancing the net proceeds of sale
thereof (the "Advances") to
Development Finance Corporation of
New Zealand ("Development
Corporation"), a New Zealand
corporation. Applicant further states
that substantially all of its assets will
consist of the unconditional obligation
of Development Corporation to repay
indebtedness (the "Repayment
Obligation") to Applicant arising by
reason of the Advances made to
Development Corporation by Applicant.
All of Applicant's outstanding common
stock is, and will be, owned by
Development Corporation. Applicant
states that there has been, and
undertakes that in the future there will
be, no public offering of Applicant's
common stock or of any other equity
security of Applicant.

According to the application,
Development Corporation, a statutory
corporation wholly-owned by the
Government of New Zealand, was
established for the purpose of providing
financial and advisory assistance to
New Zealand companies primarily
engaged in manufacturing, processing,
fishing or transportation or in related
service industries. Advances made by
Applicant to Development Corporation
will be used by Development
Corporation in fulfillment of its statutory
purpose of providing financing to New
Zealand companies.

Applicant represents that in 1978, the
staff of the Division of Investment
Management took the position that it
would not recommend that the
Commission take any enforcement

action against Development Corporation if it offered and sold its commercial paper notes in the United States without registering under the Act as an investment company (Development Finance Corporation of New Zealand, available January 27, 1979). Applicant states that, while Development Corporation in the past itself sold commercial paper notes in the United States commercial paper market, some investors in that market are precluded from purchasing commercial paper notes of foreign issuers. Accordingly, Development Corporation proposes to expand the potential sources of United States funding for its activities by establishing Applicant as a United States entity for the purpose of issuing or selling commercial paper notes in the United States.

To this end, Applicant proposes to enter into arrangements with Development Corporation pursuant to which Development Corporation may request the Applicant to make Advances to Development Corporation. To obtain funds to make the Advances, Applicant proposes to issue and sell short-term negotiable promissory notes of the type exempt from the registration requirements of the Security Act of 1933 ("Securities Act") by virtue of Section 3(a)(3) thereof and generally referred to as commercial paper (the "Notes"). The Notes will be sold in minimum denominations of \$100,000, will have a maturity not exceeding 270 days, and will neither be payable on demand prior to maturity nor eligible for any extension, renewal, or automatic "rollover" at the option of either the holder or Applicant. Applicant states that except for amounts needed to pay matured or maturing Notes and to meet Applicant's expenses, Applicant will advance all of the proceeds from the sale of Notes to Development Corporation. Applicant contemplates that the face amount of the Notes outstanding at any one time which Applicant may issue will not exceed \$40 million or such greater amount (not in excess of \$100 million) as may be required as a result of Development Corporation's funding needs and supported by increases in the credit facilities available to Development Corporation with respect to the Repayment Obligation.

According to the application, the obligation of Applicant to pay maturing or matured Notes will be supported by the Repayment Obligation, which will be the practical equivalent of a guarantee by Development Corporation of Applicant's obligations and, in the event Applicant defaults on its obligations to

the holders of the Notes, will be directly enforceable against Development Corporation by the holders of the Notes. In addition, Applicant states that the Repayment Obligation will have the benefit of (i) an overdraft credit facility established by Development Corporation with Citibank, N.A. for \$10 million (the "Overdraft Credit Facility") and (ii) a \$40 million standby credit facility established by Development Corporation with a consortium of banks (the "Standby Credit Facility"). Applicant further represents that the Overdraft Credit Facility will permit Development Corporation to make drawings for payment of the Repayment Obligation and will permit Applicant to make drawings to pay maturing or matured Notes. The Standby Credit Facility will further provide funds which Development Corporation may use to pay the Repayment Obligation and repay Citibank for drawings by Development Corporation or Applicant may use to pay maturing or matured Notes.

Applicant further represents that, Development Corporation will submit to the jurisdiction of any state or federal court in New York City, and will authorize an agent in New York City to accept service of process, in any action based on the Repayment Obligation. Applicant further states that the consent of Development Corporation to jurisdiction, and appointment of an agent to accept service of process, will be irrevocable until all amounts due and to become due in respect of the Advances have been paid.

Prior to their issuance, the Notes, and any future offering of Applicant's debt securities, will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization. However, Applicant understands that no rating shall be required to be obtained with respect to an issue of Applicant's debt securities if, in the opinion of Applicant's counsel, an exemption is available for the issue pursuant to Section 4(2) of the Securities Act.

Applicant undertakes not to sell any Notes prior to receiving an opinion of United States counsel to the effect that the proposed offering of Notes is exempt from the registration requirements of the Securities Act by virtue of Section 3(a)(3) thereof. Applicant undertakes that, in respect of any future offerings of its debt securities, Applicant will obtain an opinion of United States counsel as to compliance with, or the availability of an exemption from, the registration provisions of the Securities Act. Applicant does not request Commission

review or approval of counsel's opinion regarding the availability of an exemption for the Notes under Section 3(a)(3) of the Securities Act.

Applicant states that the Notes will be offered publicly, through one or more major dealers, only to the types of sophisticated and largely institutional investors that ordinarily participate in the United States commercial paper market and that, while an announcement of the establishment of the commercial paper facility may be made as a matter of record, the offering will not be advertised. Applicant undertakes to ensure that each dealer in the Notes will furnish each offeree memoranda describing the businesses of Development Corporation and Applicant and providing the most recent annual financial information for Development Corporation and for applicant. Applicant represents that the memoranda prepared by each dealer will be updated as promptly as practicable to reflect material adverse changes in the financial status of applicant or of Development Corporation and will be at least as comprehensive as memoranda customarily used in offering commercial paper in the United States.

Applicant has selected Citibank, N.A. of New York to act as issuing and paying agent for the Notes (the "Paying Agent"). The Paying Agent will receive proceeds from Applicant's sales of the Notes and collect payments made by Development Corporation in respect of the Repayment Obligation. Maturing or matured Notes will be paid by the Paying Agent with funds from the proceeds of new sales of Notes or from the repayment of Advances under the Repayment Obligation.

Applicant states that under the Act's definition of a "security," the Repayment Obligation, which would constitute virtually all of Applicant's assets, could be deemed to be an "investment security" and, Applicant could be deemed to be an investment company pursuant to Section 3(a)(3) of the Act. However, having been organized solely for the purpose of financing operations of Development Corporation, Applicant believes that it may be excluded from the definition of an investment company pursuant to Section 3(c)(5) of the Act. Accordingly, in order to eliminate any doubt that it would be entitled, without registration under the Act, to issue and sell the Notes, Applicant is seeking an exemption from all provisions of the Act.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by

order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 13, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32033 Filed 11-22-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 12810; 612-5309]

First Phoenix Fund, Inc.; Filing of Application

November 16, 1982.

Notice is hereby given that First Phoenix Fund, Inc. ("Applicant"), No. 6, The Commons, 3512 Silverside Road, Wilmington, Delaware 19803, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on September 7, 1982, for an order of the Commission pursuant to

Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit the net asset value of Applicant's shares in its two portfolios to be calculated based on the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below. Such persons are also referred to the Act for the complete text of those provisions thereof from which an exemption is being sought.

Applicant is a series investment company which intends to offer two classes of shares, each class representing interests in one of two separate investment portfolios—the Discretionary Portfolio and the Non-Discretionary Portfolio. The investment objective of each Portfolio is to seek current income with liquidity and stability of principal by investing in high quality "money market" instruments, including obligations issued or guaranteed by the United States government, its agencies and instrumentalities; certificates of deposit; bankers' acceptances; and commercial paper. Securities held in each Portfolio may be subject to repurchase agreements. Applicant states that it will not seek profits through short-term trading and will usually hold its securities to maturity.

Applicant states that its shares will be sold exclusively to The First National Bank of Atlanta ("First of Atlanta"), and its affiliated and correspondent banks acting in a fiduciary, advisory, custodial or similar capacity on behalf of persons maintaining accounts at the banks through which Applicant's shares may be purchased. Applicant further states that shares in the Discretionary Portfolio will be sold only to customer accounts for which First of Atlanta or an affiliated bank exercises substantial investment discretion; sales of shares in the Non-Discretionary Portfolio will be limited to other types of customer accounts at First of Atlanta and its affiliates and to all accounts at First of Atlanta's correspondent banks. Provident Institutional Management Corporation acts as Applicant's investment adviser, and Shearson/American Express, Inc., is its distributor.

The application states that the Commission has expressed the view that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" and similar funds having more than 60 days remaining to maturity be valued with reference to market factors, and (2) it

would be inconsistent generally, with the provisions of Rule 2a-4 for a "money market" or similar fund to value such portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant is requesting an order of the Commission, pursuant to Section 6(c) of the Act, to permit the assets in each of Applicant's Portfolios to be valued according to the amortized cost method. Section 6(c) of Act provides, in pertinent part, that the Commission, by order upon application may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant states that it believes that its shareholders would be unfairly treated if it were forced to price its portfolio instruments in a manner which it contends would produce artificial price or yield volatility for instruments which Applicant expects to hold until maturity. The Applicant submits that potential shareholders are not concerned with the theoretical differences which might occur between the yield achieved through market pricing and the yield computed on the basis of amortized cost. On the other hand, Applicant states that it believes that such potential shareholders are vitally concerned that (1) the net asset value of their shares remain stable; and (2) the daily net income declared on their investment be steady and not exhibit the volatility which can occur when changes in market prices cause changes in yield on a daily or weekly basis.

By maintaining Portfolios of high quality money-market instruments of short maturities, Applicant believes that it will be possible to provide the required stability to individuals and institutional investors. Applicant has determined that maintaining an average portfolio maturity of 120 days or less will accomplish the aims of Applicant's investors by reducing the risk of significant volatility in the value of portfolio instruments and at the same time producing a yield commensurate with those available in the market in which each of Applicant's Portfolio's is investing.

Applicant agrees that the following conditions may be imposed in any order

of the Commission granting the requested relief:

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within its overall duty of care owed to Applicant's shareholders—to establish procedures reasonably designed, taking into account current market conditions and the investment objective of each of Applicant's Portfolios, to stabilize the net value per share of each Portfolio, as computed for the purposes of distribution, redemption and repurchase, at \$1.00 per share.

(2) Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from each Portfolio's \$1.00 amortized cost price per share, and the maintenance of records of such review.¹

(b) In the event that such deviation from such Portfolio's \$1.00 amortized cost price per share exceeds $\frac{1}{2}$ of 1%, a requirement that the board of directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes that the extent of any deviation from the \$1.00 amortized cost price per share of any of Applicant's Portfolios may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the greatest extent reasonably practicable such dilution or unfair results, which action may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses or to shorten the average portfolio maturity of such Portfolio; reducing or withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to each Portfolio's objective of maintaining a stable price per share;

provided, however, that Applicant will neither (a) purchase any instrument with a remaining maturity greater than one year nor (b) maintain in any Portfolio a dollar-weighted average portfolio maturity which exceeds 120 days.²

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition (1) above, and Applicant will include in the minutes of board of directors' meetings and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to the rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which, as determined by the board of directors, present minimal credit risks, and which are of high quality, as determined by any major rating service, or, in the case of any instruments that are not rated, are of comparable quality, as determined by the board of directors.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, Applicant will describe the nature and circumstances of such action.

Prior to adopting the amortized cost method of valuation, Applicant's board of directors will determine in good faith that in light of characteristics described above, including the conditions to which Applicant must adhere as set forth in any order of the Commission, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities will reflect the fair value of such securities. On the basis of the foregoing, Applicant submits that the requested exemption is appropriate in the public interest and consistent with protection of investors and the purposes

fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 10, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32629 Filed 11-22-82; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-12071]

General Electric Credit Corp.; Application and Opportunity for Hearing

Notice is hereby given that General Electric Credit Corporation (the "Company") has filed an application pursuant to clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Chemical Bank ("Chemical") under an indenture dated as of December 1, 1974 (the "1974 Indenture") between the Company and Chemical which was heretofore qualified under the Act, and the trusteeship by Chemical under an indenture (the "New Indenture") among Chemical, as trustee, Florida National Bank of Miami, as co-trustee, Trafalgar Credit Corporation ("Trafalgar"), as issuer and the Company, as guarantor, which is not qualified under the Act, is

¹ To fulfill this obligation, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions approved by its board of directors in the exercise of its discretion to be appropriate indicators of value, which may include among others (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes of money-market instruments published by reputable sources.

² In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce such dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chemical from acting as Trustee under the 1974 Indenture or under the New Indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of this Section of the Act provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application of the Commission, and after opportunity for hearing thereon, that the trusteeships under the indentures are not so likely to involve a material conflict of interest to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any such indentures.

The Company alleges that:

(1) At October 15, 1982, it had outstanding \$125,000,000 principal amount of 8.60% Notes Due April 1, 1985 (the "1974 Notes") under the 1974 Indenture. The 1974 Notes issued pursuant to the 1974 Indenture were registered under the Securities Act of 1933 and the 1974 Indenture was qualified under the Trust Indenture Act of 1939. Chemical is not a trustee under any other indenture under which any other securities of the Company are outstanding.

(2) Trafalgar, an indirect wholly-owned subsidiary of General Electric Credit Company, the parent of the Company, has issued \$14,652,608.18 principal amount of its 15% Mortgage-Backed Bonds, Series 1, Due 2012 (the "Bonds") under the New Indenture, which Bonds are secured by a pledge of a pool of mortgages owned by Trafalgar. The Bonds are partially guaranteed by the Company pursuant to Section 2.07 of the New Indenture. In the event any payment made by the Company under such guarantee (the "Guarantee") is not otherwise reimbursed to it, upon payment in full of the Bonds the Company will succeed to the rights of

the trustee under the New Indenture in such collateral to the extent of such reimbursement deficiency. Chemical is trustee under the New Indenture. The Bonds issued pursuant to the New Indenture have not been registered under the Securities Act of 1933 in reliance upon an exemption therefrom pursuant to Section 4(2) of such Act, and accordingly the New Indenture is exempt from the qualification provisions of the Trust Indenture Act of 1939;

(3) Florida National Bank of Miami acts as co-trustee under the New Indenture in certain limited respects.

(4) The Company's obligations pursuant to the 1974 Indenture and under the New Indenture are both senior and wholly unsecured and such obligations will rank *pari passu* inter se;

(5) The Company is not in default under the 1974 Indenture or the 1974 Notes, and neither the Company nor Trafalgar is in default under the New Indenture, the Bonds or the Guarantee;

(6) Such differences as exist between the 1974 Indenture and the New Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of any of the Bondholders to disqualify Chemical from acting as Trustee under one of the Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than December 13, 1982 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32059 Filed 11-22-82; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted Form 4 for an extension of clearance. Form 4 is a statement of changes in beneficial ownership of securities by officers, directors and ten percent shareholders of certain companies subject to the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935 and the Investment Company Act of 1940.

Agency Clearance Officer—Kenneth Fogash 202-272-2700.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, D.C. 20549.

Form 4

No. 270-126

Submit comments to OMB Desk Officer: Robert Veeder 202-395-4814. November 15, 1982.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32070 Filed 11-22-82; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance Form 20-F (17 CFR 240.319), which governs the disclosure requirements for registration statements and annual reports of certain foreign private issuers with foreign securities traded in the United States. Please cite to Commission file number 270-156 in all references to the submission.

Agency Clearance Officer: Kenneth Fogash (202) 272-2700

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, D.C. 20549.

Extension of Clearance

Form 20-F

No. 270-156

Submit comments to OMB Desk
Officer: Robert Veeder (202) 395-4814.
George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32069 Filed 11-22-82; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 12821; 812-5327]

Arch Fund, Inc.; Application.

November 17, 1982.

In the matter of: Arch Fund, Inc., No. 6, The Commons, 3512 Silverside Road, Wilmington, DE 19810 (812-5327).

Notice is hereby given that The Arch Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on September 24, 1982, and an amendment thereto on October 25, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to calculate its net asset value per share using the amortized cost method of valuation for its two existing classes of shares representing investment exclusively in money market securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application, Applicant intends to offer two classes of shares, each class representing interests in one of two separate investment portfolios, namely the Discretionary Portfolio and the Non-Discretionary Portfolio. Applicant states that shares of each of its existing portfolios will be sold exclusively to Mercantile Trust Company N.A., St. Louis, Missouri ("Mercantile Trust"), and its affiliated correspondent banks acting in a fiduciary, advisory, custodial or other capacity on behalf of persons maintaining accounts at the banks through which Applicant's shares may be purchased. Applicant further states that shares in the Discretionary Portfolio will be sold only to customer accounts for which Mercantile Trust or an affiliated bank exercises substantial investment discretion; and sales of shares in the Non-Discretionary Portfolio will be limited to other types of customer accounts at Mercantile Trust and its affiliates and to all accounts at Mercantile Trust's correspondent banks.

Applicant represents that the investment objective of each of its existing portfolios is to seek current

income with liquidity and stability of principal by investing in high quality "money-market" instruments, including obligations issued or guaranteed by the United States Government, its agencies and instrumentalities; certificates of deposit; bankers' acceptances; commercial paper; variable amount master demand notes; and repurchase agreements. Applicant further represents that in instances where one of its existing portfolios purchases variable amount master demand notes or other floating rate or variable rate obligations or obligations with demand features, Applicant intends to determine the maturities of such obligations in accordance with the procedures permitted by proposed Rule 2a-7 under the Act, or if that rule should ultimately be adopted, in accordance with the procedures permitted by the rule as adopted.

Applicant represents that Provident Institutional Management Corporation ("Provident"), a wholly-owned subsidiary of Provident National Bank, serves as the investment adviser to the Discretionary Portfolio and that Mercantile Trust serves as the investment adviser to the Non-Discretionary Portfolio. Applicant further represents that shares of each of its existing portfolios are sold by Shearson/American Express, Inc. ("Shearson"), a wholly-owned subsidiary of American Express Company. Applicant states that it will not execute portfolio transactions through, or acquire repurchase agreements or portfolio securities issued by, Provident, Mercantile Trust, Shearson or their affiliates; will not make savings deposits in Mercantile Trust or its affiliates; and will not give preference to repurchase agreements entered into with or securities issued by its correspondents.

Applicant requests exemptions from Section 2(a)(41) of the Act, and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit the assets in each of Applicant's existing portfolios to be valued according to the amortized cost method. Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision or provisions of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant believes that its shareholders would be unfairly treated if Applicant were forced to price its portfolio instruments in a manner which would produce artificial price or yield volatility for instruments which Applicant expects to hold until maturity. Applicant further asserts that potential shareholders of Applicant are not concerned with the theoretical differences which might occur between the yield achieved through market pricing and the yield computed on the basis of amortized cost as described above. On the other hand, Applicant believes that such potential shareholders are vitally concerned that the net asset value of their shares remain stable; and that the daily net income declared on their investment be steady and not exhibit the volatility which can occur when changes in market prices cause changes in yield on a daily or weekly basis.

By maintaining its existing portfolios of high quality money-market instruments of short maturities, Applicant believes that it will be possible to provide the required stability to individuals and institutional investors. Applicant has further determined that maintaining an average portfolio maturity of 120 days or less will accomplish the aims of Applicant's investors by reducing the risk of significant volatility in the value of Applicant's portfolio instruments and at the same time producing a yield commensurate with those available in the market in which each of its portfolios is investing.

Applicant further agrees that the following conditions may be imposed in any order of the Commission granting such relief, each to apply only to its existing portfolios.

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within its overall duty of care owed to Applicant's shareholders—to establish procedures reasonably designed, taking into account current market conditions and the investment objective of each of Applicant's existing portfolios, to stabilize the net asset value per share of each portfolio, as computed for the purpose of distribution, redemption and repurchase, at \$1.00 per share.

(2) Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as

are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from each portfolio's \$1.00 amortized cost price per share, and the maintenance of records of such review.¹

(b) In the event that such deviation from such portfolios \$1.00 amortized cost price per share exceeds 1/2 of 1%, a requirement that the board of directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes that the extent of deviation from the \$1.00 amortized cost price per share of any of Applicant's existing portfolios may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the greatest extent reasonably practicable such dilution or unfair results, which action may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses or to shorten the average portfolio maturity of such portfolio; reducing or withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to each existing portfolio's objective of maintaining a stable price per share; provided, however, that Applicant will neither (a) purchase any instrument with a remaining maturity greater than one year, nor (b) maintain in any such portfolio a dollar-weighted average portfolio maturity which exceeds 120 days.²

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition (1) above, and Applicant will include in the minutes of board of directors' meetings and will record, maintain and preserve for a period of not less than six years (the first 2 years in an easily accessible place) a written record of the board's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above. The documents preserved pursuant to this condition shall be subject to inspection

¹ To fulfill this obligation, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions approved by its board of directors in the exercise of its discretion to be appropriate indicators of value, which may include among others (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources.

² In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce such dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to the rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which, as determined by the board of directors, present minimal credit risks, and which are of high quality, as determined by any major rating service, or, in the case of any instruments that are not rated, are of comparable quality, as determined by the board of directors.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, the Applicant will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than December 13, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32067 Filed 11-22-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12819; 812-5335]

Bayerische Hypotheken- Und Wechsel-Bank Aktiengesellschaft; Application

November 16, 1982.

In the matter of; Bayerische Hypotheken- Und Wechsel-Bank Aktiengesellschaft; c/o Thomas P. Dickson, Esq., Milbank, Tweed, Hadley & McCloy, 1 Chase Manhattan Plaza, New York, New York 10005 (812-5335).

Bayerische Hypotheken- und Wechsel-Bank Aktiengesellschaft ("Applicant") has filed an application for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all the provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

As of January 1982, Applicant operated the largest bank branch network in southern Germany and was active nationwide in the following cities: Frankfurt, Hamburg, Hannover, Dusseldorf, Stuttgart and Berlin. Through its full-service branches in New York, Cayman Islands and London, its subsidiaries in Luxembourg and Salzburg, representative offices in Brazil, Hong Kong, Italy, Mexico, South Africa and Spain, affiliates and its partnership in ABECOR, Europe's largest international banking group, Applicant offers commercial banking services world-wide. It accepts demand, time and savings deposits. In addition to making secured and unsecured short and long term loans, Applicant guarantees items issued by its customers and participates in syndicated loan transactions. Applicant engages in the mortgage banking business, as one of two private commercial banks in West Germany so authorized, by making loans which are secured by mortgages and by making loans to governmental entities which are backed by such entity's taxing power. Applicant also engages in the underwriting and brokering of securities (both for its own account and for those of others) and the business of buying and selling foreign exchange and bullion.

Applicant states that, at the end of 1981, total consolidated assets of itself and its subsidiaries amounted to approximately \$39,569 million, consolidated amounts due to customers aggregated \$11,476 million, and shareholders' equity amounted to \$794 million. Somewhat more than a third of Applicant's aggregate assets relate to mortgage banking. Applicant's customer

lending and deposit operation also comprise approximately one-third of its aggregate assets and approximately one-seventh of its assets are related to money market operations with other banks.

Applicant represents that it is extensively regulated under German banking laws, chiefly by the Federal Banking Supervisory Authority ("FBSA"). The FBSA, and the Banking Act under which it regulates, impose the following requirements: each bank must maintain adequate equity capital and liquidity; large loans must be filed with regard to minimum reserve, liquidity, equity capital, and foreign exchange limitations. The FBSA also regulates Applicant under provisions of the Law on Mortgage Banks. To carry out banking business, a bank must obtain a written license from the FBSA which the FBSA can withdraw. The German Central Bank assists, and cooperates with, the FBSA with regard to the supervision of banking activities in West Germany; it determines the discount rate for rediscounting bills of exchange, establishes volume ceilings for rediscounts by each bank, and imposes certain minimum reserve requirements upon all banks. Applicant represents that, as a corporation, it must be audited annually by a certified public accountant nominated by its shareholders and approved by the FBSA. In addition, on an annual basis, the FBSA nominates a certified public accountant to examine the depositaries wherein Applicant places its customers' securities for safekeeping. While no governmental agency comparable to the Federal Deposit Insurance Corporation exists in West Germany, Applicant does belong to a group of private commercial banks that insures deposits. Such insurance, however, does not cover the subject of this application. Finally, Applicant's branch in the United States is licensed, examined, and regulated by the state banking authorities of New York.

According to the application, Applicant proposes to issue and sell unsecured, prime quality, commercial paper notes denominated in United States dollars to one or more commercial paper dealers in the United States who will then reoffer the notes in minimum denominations of \$100,000 to institutional investors and other entities and individuals who normally purchase such commercial paper notes. The notes will not be advertised or otherwise offered for sale to the general public. Applicant states that it presently estimates that the total aggregate amount of notes to be outstanding will

not exceed \$100 million. Applicant represents that its notes will rank *pari passu* among themselves and equally with all its other unsubordinated indebtedness, including deposit liabilities, and superior to the rights of shareholders. Applicant plans to sell the notes without registration under the Securities Act of 1933 ("1933 Act") in reliance upon an opinion of its American counsel that the offering will qualify for an exemption from the registration requirements of the 1933 Act provided for certain short-term commercial paper by Section 3(a)(3) thereof. Applicant will not proceed with its proposed offering until it has received such an opinion letter. Applicant does not request Commission review or approval of the aforementioned counsel's opinion. Applicant represents that the presently proposed and any future issuance of notes shall have received, prior to issuance, one of the three highest investment grade ratings from at least one nationally recognized United States organization engaged in statistical rating and that its American counsel will certify that such rating has been received. Applicant undertakes to ensure that the dealer or dealers in the notes will provide each offeree of the notes, prior to any sale of notes to such offeree, with (i) a memorandum which describes Applicant's business and (ii) Applicant's most recent publicly available fiscal year-end balance sheet and income statement. Such memorandum will be updated as promptly as practicable to reflect material changes in Applicant's financial status and will be at least as comprehensive as those customarily used in offering prime quality commercial paper in the United States.

Applicant represents that any future offerings of its securities in the United States will be done on the basis of disclosure documents at least as comprehensive as those used in the presently proposed offering. Applicant consents to any order granting relief requested pursuant to section 6(c) of the Act being expressly conditioned upon its compliance with the foregoing undertakings. Applicant represents that any future offering in the United States will be made pursuant to either a registration statement under the Securities Act of 1933 or an applicable exemption from registration under the 1933 Act. In any offering whereby no registration is made pursuant to the 1933 Act, disclosure documents will be provided to each offeree who has indicated an interest in the securities

then being offered prior to any sale of such securities to such offeree.

Applicant agrees to appoint a bank in the United States as its authorized agent to issue the notes from time to time. Applicant represents that it will appoint a bank or trust company, a corporation providing corporate services for lawyers, or the Commission as its agent to accept any process which may be served in any action based on the notes and instituted in any state or federal court by the holder of any note. Applicant further represents that it will accept the jurisdiction of any state or federal court in the City and State of New York in respect of any such action and that both its appointment of an authorized agent and its consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the notes that have been paid by Applicant. Applicant states that it will similarly consent to jurisdiction and appoint an agent for service of process, such consent also to be irrevocable until all amounts due and to become due in respect of such securities have been paid, in suits arising from any other offerings of securities that it may make in the United States, which offerings Applicant states may include debt securities. Applicant consents to be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the notes or otherwise. In such instances, the authorized agent will neither be a trustee for the noteholders nor will it have any responsibilities or duties to act for such holders as would a trustee.

Section 3(a)(3) of the Act defines investment company in such a manner that Applicant states that there is uncertainty whether it would be considered an investment company as defined by the Act. Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Applicant states that absent an exemption it would be denied ready access to the credit markets in the United States, a result both inequitable and in direct conflict

with the objective of the International Banking Act of 1978. Applicant asserts that an exemptive order is both necessary and appropriate because it affords foreign banks access to a source of U.S. dollars which is necessary in view of their activities in the Eurodollar market and because it would benefit U.S. investors by making available additional opportunities for investment in short-term prime quality securities. Issuance of the notes will provide Applicant with an additional source of funding to meet its short-term U.S. dollar requirements and could help to stabilize the international financial markets. Applicant claims that its activities are extensively regulated by the German banking authorities, in a regulatory structure comparable to that imposed upon United States banks, and that the limitations imposed by German law afford substantial protection to investors in debt securities. Applicant further asserts that a commercial bank such as itself is fundamentally different from the typical investment company that Congress intended the Act to regulate and that Applicant's activities do not lend themselves to the abuses which the provisions of the Act were designed to prevent. Applicant concludes that granting an exemptive order pursuant to Section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is hereby given that any interested person may, not later than December 13, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on this matter accompanied by a statement as to the nature of his/her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed to: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any

notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32073 Filed 11-22-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22715; 70-6776]

Connecticut Light & Power Co.; Order Authorizing Eurodollar Loan Agreement and the Organization and Financing of a Foreign Subsidiary To Issue and Sell Debentures in the Eurobond Market; Exception From Competitive Bidding; Reservation of Jurisdiction

November 17, 1982.

In the matter of; Connecticut Light & Power Co.; Berlin, Connecticut (70-6776).

The Connecticut Light & Power Company ("CL&P"), a wholly-owned subsidiary of Northeast Utilities, a registered holding company, has filed with this Commission an application-declaration and an amendment thereto pursuant to Sections 6(a), 7, 9(a), 10 and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45, 50(a)(2), 50(a)(3) and 50(a)(5) promulgated thereunder.

CL&P seeks Commission authorization to borrow up to \$75 million through a multibank Eurodollar credit arrangement and to organize a new, wholly-owned financing subsidiary for the express purpose of engaging in Eurodollar borrowing transactions. Funds available from the credit arrangement would be applied in part to provide working capital for CL&P's operations and to create equity capital for the financing subsidiary. The subsidiary will serve as a vehicle for the issuance and sale of debentures in the Eurobond market, the proceeds of which will be loaned, in turn, to CL&P.

CL&P asserts that the proposed transactions will provide alternatives to domestic financing sources. Borrowings will be effected for working capital purposes when interest rates will be competitive with, or more favorable than, comparable arrangements available in the United States. It is also represented that at times in the past several years there have been cost savings available in the Eurobond market relative to the domestic market ranging from 30 to 80 basis points, and at times exceeding 100 basis points. Through the proposed transactions,

CL&P intends to be in a position to take advantage of such cost savings when they are available.

Pursuant to a proposed loan agreement CL&P intends to initially borrow up to \$50 million for general corporate purposes ("Tranche A") and thereafter under a separate agreement, up to \$25 million to capitalize the financing subsidiary ("Tranche B"). Effective interest rates will be set with reference to the London inter-bank offered rate ("LIBOR") as it may fluctuate from period to period, for one, three or six-month interest periods as determined by CL&P. Borrowings under Tranche A will be available for a period of two years, in multiples of \$500,000 but not less than \$5 million, will bear interest at LIBOR plus $\frac{1}{2}$ percent on all amounts actually borrowed and will carry the following fees: 1) an initial management fee of $\frac{1}{4}$ percent on the line of credit; 2) a $\frac{1}{4}$ percent commitment fee on the unused portion of the line of credit; and 3) a \$5,000 agency fee per annum. All amounts under Tranche A will be due at the expiration of the two-year period but may be prepaid, without penalty, at the end of any applicable LIBOR interest period. Based on LIBOR rates (as of November 15, 1982) of 9.75 percent and 10.00 percent and 10.07 percent for one, three and six-month interest periods, respectively, CL&P estimates the effective cost of borrowing under Tranche A for these periods would be 9.93 percent, 10.18 percent and 10.24 percent, respectively.

Net proceeds from Tranche A would be applied, together with other available funds, to provide working capital and to finance CL&P's construction expenditures for 1982 and 1983 estimated at \$848,043,000 (including AFUDC but excluding nuclear fuel).

Final borrowing terms for the \$25 million under Tranche B have not as yet been settled. CL&P also states that in lieu of Tranche B an alternative method may be chosen to capitalize the financing subsidiary. Therefore, jurisdiction will be reserved over the borrowing authority for the \$25 million pending completion of the record.

CL&P seeks authorization to purchase shares of the financing subsidiary proposed to be organized and/or to make capital contributions thereto in an aggregate amount not to exceed \$25 million. It will be organized under the laws of the Netherlands Antilles and its principal function will be to borrow funds outside of the United States through the issuance of debentures in the Eurobond market. It is stated that organization in this manner is necessary in order for debenture interest to be free

from withholding taxes, a common, accepted characteristic of Eurobond financing. To eliminate the tax withholding requirement it is represented that a debt-to-equity capitalization ratio no higher than 3.3 to 1 is advisable. Borrowings under Tranche B or an alternative arrangement, if authorized, or funds from internal cash sources will be applied to capitalize the financing subsidiary and to maintain this ratio. Substantially all of the equity investment in the new subsidiary will be reinvested in one or more financial instruments, such as a certificate of deposit with a major financial institution. The terms of the reinvestment will be matched as closely as practicable to those of the borrowings under Tranche B in order to minimize to CL&P the effective cost of capitalization. The effective cost (the difference between borrowing costs under Tranche B and the return on the investment of equity capital) would not be likely to exceed $\frac{1}{2}$ percent plus taxes and expenses.

The debentures will be issued within two years from the date of this order and will be sold in a public offering outside of the United States through a syndicate of banks and other financial institutions. CL&P requests an exception from the competitive bidding requirement of Rule 50 promulgated under the Act in order to negotiate with managing underwriters the principal amount of the debentures (not greater than \$75 million), the public offering price (not less than 98 nor more than 100 percent of the principal amount), maturity and interest rate. The debentures will be issued under an indenture between CL&P, the financing subsidiary, and a major financial institution, acting as trustee. CL&P will unconditionally guarantee the principal of and interest on the debentures which will be unsecured general obligations of the subsidiary. Interest on the debentures would be payable annually, in arrears, in United States dollars.

Depending upon the maturity of the debentures they may be non-callable for up to 6 years. Thereafter, the financing subsidiary will have the option of redeeming all or a portion of the debentures at an initial optional redemption price likely to be 101 $\frac{1}{2}$ percent of the principal amount. The initial redemption price would decline thereafter on a straight-line basis until maturity at a rate of $\frac{1}{2}$ percent annually for debentures maturing in 7 or 8 years and at a rate of $\frac{1}{4}$ percent for those maturing in 9 or 10 years. The debentures will not be subject to a mandatory sinking fund.

The financing subsidiary and CL&P will be permitted to purchase the debentures in the open market, on the stock exchange on which they are listed, and in private transactions at a price not exceeding 120% of the market price of the debentures on the London Stock Exchange at the close of the last business day before the private transaction.

The financing subsidiary and CL&P will be required to pay, as additional interest, any additional amount necessary so that the amount of every interest payment on the debentures to holders who are not United States or Netherlands Antilles residents shall be (after withholding any tax imposed on such payment by the United States or Netherlands Antilles) equal to the stated interest rate of the debentures. If, as a result of changes in the laws of the Netherlands Antilles or the United States, the financing subsidiary would be required to make such additional payments, the financing subsidiary would have the option of redeeming the debentures as a whole (but not in part) at their principal amount, together with accrued interest. A similar redemption option would also be available, if as a result of changes in the laws of the Netherlands Antilles or the United States, CL&P or the financing subsidiary should determine that United States withholding tax would apply to interest payments receivable by the financing subsidiary from CL&P and that such obligation cannot be avoided by the use of reasonable measures.

Net proceeds from the sales of the debentures will be loaned to CL&P by the financing subsidiary. To evidence these borrowings, CL&P will issue unsecured term notes to the financing subsidiary. Borrowings of CL&P authorized by this or a subsequent order up to the maximum requested \$75 million, and the principal of any debentures issued and sold by the financing subsidiary in the Eurobond market will be repaid at their respective maturities from CL&P's internal cash resources or from the proceeds of long-term debt or equity financing. Net proceeds from the sales of the debentures will be used to retire a portion of CL&P's short-term debt then outstanding.

CL&P requests an exception from the competitive bidding requirements of Rule 50(b) pursuant to subparagraph 50(a)(5) regarding the sale of the debentures. It asserts that the protections of competitive bidding are not appropriate in the public interest of for the protection of investors or consumers for reasons which, among

other reasons, include the following: (1) Active competition is anticipated because there has been active competition among financial institutions with respect to Eurodollar financing taken as a whole and (2) the nature of a Eurobond financing precludes competitive bidding because of problems inherent in coordinating the flow of information among underwriters in numerous foreign countries.

CL&P has received the necessary state authorization from the Connecticut Department of Public Utility Control in connection with the proposed transactions. No other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees, commissions and expenses incurred in connection with the formation of the new subsidiary and with the \$50 million credit arrangement are estimated to be \$58,000, including approximately \$18,000 in legal fees for counsel of the foreign lenders' agent bank.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 22655) and no hearing has been requested of or ordered by this Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied:

It is ordered, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be and it hereby is, granted and permitted to become effective forthwith, except with respect to those matters over which jurisdiction is herein reserved, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

It is further ordered that jurisdiction be, and it hereby is, reserved with respect to all terms, fees and expenses related to: 1) borrowings by CL&P under Tranche B or any alternative arrangement; 2) the investment of equity capital by the financing subsidiary; 3) debentures issued and sold by the financing subsidiary including principal amount, public offering price, maturity and interest rate; and 4) notes issued by CL&P to evidence borrowings from the financing subsidiary.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32065 Filed 11-22-82; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 22706; 70-6796]

Consolidated Natural Gas Service Co., Inc.; Proposed Inclusion of Return on Equity in Service Company Charges to Affiliates

November 12, 1982.

In the matter of: Consolidated Natural Gas Service Co., Inc., 100 Broadway, New York, New York 10005 (70-6796).

Consolidated Natural Gas Service Company, Inc. ("Service Company"), a subsidiary of Consolidated Natural Gas Company ("Consolidated"), a registered holding company, has filed a declaration with this Commission pursuant to Section 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 90 and 91 promulgated thereunder.

Service Company performs services for Consolidated System companies at cost. The services include accounting, data processing, employee relations, rate, tax and other support services. Consolidated and its subsidiaries have been billed by Service Company on a monthly basis since 1962 to cover its aggregate expense of conducting business, including interest costs applicable to debt but excluding compensation for the use of equity capital.

Service Company requests authorization to include in billings to its associate companies reasonable compensation for necessary capital procured through the issuance of capital stock pursuant to Instruction 01-12 of the Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies and Rule 91(a) under the Act. Such compensation, or return on Service Company capital stock equity would be computed using the latest rate of return on equity allowed Consolidated Gas Supply Corporation ("Supply Corporation"), another Consolidated subsidiary, by the Federal Energy Regulatory Commission ("FERC"). The FERC return on equity is simpler to use than the various returns on equity granted by the jurisdictional state regulatory commissions. The latest rate of return on equity allowed to Supply Corporation by FERC is 12.50 percent. Service Company's authorized rate of return on equity will be automatically adjusted when FERC changes Supply Corporation's authorized return. Service Company will continue to bill associate companies at actual cost for its other expenses of conducting business, including interest on outstanding debt.

In the future, Service Company will issue both capital stock and non-negotiable long-term notes to Consolidated to finance the acquisition

of assets. The Service Company capital structure will be developed to eventually reflect, to the extent possible, the long-term debt/common stock equity ratio of Consolidated and its subsidiaries on a consolidated basis.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 6, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32079 Filed 11-22-82; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8078]

Falcon Oil & Gas Co., Inc.; Application To Withdraw From Listing and Registration

November 15, 1982.

In the matter of Falcon Oil & Gas Company, Inc., Common Stock, \$.01 Par Value, File No. 1-8078.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Falcon Oil & Gas Company, Inc. ("Company") wishes to withdraw its common stock from listing and registration on the PSE because the Company has decided to trade its common stock in the over-the-counter market.

Any interested person may, on or before December 7, 1982, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32080 Filed 11-22-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12820; 812-5322]

Colonial Option Income Fund, Inc., et al.; Application

November 16, 1982.

In the matter of: Colonial Option Income Fund, Inc. and Colonial Management Associates, Inc., 75 Federal Street, Boston, Massachusetts 02110 (812-5322).

Colonial Option Income Fund, Inc. (the "Fund"), registered under the Investment Company Act of 1940 ("Act"), and Colonial Management Associates, Inc. ("CMAI"), investment adviser of and principal underwriter for the Fund, ("Applicants"), filed an application on September 20, 1982, and an amendment thereto on October 8, 1982, requesting an order of the Commission pursuant to Section 6(c) of the Act, granting a retroactive exemption from Sections 18(d), 18(f) and 22(c) of the Act, and Rule 22c-1 thereunder, with respect to the transactions described below. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that prior to September 27, 1982, the Fund's authorized capital stock consisted of 30,000,000 shares of common stock. The general public offering of the Fund's shares was suspended on August 30, 1982 when it was discovered that substantially all of the authorized shares of the Fund had been issued. Reinvestment of the third quarter distributions in additional shares

described below to those shareholders who elected to reinvest was delayed.

Applicants state that a special meeting of shareholders to (a) authorize an increase of the capital stock of the Fund to 60,000,000 shares of common stock and to amend the Articles of Organization of the Fund accordingly, and (b) authorize retroactively the issuance of up to 936,000 of such shares in payment of distributions to certain shareholders and of up to 1,713,000 of such shares with respect to certain purchase orders previously received and confirmed, was held on Monday, September 27, 1982, at which time such authorizations were approved.

The Applicants state that on July 22, 1982, the Fund's board of directors declared a dividend of \$.12 per share from net investment income and a distribution of \$.31 per share from realized gains payable on August 31, 1982, to shareholders of record on August 13, 1982. Pursuant to standing shareholder elections to receive distributions in shares rather than cash, approximately 936,000 shares of common stock were issuable to shareholders on August 31, 1982, in payment of the distributions at the August 13 net asset value of \$7.62 per share. Because the Fund did not have legally authorized shares available on August 31, 1982, no dividend reinvestment shares were issued in payment of such distributions to such shareholders ("DRIP shares" and "DRIP shareholders"). The DRIP shareholders were advised that the number of shares to which they were entitled on August 31, 1982 would be issued to them unless they elected to receive in cash the net asset value of such shares determined as of the time of the request (but not less than \$7.62 per share). This cash election terminated when the DRIP shares were authorized and issued.

The application states that during the period from August 17, 1982 until August 30, 1982, when the Fund suspended sales of shares, purchase orders were confirmed for the sale of approximately 1,713,000 shares which were not issued because no legally authorized shares were available ("confirmed shares" and "confirmed purchasers"). Applicants state that, having received the necessary authorization from its shareholders, the Fund has issued shares with respect to all such transactions for which payments were received and which were not cancelled by the confirmed purchasers. Such purchase orders were confirmed at per share net asset values ranging from \$7.92 to \$8.46, for an aggregate of approximately \$14,068,000. Applicants state that the confirmed

shares had a net asset value of approximately \$14,459,000 based on the Fund's per share net asset value of \$8.44 on August 30, 1982, which is higher than the net asset values for all except one of the days on which purchase orders were confirmed. (The actions regarding the confirmed shares described in this paragraph are sometimes hereinafter referred to as the "confirmed purchasers transactions"). Applicants state that confirmed purchasers who elected to cancel their transactions were refunded the purchase price the Fund received for the confirmed shares. Applicants further state that CMAI undertook that it would reimburse the Fund for the difference between a lower current net asset value of the Fund's shares at the time of such cancellations was less than the amount refunded. A similar undertaking was made with respect to DRIP shares. Since the net asset value at the time of any such cancellations was, in fact, always greater than the amounts refunded, no such reimbursements were necessary. Applicants state that the Fund's board of directors had a meeting on September 3, 1982 to consider the matter. With respect to the DRIP shareholders, the Applicants state that the Fund's directors believed that insofar as possible they should be put in the same position they would have occupied if the Fund had had legally authorized shares available for the issuance of the DRIP shares on August 31, 1982. Accordingly, the directors authorized the Fund to undertake the DRIP transactions. With respect to the confirmed purchasers, the directors were advised that the Fund had the right to refund all amounts received prior to August 30 and to refuse to accept payments tendered on and after August 30, but that such action might result in claims being asserted against the Fund. Applicants state that the directors also considered the dilutive effects on the Fund's net asset value if the Fund were to issue the confirmed shares at the lower net asset values in effect when the purchase orders were confirmed. The differences between the value of such shares on August 30, 1982 and the value of such shares when confirmed was \$391,000, approximately 1.3 cents per outstanding share of the Fund. According to the application, the directors determined that it was in the best interests of the Fund and its shareholders to issue shares with respect to these transactions, rather than to cancel them and refund the amounts received by the Fund, or to refuse to accept the payments tendered to it.

Applicants represent that the situations described above arose as a

direct consequence of a dramatic increase in sales of shares during the summer of 1982 and an inadvertent error in monitoring such sales. As a result the Fund exhausted its available shares on August 17, 1982 and did not have legally authorized shares available for payment of the August 31 distributions or for the purchase orders it accepted and confirmed from August 17, 1982 to August 30, 1982. Applicants contend that both the DRIP shareholders, who had elected to receive distributions in additional Fund shares in accordance with the Fund's normal procedures, and the confirmed purchasers, who ordered and paid for Fund shares in the normal course of business, had reasonable expectations of receiving such shares and may have had legal claims they could assert if such expectations were not fulfilled. Applicants state that in order to put the DRIP shareholders and the confirmed purchasers in the position they would have occupied if the Fund had not unexpectedly exhausted its legally authorized shares on August 17, 1982, the Fund has undertaken the DRIP transactions and the confirmed purchasers transactions. It should also be noted, Applicants assert, that the DRIP transactions and the confirmed purchasers transactions put all shareholders of the Fund in the same position which they would have had vis-a-vis the Fund if shares had been available for issuance in the normal course of business.

The Fund seeks retroactive exemption from the provisions of Sections 18(d) and 18(f) of the Act to the extent necessary to make the DRIP transactions and the confirmed purchasers transactions lawful under the Act. Applicants state that they believe the arrangements pursuant to which (a) the DRIP shareholders were given the right to receive their DRIP shares at \$7.62 per share, or to elect to receive cash equal to the net asset value, determined at the time of such elections, of the shares to which they were entitled (but not less than \$7.62 per share) and (b) the confirmed purchasers were given the right to receive the confirmed shares may have constituted the issuance of a warrant or right to subscribe within the meaning of Section 18(d) of the Act and the issuance of a senior security within the meaning of Section 18(f).

Applicants seek retroactive exemption from the provisions of Section 22(c) of the Act and Rule 22c-1 thereunder to authorize retroactively the issuance of the DRIP shares and the confirmed shares at prices other than "the current net asset value" per share

of the Fund at the time of issuance of the unauthorized shares.

Section 6(c) authorizes the Commission to exempt conditionally or unconditionally any class of persons or transactions from any provisions of the Act "if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions" of the Act. The Applicants submit that granting the retroactive exemptive relief requested meets such standard because it will authorize the Fund's issuance to DRIP shareholders and confirmed purchasers the shares to which they were entitled and because it is fair and equitable to all shareholders of the Fund since it will authorize such issuance on the same terms as would have prevailed if legally authorized shares had been available for issuance at the proper time. Applicants note that the reinvested cash for the DRIP shares has been continuously in the possession of the Fund and that the consideration for the confirmed shares was timely received by the Fund substantially in accordance with normal procedures (except for a four day period during which settlements were suspended). Applicants submit that permitting DRIP shareholders to elect to receive in cash the current net asset value of their DRIP shares in effect at the time of such election instead of the shares themselves put them and the Fund in the same position as if they had redeemed such shares. Applicants represent that the provision that the cash amount they received would in no event be less than the \$7.62 net asset value at which the shares would have been issued did not disadvantage the Fund because if the current net asset value had been less than \$7.62 per share at the time of any payment, CMAI would have reimbursed the Fund.

Applicants submit that although the DRIP transactions and the confirmed purchasers transactions may have involved technical violations of Sections 18(d) 18(f) and 22(c), and rule 22c-1, such transactions did not violate the public policies underlying such provisions.

Applicants contend that the principles underlying Section 18(d) were not violated here as to the DRIP shares because all shareholders, including owners of DRIP shares, had the right to take their distributions in cash or in additional shares, and the DRIP transactions merely permitted delayed completion of the issuance of the DRIP shares. With respect to the confirmed shares, Applicants state that the Fund

was engaged in a continuous general public offering of its shares and sought simply to complete transactions with purchasers who responded to the offering in good faith and in the normal course of business. Applicants argue that the fact that the DRIP shareholders and the confirmed purchasers had the right to receive cash until their shares were issued was not unfair to the Fund because, in the unlikely event that the DRIP shareholders elected cash payment at a time when the Fund's net asset value was less than \$7.62, or that the confirmed purchasers cancelled their transactions at a time when the Fund's net asset value was less than the purchase price which the Fund received, CMAI would have reimbursed the Fund for the difference.

Applicants state that they believe the basic policy underlying Section 18(f) of the Act has not been violated in the instant application because leveraging in the traditional sense was not involved in the DRIP transactions or the confirmed purchasers transactions since, to the extent that claims against the Fund or "senior securities" were created, the Fund in no event would pay more than the equivalent of their current net asset value. The Applicants further state that the existence of such claims as senior securities were only temporary, terminating either when the DRIP shares and confirmed shares were issued, or when the DRIP shareholders and confirmed purchasers were paid for their claims in cash. Also, applicants state that the 300% asset coverage test of Section 18(f) was met.

Applicants contend that the policies of Section 22(c) and Rule 22c-1 have not been contravened on the given facts; the DRIP transactions did not dilute the net asset value of the Fund's shares because DRIP shareholders received DRIP shares in the same aggregate net asset value as of the shares had been issued on August 31, 1982. With respect to the confirmed shares, the Applicants contend that there was no dilution within the meaning of Rule 22c-1 because such shares were sold at the prices next determined after the orders therefor were received, and, except for the period from August 30, 1981, to September 3, 1982, during which settlement of transactions with the confirmed purchasers was suspended, the confirmed purchasers paid for the confirmed shares in the normal course of business. With respect to the possibility that either the DRIP shareholders or confirmed purchasers might have received in cash more than the current net asset value of their shares, there would have been no

dilutive effect because CMAI would have reimbursed the Fund for any excess of such cash payments over current net asset value.

Applicants believe it is clear that the DRIP transactions and the confirmed purchasers transactions did not involve the speculative trading practices against which Rule 22c-1 was designed to protect. Applicants state that the election by the DRIP shareholders to take their distributions in shares was made before the reinvestment price was determined, and the orders by the confirmed purchasers were placed before the prices for the confirmed shares were determined.

Applicants contend that it is necessary and appropriate for the requested relief to be granted retroactively. As to the possible violation of Section 18 of the Act, it necessarily arose no later than September 3, 1982, the date on which the board of directors of the Fund decided upon the actions which the Fund would take, actions which could not in fairness to DRIP shareholders and confirmed purchasers have been postponed. As to the possible violation of Rule 22c-1 which arose when the Fund issued the DRIP shares and the confirmed shares promptly after shareholder authorization, the Fund believes that the status of the DRIP shareholders and the confirmed purchasers had to be regularized as soon as possible so that the holders of such shares were able to participate in all rights of shareholders pertaining to such shares or to receive the cash to which they were entitled, and that it was highly undesirable to postpone issuance of such shares or payment of such cash until action on the application could be completed. In the event that the exemptive relief requested by the application is not granted, Applicants state that CMAI will reimburse the Fund and hold it harmless for any loss or expense which the Fund may incur as a result thereof. The Applicants submit that granting the exemptions requested on a retroactive basis is appropriate because such transactions were undertaken in a good faith effort to rectify the situation which arose out of the inadvertent exhaustion of the Fund's supply of legally authorized shares.

Notice is hereby given that any interested person may, not later than December 13, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on this matter accompanied by a statement as to the nature of his/her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted,

or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed to: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32071 Filed 11-22-82; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 22711; 70-6807]

**General Public Utilities Corp., etc.;
Proposal To Issue and Sell Notes, To
Issue and Pledge Bonds and a
Guaranty of Loans by Parent**

November 16, 1982.

In the matter of General Public Utilities Corporation, 100 Interpace Parkway, Parsippany, New Jersey 07054; Jersey Central Power & Light Company, Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960; Metropolitan Edison Company, 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania 19605, and Pennsylvania Electric Company, 1001 Broad Street, Johnstown, Pennsylvania 15907 (70-6807).

General Public Utilities Corporation ("GPU"), a registered holding company, and its electric utility subsidiaries, Jersey Central Power & Light Company ("JCP&L"), Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec") have filed an application-declaration with this Commission pursuant to Sections 6(a), 7, 9(a), 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 44 and 50 thereunder.

By Commission orders dated June 19, 1979 and September 28, 1981 (HCAR Nos. 21107 and 22207) GPU, JCP&L, Met-Ed and Penelec were authorized, among

other things, to issue, sell and renew their respective promissory notes ("Notes") maturing not more than three months from the date of issue from time to time through December 31, 1982. The Notes were to be issued, sold and renewed under and pursuant to a certain revolving credit agreement, as amended and restated as of October 1, 1981 ("Credit Agreement") with a group of commercial banks ("Banks") for which Citibank, N.A. acts as agent and Chemical Bank acts as co-agent.

The Credit Agreement generally limits aggregate borrowings by the GPU Companies thereunder to \$150 million. That amount may be increased to \$200 million with approval of the Banks holding 85% of the Notes outstanding with individual sublimits applicable to each GPU Company. At November 1, 1982, GPU had \$18 million in borrowings outstanding under the Credit Agreement.

JCP&L, Met-Ed and Penelec had no borrowings outstanding. The Credit Agreement provides for the GPU Companies to pay an annual commitment fee of $\frac{1}{2}$ of 1% of the Banks' total commitment, whether used or unused, as well as an annual Agent's fee of \$250,000. Interest rates on borrowings are 107% of the higher of (a) Citibank's base rate as in effect from time to time or (b) $\frac{1}{2}$ of 1% above the three-week moving average of offering rates for three-month certificates of deposit of major banks ("Alternate Base Rate").

The Notes issued under the Credit Agreement are (a) prepayable at any time without penalty and (b) subject to acceleration by the Banks under certain conditions, including the occurrence of a material adverse change in financial condition or prospects of the borrower. The Notes are secured by an unconditional guaranty given by GPU as well as the pledge by GPU to the Banks of all of the common stock of JCP&L, Met-Ed, Penelec and GPU Service Corporation. Met-Ed's obligations under the Credit Agreement are further secured by the pledge and grant to the Banks of security interests in (a) certain uranium yellowcake owned by Met-Ed and the related contract between Met-Ed and Kerr-McGee Nuclear Corporation ("Kerr-McGee") providing for conversion and delivery thereof, (b) \$40 million aggregate principal amount of Met-Ed's First Mortgage Bonds, due December 31, 1982, (c) Met-Ed's accounts receivable from the sale of electricity and (d) Met-Ed's coal inventories. JCP&L's obligations under the Credit Agreement are further secured by the pledge and grant to the Banks of a security interest in certain uranium yellowcake owned by JCP&L and the related contract between JCP&L

and Kerr-McGee providing for the conversion and delivery thereof.

By Commission orders dated June 19, 1979 and September 30, 1981 (HCAR Nos. 21107 and 22211, GPU was authorized to amend its existing loan agreement, dated as of November 15, 1976 ("Loan Agreement") with a group of five commercial banks ("Loan Agreement Banks"), to provide for the renewal of the \$39,000,000 principal amount of promissory notes outstanding thereunder and issuance of new promissory notes to the Loan Agreement Banks in a like principal amount, maturing December 31, 1982 and bearing interest, payable monthly, at 107% of the Alternate Base Rate of Citibank, N.A. The new promissory notes are secured under the terms of the stock pledge agreement under which GPU has pledged as collateral to the Banks and the Loan Agreement Banks all of the common stock of JCP&L, Met-Ed, Penelec and GPU Service Corporation. Such amendments to the Loan Agreement were designed to provide substantially similar terms and conditions for GPU's promissory notes issued under the Loan Agreement as for the promissory notes issued by GPU under the Credit Agreement.

The GPU Companies propose to issue, sell and renew to the Banks from time to time during the period commencing on the effective date of the authorization herein requested through December 31, 1983 their respective new promissory notes ("New Notes"), maturing not more than four months from the date of issue, in the cases of JCP&L, Met-Ed and Penelec, and not in excess of seven months from the date of issue in the case of GPU, under and pursuant to the terms of an amended credit agreement ("Amended Credit Agreement"). Borrowings by the GPU Companies under the Amended Credit Agreement would be limited to \$125 million, which amount could be increased to \$200 million with the approval of the Banks holding 85% of the New Notes outstanding, with individual sublimits applicable to each GPU Company as follows: GPU—\$18 million, (which represents the principal amount of GPU borrowings expected to be outstanding under the Credit Agreement on the date New Notes are issued); JCP&L—\$45 million; Met-Ed—\$25 million; and Penelec—\$40 million or, in the cases of JCP&L, Met-Ed and Penelec, such lesser amounts as may be permitted by their respective charters.

The sublimits for GPU, JCP&L and Met-Ed are subject to additional limitations. The GPU \$18 million sublimit is reduced and GPU's

borrowings are amortized to provide for repayment of all GPU borrowings under the Amended Credit Agreement by June 30, 1983. The initial JCP&L \$45 million sublimit is subject to the further restriction that outstanding borrowings may not exceed 60% of JCP&L's customer accounts receivable from the sale of electricity. The initial Met-Ed \$25 million sublimit is subject to the further restriction that outstanding borrowings are limited to the sum of (a) 80% of Met-Ed's customer accounts receivable pledged to the Banks as collateral and (b) 50% (but not in excess of \$5 million) of the FOB mine cost of Met-Ed's coal inventories pledged to the Banks.

GPU proposes unconditionally to guarantee the New Notes and the other obligations of JCP&L, Met-Ed and Penelec under the Amended Credit Agreement. As security for such unconditional guaranty, GPU proposes to pledge to the Banks all of the common stock of JCP&L, Met-Ed, Penelec and GPU Service Corporation. In addition, GPU proposes to issue a restated guaranty continuing its unconditional guaranty of the loan to GPU Service Corporation, as previously authorized, from The Fidelity Bank, Philadelphia, Pennsylvania which matures September 30, 1984, which guaranty would continue to be secured by the pledge of all of the common stock of JCP&L, Met-Ed, Penelec and GPU Service Corporation.

Met-Ed proposes to pledge and grant to the Banks as additional collateral for its New Notes and its other obligations under the Amended Credit Agreement, first priority security interests in all Met-Ed's right, title and interest in and to (a) Met-Ed's customer accounts receivable from the sale of electricity and (b) its coal inventories. Moreover, Met-Ed proposes to pledge to the Banks \$40 million aggregate principal amount of First Mortgage Bonds ("New Met-Ed Pledged Bonds") as further collateral for its New Notes and other obligations under the Amended Credit Agreement, as described below.

Because JCP&L and Met-Ed do not propose to continue to grant to the Banks as additional collateral for their respective New Notes and obligations under the Amended Credit Agreement security interests in their uranium yellowcake and Kerr-McGee conversion contracts, the existing security interests in such collateral will be terminated upon the issuance by JCP&L and Met-Ed of New Notes.

The GPU Companies propose to pay an annual commitment fee of up to ¼ of 1% of the total commitment, and an annual Agent's fee of \$250,000. The annual interest rate on borrowings under the Amended Credit Agreement

would be 107% of Citibank's Alternate Base Rate, as in effect from time to time. The New Notes to be issued under the Amended Credit Agreement would be (a) prepayable at any time without penalty and (b) subject to acceleration by the Banks under certain conditions, including the occurrence of a material adverse change in the financial condition or prospects of the borrower.

Met-Ed further requests authority to issue and pledge to the Banks as collateral for Met-Ed's New Notes and other obligations under the Amended Credit Agreement the \$40 million of New Met-Ed Pledged Bonds. The New Met-Ed Pledged Bonds would be issued under and pursuant to the Indenture, dated November 1, 1944, between Met-Ed and J. Henry Schroder Bank & Trust Company, Successor Trustee, as supplemented and amended and as to be further supplemented and amended by a supplemental indenture. The New Met-Ed Pledged Bonds would mature on December 31, 1983. Interest on the New Met-Ed Pledged Bonds, at 1% above the rate applicable to the New Notes issued under the Amended Credit Agreement, would be payable only upon a default by Met-Ed under the Amended Credit Agreement. Met-Ed would issue the New Met-Ed Pledged Bonds to the Banks against cancellation of a like principal amount of Met-Ed's first mortgage bonds previously pledged to the Banks as collateral.

GPU also requests authority to enter into a further amendment of the Loan Agreement pursuant to which GPU proposes on or before December 31, 1982, to issue to the Loan Agreement Banks \$18,000,000 aggregate principal amount of new promissory notes ("New GPU Notes") to replace a like principal amount of promissory notes presently outstanding under the Loan Agreement and maturing on December 31, 1982. The New GPU Notes would (a) bear interest at a fluctuating rate per annum equal to 107% of Citibank's Alternate Base Rate, (b) provide for amortization of the principal designed to repay all outstanding indebtedness by June 30, 1983 and (c) be prepayable at any time, without penalty. GPU further proposes that the New GPU Notes be secured by a pledge of the common stock of JCP&L, Met-Ed, Penelec and GPU Service Corporation under the amended stock pledge agreement. The net proceeds of the New Notes and the New GPU Notes proposed to be issued and sold would be used by the GPU Companies to repay the maturing borrowings under the Credit Agreement, Amended Credit Agreement and the Loan Agreement as the case may be, and to provide for temporary working capital requirements.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 10, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32031 Filed 11-22-82; 8:45 am]
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[Release No. 22713; 70-6665]

**Indiana & Michigan Electric Co.;
Proposed Issuance and Sale of Short-
Term Notes to Banks and Commercial
Paper to Dealer; Request for
Exception From Competitive Bidding**

November 16, 1982.

In the matter of Indiana & Michigan Electric Company, One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801 (70-6665).

Indiana & Michigan Electric Company ("I&M"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration previously filed and amended pursuant to Section 6 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(2) and 50(a)(5) promulgated thereunder.

By order dated December 30, 1981 (HCAR No. 22348), I&M was authorized to issue and sell up to an aggregate amount of \$200,000,000 of short-term notes to banks and commercial paper to a dealer pursuant to an exception under Section 6(b) of the Act from time to time prior to January 1, 1983.

By post-effective amendment, I&M seeks to issue and sell short-term notes to banks and commercial paper to a

dealer in an aggregate amount not to exceed \$135,000,000 outstanding at any one time pursuant to an exception under Section 6(b) of the Act. The notes would be issued from time to time prior to January 1, 1984, provided that none of such notes shall mature later than June 30, 1984.

Pursuant to Commission order dated September 30, 1980 (HCAR No. 21734) and approval of the holders of a majority of I&M's outstanding Cumulative Preferred Stock at a meeting held October 17, 1980, I&M will issue or assume unsecured debt in an aggregate amount exceeding 10%, but which, together with aggregate outstanding long-term unsecured debt, will not exceed 20% of the capitalization of I&M at the time of any computation for a period of time commencing January 1, 1981 and ending December 31, 1985. Such unsecured borrowing is subject to the provision that the principal amount of unsecured debt, exclusive of long-term unsecured debt, outstanding on December 31, 1985, in excess of 10% of capitalization (or otherwise permitted by Article 6 subparagraph (7)(B)(c) of I&M's Amended Articles of Acceptance) mature not later than June 30, 1986.

I&M has credit arrangements totaling \$477,465,000 with a group of local banks ("local banks") and a group of major domestic banks and four non-domestic banks ("major banks"). Each note to the local banks will mature not more than 270 days after the date of issuance or renewal thereof. I&M's credit arrangements with such banks do not require it to maintain additional balances, as compensation for the line of credit made available by the bank, since I&M maintains deposit balances at such banks for its operational and financial needs in amounts sufficient to satisfy any compensating balances required with respect to borrowings from such banks. Borrowings under such line of credit would generally bear interest at an annual rate not greater than the bank's prime commercial rate in effect from time to time.

Notes issued to the major domestic banks will mature not more than 270 days after the date of issuance or renewal thereof. I&M's credit arrangements with these banks generally require it to maintain compensating balances of 5% of the line of credit and to pay a fee that is equal to $\frac{1}{2}$ of 1% of the size of the line. The combination of 5% compensating balances and the fee is generally equivalent to compensating balances not in excess of 10% of the line of credit made available. Borrowings from these domestic banks would generally bear interest at an annual rate

not greater than 108.5% of the bank's prime commercial rate in effect from time to time. In the case of the non-domestic banks, Credit Lyonnais, Bank of Nova Scotia, Barclays, and Credit Suisse, no compensating balances are required, only a fee of $\frac{1}{2}$ of 1% of the unused amount of the line of credit. Borrowings from these four banks may be made in U.S. dollars and/or in Eurodollars. Where such borrowings are made in Eurodollars, the rate of interest will be a designated percent, not more than $\frac{1}{2}$ %, over the London Interbank Offered Rate (LIBOR).

The total cost of borrowings under lines of credit with the major banks would not be greater than the effective rate for borrowings bearing interest at the prime rate with compensating balances equal to 10% of the line of credit and 10% of the amount borrowed.

All lines of credit with the major banks are shared with Appalachian Power Company, Columbus and Southern Ohio Electric Company, Kentucky Power Company, and Ohio Power Company, associate companies of I&M. Certain of the lines of credit are also shared with American Electric Power Company, Inc., I&M's parent company. If proposed short-term bank borrowings through December 31, 1982 are authorized or permitted under Section 6(b), I&M and its associate companies will be authorized to borrow an aggregate amount of approximately \$800,000,000 as of January 1, 1983. Fees and balances for shared lines of credit are borne by I&M and participating associate companies in proportion to their respective projected maximum need for such credit facilities.

If the balances maintained and fees paid by I&M with all of the banks were maintained and paid solely to fulfill requirements for borrowing by I&M, the effective annual interest cost to I&M under any of the above arrangements, assuming full use of the line of credit, would not exceed 125% of the prime commercial rate in effect from time to time, or not more than 15% on the basis of a prime commercial rate of 12%.

Commercial paper will be sold directly by I&M to a dealer in commercial paper. The commercial paper will be in the form of promissory notes in denominations of not less than \$50,000 nor more than \$5,000,000 and of varying maturities, with no maturity more than 270 days after the date of issue. Such notes will not be prepayable prior to maturity and will be sold at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and

maturity. No commercial paper will be issued having a maturity or more than 90 days if such commercial paper would have an effective interest cost which exceeds the effective interest cost at which I&M could borrow from commercial banks through the issuance or reissuance of notes in an amount equal to the principal amount of such commercial paper at that time. I&M has designated Lehman Commercial Paper Incorporated as its commercial paper dealer to purchase and resell its commercial paper.

The commercial paper dealer will reoffer commercial paper, at a discount rate of $\frac{1}{2}$ of 1% less than the discount rate at which such notes were purchased from I&M, to not more than 200 of the dealer's customers identified and designated in a non-public list prepared by the dealer in advance. No sales of such commercial paper will be made to any customer unless that customer has received up-to-date reports as to the credit position of I&M. It is expected that such customers will hold such commercial paper notes to maturity; but if any such customer wishes to resell such commercial paper prior to maturity, the dealer, pursuant to a verbal repurchase agreement, will repurchase such commercial paper and reoffer it to other customers on its non-public list.

The proceeds of the short-term debt incurred by I&M will be added to the general funds of I&M and used to pay the general obligations of I&M, including expenses incurred in its various construction projects, and for other corporate purpose. The presently estimated cost of I&M's net construction program (adjusted to reflect the planned acquisition of a portion of the Rockport Plant by two affiliated companies) for the year 1983 is approximately \$146,000,000.

I&M seeks an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) for the issuance and sale of commercial paper because it is not practicable to invite competitive bids for commercial paper and current commercial paper rates for prime borrowers are published daily in financial publications.

The application-declaration as amended by the post-effective amendment and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 10, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549.

and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended by the post-effective amendment or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32030 Filed 11-22-82; 8:45 am]
BILLING CODE 8010-01-M

[File No. 22-11998]

International Harvester Co.; Application and Opportunity for Hearing

November 16, 1982.

Notice is hereby given that International Harvester Company (the "Company") has filed an application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission that the trusteeship of Commerce Union Bank, One Commerce Place, Nashville, Tennessee 37239, under three indentures of the Company is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Commerce Union Bank from acting as trustee under any of such indentures. The Company alleges that:

1. The Company had outstanding on November 4, 1982 the following securities (collectively, the "Old Debentures") issued under the following indentures (collectively, the "Old Indentures") between the Company and Commerce Union Bank ("Commerce Union") as successor trustee, each of which was qualified under the Trust Indenture Act of 1939 in connection with the registration under the Securities Act of 1933 of the securities issued thereunder.

A. 9% Sinking fund Debentures Due 2004, under Indenture dated as of June 15, 1974 (Registration Statement No. 2-51111) (of which approximately \$150,000,000 principal amount was outstanding as of October 27, 1982); and

B. 8% Sinking Fund Debentures Due 1995, under Indenture dated as of September 1, 1970 (Registration Statement No. 2-38164) (of which approximately \$87,000,000 principal amount was outstanding as of October 27, 1982).

2. The Company's subsidiary, International Harvester Credit Corporation ("IHCC"), had outstanding on November 4, 1982 the following securities (collectively, the "IHCC Debentures") issued under the following indentures (collectively, the "IHCC Indentures") between the Company and Commerce Union as successor trustee, each of which was qualified under the Trust Indenture Act of 1939 in connection with the registration under the Securities Act of 1933 of the securities issued thereunder:

A. 8% Debentures Due 1991, under Indenture dated as of August 1, 1971 (Registration Statement No. 2-41096) (of which approximately \$50,000,000 principal amount was outstanding as of October 27, 1982);

B. 7% Debentures Due 1993, under Indenture dated as of February 1, 1972 (Registration Statement No. 2-42830) (of which approximately \$60,000,000 principal amount was outstanding as of October 27, 1982);

C. 7% Debentures Due 1994, under Indenture dated as of January 15, 1973 (Registration Statement No. 2-46636) (of which approximately \$75,000,000 principal amount was outstanding as of October 27, 1982);

D. 9% Notes Due April 1, 1984, under Indenture dated as of April 1, 1976 (Registration Statement No. 2-55565) (of which approximately \$75,000,000 principal amount was outstanding as of October 27, 1982);

E. 8.35% Notes Due December 15, 1986, under Indenture dated as of December 15, 1976 (Registration Statement No. 2-57773) (of which approximately \$100,000,000 principal amount was outstanding as of October 27, 1982); and

F. 13% Notes Due August 1, 1986, under Indenture dated as of August 1, 1980 (Registration Statement No. 2-68588) (of which approximately \$100,000,000 principal amount was outstanding as of October 27, 1982).

The Company is not obligated on any of the IHCC Debentures, nor is IHCC obligated on any of the Old Debentures referred to in Part I above.

3. In 1981, the Company and certain of its institutional lenders entered into an agreement (the "1981 Credit Agreement") restructuring a major portion of the Company's debt. As of the date of the filing of this application, and as has been publicly reported, the Company is engaged in a further debt

restructuring. As part of this second debt restructuring, the Company has negotiated a revised credit agreement (the "Revised Credit Agreement") with certain of its institutional lenders and has filed with the Securities and Exchange Commission (the "Commission") a registration statement under the Securities Act of 1933 with respect to its exchange offer (the "Exchange Offer") to existing holders of the Old Debentures. Pursuant to the Exchange Offer, the Company proposes to issue to holders of the Old Debentures a new debenture (the "New Debenture") plus warrants to purchase Common Stock (the "Warrants"). The New Debentures will mature in 2002, and will be issued and bear interest in amounts determined immediately prior to the closing of the Exchange Offer.

Subject to issuance by the Commission of the order requested hereby, the Company intends to appoint Commerce Union as trustee under the indenture pursuant to which the New Debentures will be issued (the "New Indenture").

4. Section 5.06 of each of the New and Old Indentures provides that, with certain exceptions not pertinent to this application, the Company will not, and will not permit any Restricted Subsidiary¹ to, create or assume any mortgage, security interest, pledge or lien of or upon any Principal Property,² or shares of capital stock or indebtedness for borrowed money issued by any Restricted Subsidiary and owned by the Company or any Restricted Subsidiary, whether owned at the date of the indenture or thereafter acquired, without making effective provision, and the Company in such case will make or cause to be made effective provision, whereby the securities issued under such indentures shall be secured by such mortgage, security interest, pledge or lien equally and ratably with any and all other indebtedness or obligations thereby secured, so long as such other

¹Section 1.01 of the New and Old Indentures defines the term "Restricted Subsidiary" to mean "any Subsidiary (a) substantially all the property of which is located, or substantially all the business of which is carried on, with the United States of America, excluding its territories and possessions, and (b) which owns or leases a Principal Property."

²Section 1.01 of the New and Old Indentures defines the term "Principal Property" to mean "any plant use primarily for manufacturing purposes located within the United States of America, excluding its territories and possessions, of the Company or any Restricted Subsidiary Except any such plant which the Board of Directors of the Company by resolution declares is not of material importance to the total business conducted by the Company and its Restricted Subsidiaries as an entity."

indebtedness or obligations shall be so secured.

Because the indebtedness of the Company under the 1981 Credit Agreement is, and the indebtedness of the Company under the Revised Credit Agreement will be, secured by a lien on certain Principal properties of the Company, the Old Debentures and (and the New Debentures will be) secured equally and ratably with such indebtedness, and will remain so secured so long as any indebtedness of the Company (under its Revised Credit Agreement or otherwise) is secured by such collateral. Thereafter, the New and Old Debentures will again become unsecured.

Upon issuance, the New Debentures and each of the Old Debentures will rank *pari passu* in right of payment of principal and interest upon any distribution of assets of the Company upon any dissolution, winding up, total liquidation or reorganization of the Company.

5. As required by Section 310(b) of the Trust Indenture Act of 1939, each of the New and Old Indentures contain the following language:

(a) If the Trustee has or shall acquire any conflicting interest, as defined in this Section 8.08, it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner and with the effect specified in Section 8.10.

(c) For the purposes of this Section 8.08 the Trustee shall be deemed to have a conflicting interest if:

(1) the Trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the Company are outstanding, unless such other indenture is a collateral trust indenture under which the only collateral consists of Debentures issued under this Indenture; *provided, however*, that there shall be excluded from the operation of this paragraph any indenture or indentures under which other securities, or certificates of interest or participation in other securities, of the Company are outstanding if * * * (ii) the Company shall have sustained the burden of proving, an application to the Commission and after opportunity for hearing thereon, that trusteeship under this Indenture and such other indenture or indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under one of such indentures * * *

6. For the reasons set forth below, the Company believes that neither the appointment of Commerce Union as trustee under the New Indenture nor its continued trusteeship under the Old Debentures is so likely to involve a material conflict of interest as to make it

necessary in the public interest or for the protection of investors that Commerce Union be disqualified from acting as trustee under any of the New or Old Debentures:

(a) Upon issuance of the New Debentures, each of the New and Old Debentures will rank *pari passu* in right of payment with each of the other New and Old Debentures.

(b) So long as any indebtedness or obligation of the Company is secured by any collateral consisting of any Principal Property, or shares of capital stock or indebtedness for borrowed money issued by any Restricted Subsidiary and owned by the Company or any Restricted Subsidiary, each of the New and Old Debentures will remain equally and ratably secured by such collateral.

(c) In order to secure the indebtedness and other obligations referred to in clause (b) above (the "Secured Obligations"), the Company has entered into an agreement (as amended, the "Trust Agreement"), dated as of November 1, 1981, with Fidelity Union Bank (the "Trustee") as trustee with respect to the collateral. Under the terms of the Trust Agreement if circumstances occur under which the Trustee takes action to realize on any collateral consisting of any Principal Property, or shares of capital stock or indebtedness for borrowed money issued by any Restricted Subsidiary and owned by the Company or any Restricted Subsidiary, all sums received by the Trustee in respect of such collateral as a result of such action will be held in trust by the Trustee and distributed to the holders of the Secured Obligations (including the trustees under each indenture of the Company under which Secured Obligations are outstanding) in a total amount equal to the unpaid principal or face amount of, and unpaid interest on and fees or charges if any, in respect of, the Secured Obligations whether or not then due and payable.³ If such sums realized by the Trustee are insufficient to pay in full such unpaid amounts in respect of the Secured Obligations, such sums will be applied to the payment of such unpaid amounts in respect of the Secured Obligations ratably to each holder in the same proportion that the aggregate unpaid amounts in respect of the Secured Obligations held by each such holder bears to the aggregate unpaid amounts in respect of the Secured Obligations held by all holders. Under the terms of the Trust Agreement if any payment of principal or interest on the New or Old Debentures is not made when due, or if such indebtedness has been declared due and payable prior to its stated maturity pursuant to the terms of any such indenture, the trustee under such indenture may give notice to the Trustee requiring the Trustee to take action to realize on the collateral.

³The Trust Agreement provides that if any such payments in respect of the Secured Obligations outstanding under an indenture cannot be made at the time of such a distribution because the indenture does not make provisions for the receipt of such payments by the trustee thereunder at such time for any reason, the Trustee will hold any amounts not distributed in trust for the holders of such Secured Obligations until payments can be made.

(d) The effect of the Trust Agreement is to insure that if any holder or group of holders of Secured Obligations becomes entitled to cause the Trustee to take action to realize on any collateral consisting of any Principal Property, or shares of capital stock or indebtedness for borrowed money issued by any Restricted Subsidiary and owned by the Company or any Restricted Subsidiary, all holders of Secured Obligations, including holders of the New and Old Debentures, will benefit ratably. Consequently, should Commerce Union Bank, as trustee under either of the New and Old Indentures, have occasion because of a default under any of such indentures, to cause the Trustee to take action to realize on any such collateral, such action would inure to the ratable benefit of all of the holders of New and Old Debentures and all other holders or holders of Secured Obligations.

(e) For the foregoing reasons, serving as trustee under the New Indenture should in no way inhibit, discourage or otherwise influence Commerce Union's actions as trustee under the Old Indentures. Consequently, Commerce Union's trusteeship under the New and Old Indentures would not result in a material conflict of interest.

All persons are referred to the Company's application for a more detailed account of the matters of fact and law asserted therein. The Company's application is a public document on file in the office of the Commission at the Public Reference Room, 450 5th Street NW., Washington, D.C.

Notice is further given that any interested person may, not later than December 9, 1982, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

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[Release No. 22712; 70-6664]

Kentucky Power Co.; Proposed Issuance and Sale of Short-Term Notes to Banks

November 16, 1982.

In the Matter of Kentucky Power Co., 1701 Central Avenue, Ashland, Kentucky 41101 (70-6664).

Kentucky Power Company ("Kentucky"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration previously filed and amended pursuant to Section 6 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(2) and 50(a)(5) promulgated thereunder.

By order dated December 30, 1981 (HCAR No. 22346), Kentucky was authorized to issue and sell up to an aggregate amount of \$50,000,000 of short-term notes to banks and commercial paper to a dealer pursuant to an exception under Section 6(b) of the Act from time to time prior to January 1, 1983.

By post-effective amendment, Kentucky seeks to issue and sell short-term notes to banks in an aggregate amount not to exceed \$50,000,000 outstanding at any one time pursuant to an exception under Section 6(b) of the Act. The notes would be issued from time to time prior to January 1, 1984, provided that none of such notes shall mature later than June 30, 1984.

Kentucky has credit arrangements totaling \$392,900,000 with a local bank ("local bank") and a group of major domestic banks and four non-domestic banks ("major banks"). Each note to the local bank will mature not more than 270 days after the date of issuance or renewal thereof. Kentucky's credit arrangements with this bank do not require it to maintain additional balances as compensation for the line of credit made available by the bank, since Kentucky maintains deposit balances at such banks for its operational and financial needs in amounts sufficient to satisfy any compensating balances required with respect to borrowings from such bank. Borrowings under such lines of credit would generally bear interest at an annual rate not greater than the bank's prime commercial rate in effect from time to time.

Notes issued to the major domestic banks will mature not more than 270 days after the date of issuance or renewal thereof. Kentucky's credit arrangements with these banks generally require it to maintain compensating balances of 5 percent of

the line of credit and to pay a fee that is equal to 1/4 of 1 percent of the size of the line. The combination of 5 percent compensating balances and the fee is generally equivalent to compensating balances not in excess of 10 percent of the line of credit made available. Borrowings from these domestic banks would generally bear interest at an annual rate not greater than 108.5 percent of the bank's prime commercial rate in effect from time to time. In the case of the non-domestic banks, Credit Lyonnais, Bank of Nova Scotia, Barclays, and Credit Suisse, no compensating balances are required, only a fee of 1/4 of 1 percent of the unused amount of the line of credit. Borrowings from these four banks may be made in U.S. dollars and/or in Eurodollars. Where such borrowings are made in Eurodollars, the rate of interest will be a designated percent, not more than 1/2 percent, over the London Interbank Offered Rate (LIBOR).

The total cost of borrowings under lines of credit with the major banks would not be greater than the effective rate for borrowings bearing interest at the prime rate with compensating balances equal to 10% of the line of credit and 10% of the amount borrowed.

All lines of credit with the major banks are shared with Appalachian Power Company, Columbus and Southern Ohio Electric Company, Indiana & Michigan Electric Company, and Ohio Power Company, associate companies of Kentucky. Certain of the lines of credit are also shared with American Electric Power Company, Inc., Kentucky's parent company. If proposed short-term bank borrowings through December 31, 1982 are authorized or permitted under Section 6(b), Kentucky and its associate companies will be authorized to borrow an aggregate amount of approximately \$800,000,000 as of January 1, 1983. Fees and balances for shared lines of credit are borne by Kentucky and participating associate companies in proportion to their respective projected maximum need for such credit facilities.

If the balances maintained and fees paid by Kentucky with all of the banks were maintained and paid solely to fulfill requirements for borrowing by Kentucky, the effective annual interest cost to Kentucky under any of the above arrangements, assuming full use of the line of credit, would not exceed 125% of the prime commercial rate in effect from time to time, or not more than 15% on the basis of a prime commercial rate of 12%.

The proceeds of the short-term debt incurred by Kentucky will be added to the general funds of Kentucky and used

to pay the general obligations of Kentucky, including expenses incurred in its various construction projects, and for other corporate purposes. The presently estimated cost of Kentucky's net construction program (adjusted to reflect the planned acquisition of a portion of the Rockport Plant by Kentucky) for the year 1983 is approximately \$141,000,000.

The application-declaration as amended by the post-effective amendment and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 10, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended by the post-effective amendment or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-32032 Filed 11-22-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12806; 811-3383]

Maxim Bond Fund, Inc.; Filing of Application

November 12, 1982.

In the matter of Maxim Bond Fund, Inc., 1675 Broadway, Denver, CO 80202 (811-3383).

Notice is hereby given that Maxim Bond Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on September 17, 1982, for an order of the Commission pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the

Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a Maryland corporation, states that on January 19, 1982, it filed a registration statement pursuant to Section 8 of the Act. Applicant states that its registration statement under the Securities Act of 1933 was never declared effective. Applicant represents that it has not made a public offering of its securities and does not have more than 100 securityholders for purposes of Section 3(c)(1) of the Act.

Applicant states that Maxim Account B of Insuramerica Corporation, a unit investment trust registered under the Act, serves as a vehicle for investment in Applicant. However, according to the application, Applicant has never engaged in any business activities other than its initial registration and does not propose to engage in any activities other than those necessary to wind up its affairs.

Applicant represents that it has no debts or other outstanding liabilities; it has no securityholders; and it is not a party to any litigation or administrative proceeding.

Section 8(f) of the Act provides, in part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order, the registration of such company under the Act shall cease to be in effect.

Notice is further given that any interested person may, not later than December 7, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in

this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32078 Filed 11-22-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12822; 811-3384]

Maxim Bond Fund, Inc.; Filing of Application

November 17, 1982.

In the matter of Maxim Bond Fund, Inc., 1675 Broadway, Denver, CO 80202 (811-3384).

Notice is hereby given that Maxim Bond Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on September 17, 1982, for an order of the Commission pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a Maryland corporation, states that on January 19, 1982, it filed a registration statement pursuant to Section 8 of the Act. Applicant states that its registration statement under the Securities Act of 1933 was never declared effective. Applicant represents that it has not made a public offering of its securities and does not have more than 100 securityholders for purposes of Section 3(c)(1) of the Act.

Applicant states that Maxim Account B of Insuramerica Corporation, a unit investment trust registered under the Act, serves as a vehicle for investment in Applicant. However, according to the application, Applicant has never engaged in any business activities other than its initial registration and does not propose to engage in any activities other than those necessary to wind up its affairs.

Applicant represents that it has no debts or other outstanding liabilities; it has no securityholders; and it is not a party to any litigation or administrative proceeding.

Section 8(f) of the Act provides, in part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an

investment company, it shall so declare by order, and upon the effectiveness of such order, the registration of such company under the Act shall cease to be in effect.

Notice is further given that any interested person may, not later than December 13, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32066 Filed 11-22-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12811; 812-5260]

Seligman Cash Management Fund, Inc.; Application

November 16, 1982.

In the Matter of Seligman Cash Management Fund, Inc., One Bankers Trust Plaza, 130 Liberty Street, New York, New York 10006 (812-5260).

Notice is hereby given that Seligman Cash Management Fund, Inc. ("Applicant"), an open-end, diversified, management investment company registered under the Investment Company Act of 1940 (the "Act"), filed an application on August 2, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to

the extent necessary to permit Applicant to value the money market securities in both of its investment portfolios using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and such persons are also referred to the application for a further analysis of the provisions of the Act from which an exemption is being sought.

Applicant states that it was incorporated in the state of Maryland in June 1976 and started in June 1977. Its investment objectives are to preserve capital and to maximize liquidity and current income. Applicant maintains that it pursues this objective by investing in high-quality short-term money market instruments. As of June 30, 1982, there were 863,953,764 issued and outstanding shares of common stock of the Applicant, and its net assets were valued at \$863,953,764.

Applicant states that until July 13, 1982, it had only one class of capital stock, the portfolio for which is invested in short-term money market instruments including securities issued by the United States Government, its agencies and instrumentalities, obligations of banks, prime commercial paper, and high grade corporate debt obligations. Applicant states further that by instrument dated July 13, 1982, the Board of Directors established two classes of shares, namely the Prime Portfolio Shares, representing the existing portfolio, and the Government Portfolio Shares, representing a portfolio consisting only of money market securities issued or guaranteed by the United States Government.

Applicant represents that under its valuation policy, securities traded on national exchanges are valued at last sales prices or, in their absence, at the mean of the most recent bid and asked prices as obtained from two or more dealers. Applicant further represents that bank certificates of deposit, bankers' acceptances, commercial paper and U.S. Government and agency and instrumentality securities with remaining maturities of more than 60 days are valued at the mean of the most recent bid and asked prices as obtained from two or more dealers. Applicant states that such instruments with remaining maturities of 60 days or less are valued on the basis of amortized cost. Applicant states further that fixed time deposits (which do not have maturities of more than 60 days) are valued on the basis of amortized cost and that other investments and assets

are valued at fair value as determined in good faith by the Board of Directors.

Applicant maintains that its Board of Directors has determined in good faith that it would be in the best interests of shareholders of both classes of Applicant's shares to value the portfolio securities of both classes of shares using the amortized cost method of valuation.

It is stated that the Commission previously expressed the view that, among other things, Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and it would be inconsistent generally with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost bases (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of its request, Applicant submits that many of its investors require investment vehicles that offer a constant net asset value per share and a relatively smooth stream of investment income. Applicant believes that use of the amortized cost method of valuation permits it to provide investment vehicles with those features. Applicant represents further that its Board of Directors has determined that, absent unusual circumstances, amortized cost represents the fair value of the portfolio securities of both of its classes of shares. According to the application, the Board of Directors believes that adherence by each portfolio to the conditions set forth below will substantially reduce the likelihood of any dilution of the assets and return of or other unfair results to incoming or outgoing shareholders of such portfolio.

Applicant consents to the imposition of the following conditions to an order granting the application:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to its investment adviser, Applicant's Board of Directors undertakes—as a particular responsibility within the overall duty of

care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize its net asset value per share for each class, as computed for the purpose of distribution, redemption and repurchases at \$1.00 per share.

2. Included with the procedures to be adopted by the Board of Directors of Applicant shall be the following:

(a) Periodic review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the \$1.00 amortized cost price of each class, and maintenance of records of such review. To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the Board of Directors in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

(b) In the event such deviation from the \$1.00 amortized cost price per share of either class exceeds $\frac{1}{2}$ of 1 percent, a requirement that the Board of Directors will promptly consider what action, if any, should be initiated by it.

(c) Where the Board of Directors believes the extent of deviation from the \$1.00 amortized cost price per share for any class may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair result, which action may include: redeeming shares in kind; selling portfolio instruments prior to maturity of portfolio instruments; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity for each class appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days. In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written copy of its Board of Directors' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the Board of Directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its Board of Directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its Board of Directors.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter and, if any action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than December 10, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a

hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32028 Filed 11-22-82; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 12816; 812-5312]

St. Paul Capital Fund, Inc.; Filing of Application

November 16, 1982.

In the matter of St. Paul Capital Fund, Inc., St. Paul Growth Fund, Inc., St. Paul Income Fund, Inc. and St. Paul Investors, Inc., P.O. Box 42384, St. Paul, MN 55164 (812-5312).

Notice is hereby given that St. Paul Capital Fund, Inc., St. Paul Growth Fund, Inc., and St. Paul Income Fund, Inc. ("Funds"), each registered under the Investment Company Act of 1940 ("Act") as an open-end, management investment company, and St. Paul Investors, Inc. ("Investors," collectively with the Funds, "Applicants"), filed an application on September 10, 1982, and an amendment thereto on November 1, 1982, for an order of the Commission pursuant to Section 6(c) of the Act exempting Applicants from the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder to the extent necessary to permit sales of shares of the Funds at net asset value without a sales charge to presently existing and future tax-qualified pension and profit-sharing plans of Investors' parent company, The St. Paul Companies, Inc. ("St. Paul"), and its affiliated companies (including subsidiaries either presently existing or to be formed in the future) and to those affiliated companies' employees, retired employees ("St. Paul Affiliated Employees"), and their spouses and children under the age of 21 who open Individual Retirement Accounts ("IRAs") offered by the Funds. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Funds are organized as corporations under Minnesota law and currently engaged in continuous public offerings of their shares through Investors (a registered broker-dealer and the distributor of the Funds' shares) at public offering prices equal to net asset value plus a sales charge. The

Funds' investment manager is St. Paul Advisers, Inc. ("Advisers"), which, like Investors, is a subsidiary of St. Paul. St. Paul, Investors, Advisers, and their subsidiaries are hereinafter referred to collectively as "St. Paul Affiliated Companies." The St. Paul Affiliated Companies have approximately 10,000 employees.

According to the application, the Funds each provide a prototype IRA pursuant to the provisions of Section 408 of the Internal Revenue Code. The First Pennsylvania Bank, N.A. is the custodian for the IRA accounts. St. Paul and its affiliated companies sponsor tax-qualified, non-contributory pension and profit-sharing plans (which together with plans that may be established in the future are hereinafter referred to as the "Plans"). Applicants propose to permit sales of the Funds' shares as net asset value without the imposition of a sales charge to St. Paul Benefit Plans and to St. Paul Affiliated Employees and their spouses and minor children who open IRAs offered by the Funds.

Applicants assert that no individual or in-person group sales solicitations or presentations will be made. Further, all St. Paul Affiliated Employees will receive, at least annually, notice from their employers concerning the availability of shares of the Funds at net asset value without a sales charge. This notice will be furnished at the expense of their employer, will describe the Funds and their investment objectives, indicate that investments would be made at net asset value without a sales charge, set forth the various ways in which investments could be made, and indicate how prospectuses of the Funds and additional information could be obtained.

Applicants submit that the sale of Fund shares as proposed in the application may conflict with the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder. Rule 22d-1(f) under the Act affords an exemption from the provision of Section 22(d) for certain employee benefit plans qualified under Section 401 of the Code or for those non-qualified employee benefit plans that satisfy uniform criteria relating to realization of economies of scale in sales effort and sales related expenses and such uniform offer is described in the prospectus.

Applicants state that while the term "employee benefit plan," as used in Rule 22d-1(f), may generally be considered to apply only to a specific legal entity and may not have been contemplated to include individual IRAs, both plans and "arrangements," and the policy underlying Rule 22d-1(f) would appear

to include such accounts. Applicants further assert that it is not clear that the proposed sales would meet the "uniform offer" requirement of Rule 22d-1(f). Applicants further argue that while Rule 22d-1(i) permits sales without any sales charges to certain employees and affiliated persons of the Funds, it would not be available to St. Paul Affiliated Employees except for employees of Investors and Advisors.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provisions of the Act or of any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants submit that investment by St. Paul Affiliated Employees and their spouses and minor children in the Plans or in shares of the Funds at net asset value is supported by policy considerations, that such sales should result in demonstrable economies in sales effort and sales related expense as compared with other sales and would not be unjustly discriminatory, and that the grant of the exemption requested by the application is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes of Section 22(d) of the Act.

Applicants state that the proposed sales would result in economies of scale in sales effort and sales-related expenses because: (1) The corporate relationship of the Plans and the St. Paul Affiliated Employees to Investors and Advisors results in loyalty to and some familiarity with the funds, so that there need not and will not be any sales effort mounted by Investors' sales organization or independent dealers, as would be required in the case of sales to persons unaffiliated with St. Paul; (2) employees purchasing shares through payroll deduction will have shares purchased for their accounts at each payroll date with payment for such shares being made by a single check; (3) distributions on Fund shares will be automatically reinvested in additional Fund shares; and (4) all eligible employees will receive at least annually, at the expense of their employers, notice of the availability of the Plans.

Notice is further given that any interested person may, not later than December 13, 1982, at 5:30 p.m., submit to the Commission in writing a request

for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32075 Filed 11-22-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12825; 812-5336]

Unilever Capital Corp.; Filing of Application

November 17, 1982.

In the matter of Unilever Capital Corporation, c/o James M. Edwards, Esq., Cravath, Swaine & Moore, One Chase Manhattan Plaza, New York, New York 10005 (812-5336).

Notice is hereby given that Unilever Capital Corporation (the "Applicant"), a Delaware corporation, filed an application on October 8, 1982, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") for an order exempting Applicant from all the provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was incorporated on October 7, 1982, under the laws of the State of Delaware. Applicant's registered office is located in Wilmington, Delaware, and its principal place of business is 100 West Tenth Street, Wilmington, Delaware 19801. On October 7, 1982, Applicant issued and

sold for \$1,000 all its outstanding capital stock, consisting of 1,000 shares of common stock, par value \$1 per share, to Unilever United States, Inc. ("Unilever U.S."), a Delaware holding company and a wholly owned subsidiary of Unilever N.V., a corporation organized under the laws of the Netherlands. Unilever N.V. ("N.V.") and Unilever PLC ("PLC"), an English company, are the parent corporations of a large number of corporations (collectively, the "Unilever Group") which are principally engaged in the manufacture and sale of branded and packaged consumer goods, but are also engaged in diverse industrial and commercial activities. N.V. and PLC operate as nearly as possible as if they were the single parent of the Unilever Group. N.V. and PLC have identical boards of directors and are linked by certain agreements, including an Equalisation Agreement which makes provision so that the position of shareholders of both companies is as nearly as possible the same as if they held shares in a single company.

The Applicant states that it was organized to undertake the issuance and sale of debt securities ("Securities") in the United States. The Applicant intends to lend or advance to N.V. or PLC or companies of the Unilever Group all the proceeds of sales of Securities made by the Applicant. The terms of the advances or loans would allow the Applicant to make timely payments of principal of and premium, if any, and interest on such Securities. The Applicant represents that its Securities may be long-term, intermediate term, or short-term instruments.

As a result of such advances or loans by the Applicant to N.V. or PLC or companies of the Unilever Group, the Applicant believes that it may be deemed an investment company under the Act on the grounds that the acknowledgements or the evidence of indebtedness received from N.V. or PLC or companies of the Unilever Group for such advances or loans may be deemed "investment securities" under Section 3(a) of the Act and would constitute more than 40% of the total assets of the Applicant. As an investment company, the Applicant would be prohibited, *inter alia*, from making a public issuance and sale in the United States of securities absent registration as an investment company under the Act and compliance with the requirements of the Act and the rules and regulations promulgated thereunder. Accordingly, the Applicant is seeking an exemption from all the provisions of Act pursuant to Section 6(c) of the Act.

Applicant represents that offerings of its Securities would be limited to debt securities, which if convertible or exchangeable shall be convertible or exchangeable only for securities of the parent corporations. Such offerings would take the form of a public offering of Securities registered under the Securities Act of 1933, as amended (the "1933 Act"), or a sale of Securities by means of transactions exempt from the registration requirements of the 1933 Act. The payment of principal of and premium, if any, and interest on any Securities will be fully guaranteed, jointly and severally, by N.V. and PLC. Securities may also be guaranteed by Unilever U.S. the guarantees will provide that in the event of default with respect to a security issued by Applicant, legal proceedings may be instituted directly against any of the guarantors without first proceeding against the Applicant.

The Applicant represents in its application that N.V. and PLC would be eligible to use proposed Form F-3 in connection with the registration of the Securities with the Commission. The Applicant further represents that neither N.V., PLC nor Unilever U.S. are investment companies as defined in Section 3(a) of the Act.

The Applicant also represents that, in connection with any issuance of Securities, the Applicant and the guarantors will appoint an agent to accept service of process in any action based on such Securities or the guarantees thereof and instituted in any state or Federal court in the Borough of Manhattan, The City of New York, New York, by any holder thereof, and the Applicant and the guarantors will accept jurisdiction in any state or Federal court located in the Borough of Manhattan of the City of New York in any action based on such Securities or the guarantees thereof instituted by any holder. Such appointment and consent would be irrevocable until the amounts due or to become due on such Securities or the guarantees thereof have been paid. No authorized agent for service of process would be a trustee for the holders of Securities or the guarantees thereof or have any responsibilities or duties to act for such holders as would a trustee.

Applicant states that it does not believe that the Act was designed to regulate entities such as Applicant. All of Applicant's equity securities are represented to be owned by a parent company which is not an investment company, and it is further represented that neither its structure nor its mode of

operation resembles that of a typical investment company. Applicant states that it will not engage in a general program of investment but will serve to raise capital for N.V. and PLC. The only securities it will publicly offer will be ultimately guaranteed by N.V. and PLC. Applicant argues that since the debt is to be sold on the basis of the credit of N.V. and PLC combined, purchasers of the debt will look ultimately to N.V. and PLC for their assurance of repayment. According to the Applicant, if N.V. or PLC were to issue the debt directly, no question would arise under the Act; consequently, it is contended that there can be no public purpose served by applying the provisions of the Act to Applicant, the need for which is related to certain "legal investment" and tax issues.

Applicant also claims that it meets all the eligibility requirements for exemption from all the provisions of the Act pursuant to the proposed revision of Rule 6c-1 under the Act, which was introduced for public comment in Investment Company Act Release No. 12679 (September 22, 1982). In that connection, Applicant represents that it will not deal or trade in securities or hold securities other than securities resulting from its primary purpose.

Section 6(c) of the Act, as here pertinent, authorizes the Commission to grant an exemption to any person from the provisions of the Act when such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 13, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon

its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

for the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32074 Filed 11-22-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19234; File No. SR-Amex-82-19]

Self-Regulatory Organizations; Filing of Proposed Rule Change by American Stock Exchange, Inc.

November 12, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 1, 1982, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Amex proposes to amend Rule 347 to increase the exemptive level of reportable gratuities which may be given to any one employee of an Amex member or member organization during a calendar year from \$50 to \$100. Rule 347 presently requires a member or member organization which gives any compensation to an employee of another member or member organization or other financial concern to first obtain the written consent of the recipient's employer and to file written notice of such consent with the Exchange. According to the Exchange, the purpose of the rule is to protect against any improprieties or abuses which might arise in connection with the giving of gifts to such employees without their employers' knowledge. At the present time, however, gratuities valued at \$50 or less in total given to any one person specified in Rule 347 during the calendar year are exempt from the rule's consent and notice requirement. The Amex has indicated that several member firms have requested that the present exemptive level of \$50 be raised in order to ease the burden of administrative paperwork when giving small gifts to employees of a member or member organization during the holiday season, in accordance with the custom in the

industry. The proposed change will not, however, affect the dollar value of exempted gratuities given to other persons specified in Rule 347 (persons other than an employee of a member or member organization). In addition, Amex is proposing to add commodities brokers and dealers to the group of individuals encompassed by the Rule's gratuity provision. According to Amex, the amendment would broaden the scope of the Rule, in light of the recent developments in commodities products.

Amex states that the statutory basis for the proposed rule change is Sections 6(b)(1) and 6(b)(5) of the Act, in that it relates to the administration and enforcement of an Exchange rule which is designed to prevent fraudulent acts and practices which might arise in connection with the giving of gifts to employees of members without such member's knowledge.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-Amex-82-19.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. Copies of the filing for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32077 Filed 11-22-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19236; File No. SR-SCCP-82-6]

Self-Regulatory Organizations; Proposed Rule Change by Stock Clearing Corporation of Philadelphia Relating to SCCC Trade Guarantee and Pre-Settlement Date Marks to Market

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1982, Stock Clearing Corporation of Philadelphia filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Over the past several months Stock Clearing Corporation of Philadelphia (SCCP) has undertaken a reevaluation of its policies and procedures relating to trade guarantees and pre-settlement date marks to market.

SCCP's policy has been to guarantee as of trade date all trades executed on the Philadelphia Stock Exchange except those that were settled ex-clearing ("Z" trades). To support this trade date guarantee, SCCP also administered a policy of mandatory marking to market of unsettled trades. In the era of high interest rates, SCCP's practice of requiring participants to meet marks to market prior to settlement date (and payment from their customers) was called into question. SCCP management undertook a study of the trade guarantee/mark-to-market situation, which included polling the participants for their preferences on the subject.

After studying various options such as insurance and Letters of Credit, the Board of Directors approved the following policy regarding trade guarantees and pre-settlement date marks to market.

SCCP's guarantee of trades prior to settlement date will be limited to executions provided by specialists on the PHLX floor, recorded in an SCCP margin account with an SCCP participant as the contra party to the trade. Such trades will be guaranteed to the extent of 1,000 shares per issue in a single day with the same contra side. SCCP will retain its right to mark to market pursuant to Rule 15, but will discontinue its current practice of mandatory pre-settlement date marks to market on CNS trades.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP's policy of guaranteeing trades executed on the floor of the Philadelphia Stock Exchange was formulated in order to provide a safe trading environment, thus attracting business to this regional exchange. However, with the higher interest rates of the last few years, SCCP has experienced a growing reluctance on the part of some participants to meet calls for pre-settlement date marks to market. (In order to support a policy of guaranteeing trades from trade date, it was necessary for SCCP to follow the practice of marking trades from trade date to minimize the exposure to market fluctuations.) Thus, the policy that was designed to attract business to the Philadelphia Stock Exchange was, in some cases, having the effect of repelling business, especially from large retail firms. Conversely, another group of participants, namely, specialists on the floor of the Philadelphia Stock Exchange, was quite strong in its support of the trade date guarantee in that it provided them with a measure of protection in dealing with members of the Philadelphia Stock Exchange and Stock Clearing Corporation of Philadelphia.

These two different viewpoints were considered in the policy which was formulated and set forth above. The specialists will still receive the protection of SCCP's trade date guarantee within certain parameters, while large retail firms will not, under normal circumstances, be called upon to meet pre-settlement date marks to market.

The proposed rule change is consistent with the provisions of Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 (the Act) in assuring the safeguarding of securities and funds which are in SCCP's control. SCCP management does not believe it is

prudent to continue a policy of unlimited guarantee of trades from trade date in the absence of the protective measure of marking to market CNS trades from trade date.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not perceive any impact on competition, negative or positive, resulting from the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change

SCCP solicited comments on the proposed rule change in SCCP/PHILADEP Member Bulletin No. 81-25. Copies of the comments received, and a summary of these comments are available for inspection and copying as discussed in paragraph IV, below.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The Commission is particularly concerned about whether the proposal is consistent with Section 17A(b)(3)(A) of the Act which provides, among other things, that a clearing agency may not be registered unless it is organized and has the capacity to safeguard securities and funds in its custody or control, or for which it is responsible. Thus, the Commission specifically solicits comments on this issue. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of each filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 15, 1982.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32068 Filed 11-22-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 19243; SR-CBOE-82-12]

Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc.

November 16, 1982.

In the matter of Chicago Board Options Exchange, Incorporated, LaSalle at Jackson, Chicago, IL 60604 (SR-CBOE-82-12).

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 29, 1982, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change sets forth a revised CBOE policy with regard to granting position limit exemptions under CBOE Rule 4.11. The proposal is predicated on the recent surge in option volume and open interest which has resulted in a significant increase in exemption requests. Among other things, the revised exemption policy specifies the standards governing submission of exemption requests, the criteria under which requests are to be considered, and the procedures for reviewing and approving or disapproving the requests.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington DC 20549. Reference should be made to File No. SR-CBOE-82-12.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32072 Filed 11-22-82; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 04/04-5214]

Progressive Funding, Inc.; Application for a License to Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), has been filed by Progressive Funding, Inc. (Applicant), with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1982).

The officers, directors and sole shareholder of the Applicant are as follows:

James V. Sullivan, 1276 Nottingham Drive, Macon, Georgia 31211.
Lita McC. Sullivan, 1276 Nottingham Drive, Macon, Georgia 31211.

W. Carl Reynolds, 5637 Taylor Terrace,
Macon, Georgia 31210.
President, Treasurer, Director, Sole
Shareholder.
Vice President, Director.
Secretary, Director.

The Applicant, a Florida corporation, with its principal place of business at 920 S. Ocean Boulevard, Palm Beach, Florida 33480, and a Branch office at 1660 Waterville Road, Macon, Georgia, will begin operations with \$500,000 of paid-in capital and paid-in surplus derived from the sale of 500 shares of common stock.

The Applicant will conduct its activities primarily in the States of Florida and Georgia.

Applicant intends to provide assistance to qualified socially or economically disadvantaged small business concerns.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under this management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Palm Beach, Florida and Macon, Georgia.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 16, 1982.

Robert G. Lineberry,
Deputy Associate Administrator for
Investment

[FR Doc. 82-32081 Filed 11-22-82; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 823]

Fishery Conservation and Management Act of 1976; Applications for Permits to Fish Off the Coasts of the United States

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) as amended (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to Section 204 of the Act.

The Act also requires that a notice of receipt of all applications for such permits, a summary of the contents of such applications, and the names of the Regional Fishery Management Councils that receive copies of these applications, be published in the *Federal Register*.

Individual vessel applications for fishing in 1982 have been received from the Governments of Japan, Spain, Italy, Portugal and the German Democratic Republic.

If additional information regarding any applications is desired, it may be obtained from: Permits and Regulations Division (F/CM7), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235. (Telephone: (202) 634-7432).

Dated: November 10, 1982.

James A. Storer,
Director, Office of Fisheries Affairs.

Fishery codes and designation of regional councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional council
ABS.....	Atlantic Billfishes and Sharks.....	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA.....	Bering Sea and Aleutian Islands Trawl, Longline and Herring Gillnet.....	North Pacific.
CRB.....	Crab (Bering Sea).....	North Pacific.
GOA.....	Gulf of Alaska.....	North Pacific.
NWA.....	Northwest Atlantic.....	New England, Mid-Atlantic, Western Pacific.
SMT.....	Seamount Groundfish (Pacific Ocean).....	Western Pacific.
SNA.....	Snails (Bering Sea).....	North Pacific.

Code	Fishery	Regional council
WOC.....	Washington, Oregon, California Trawl.....	Pacific.
PBS.....	Pacific Billfish and Sharks.....	Western Pacific.

Activity codes specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1.....	Catching, processing, and other support.
2.....	Processing and other support only.
3.....	Other support only.

Nation/vessel name vessel type	Application No.	Fishery	Activity
Japan: Tokachi Maru, ¹ large stern trawler.	JA-82-0360	NWA.....	2
Keifu Maru, cargo/transport vessel.	JA-82-0572	BSA, GOA, NWA, SMT, SNA.	3
Spain: Pescamaro Uno, medium stern trawler.	SP-82-0034	NWA.....	1,2
Suemar Dos, medium stern trawler.	SP-82-0143	NWA.....	1,2
Valle de Asua, side trawler.	SP-82-0102	NWA.....	1,2
Italy: Tortorelli E., medium stern trawler.	IT-82-0011	NWA.....	1
German Democratic Republic: F. C. Weiskopf, ² stern trawler/factory ship.	GC-82-0030	NWA.....	1,2
Peter Nell, ² stern trawler/factory ship.	GC-82-0022	NWA.....	1,2
Willi Bredel, ² stern trawler/factory ship.	GC-82-0024	NWA.....	1,2
Arnold Schweig, ² stern trawler/factory ship.	GC-82-0046	NWA.....	1,2
Portugal: Santa Maria Manuela, large gillnetter.	PO-82-0016	NWA.....	1,2

¹ This joint venture between Nippon Suisan Kaisha, Ltd. of Japan and Stinson Canning Co., Prospect Harbor, Maine, USA, 04669, is for the harvesting of 1,000 mt butterfish, 300 mt herring and 300 mt mackerel between the months of November 1982 and March 1983.

² This joint venture between the German Democratic Republic and William Quinby, President, Joint Trawlers (North America) Ltd., P.O. Box 1209, Gloucester, Massachusetts, 01930, is for the harvesting and processing of 10,000 mt of mackerel from January 1st, 1983 to March 31, 1983.

[FR Doc. 82-32052 Filed 11-22-82; 8:45 am]

BILLING CODE 4710-09-M

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Government Procurement; Amendment of Determination Regarding Application of Agreement

Section 1-104 of Executive Order 12260 provides that the United States Trade Representative shall determine,

from time to time, the dollar equivalent of 150,000 Special Drawing Right units.

Now, therefore, I, William E. Brock, III, United States Trade Representative, in conformity with the provisions of Executive Order 12260, do hereby determine, effective January 1, 1983, that, with respect to the Agreement on Government Procurement, the dollar equivalent of 150,000 Special Drawing Right units is \$169,000. This determination may be modified from time to time as appropriate.

William E. Brock III,

United States Trade Representative.

[FR Doc. 82-31992 Filed 11-22-82; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name "Combe Incorporated"

Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Combe Incorporated," used by Combe Incorporated, a corporation organized under the laws of the State of Delaware,

located at 1101 Westchester Avenue, White Plains, New York 10604.

The application states that the trade name is used in connection with the following merchandise manufactured in several foreign countries: Hair coloring; toiletries; cosmetics; odor-destroying insoles; odor-destroying hosiery; denture adhesives; pharmaceutical creams, ointments and lotions; veterinary medications and shampoos; and hair care products. Various foreign subsidiaries are authorized to use the trade name. Appropriate accompanying papers were submitted with the application.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Any such submission should be addressed to the Commissioner of Customs, Entry, Licensing and Restricted Merchandise Branch, Washington, D.C. 20229, in time to be received no later than 60 days from the date of publication of this notice in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution

Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Notice of the action taken on the application for recordation of this trade name will be published in the *Federal Register*.

Dated: November 18, 1982.

Donald W. Lewis,

Director, Entry Procedures and Penalties Division.

[FR Doc. 82-32115 Filed 11-22-82; 8:45 am]

BILLING CODE 4820-02-M

Office of the Secretary

[Supplement to Department Circular; Public Debt Series—No. 31-82]

Treasury Notes; Series Y-1984; Interest Rate

November 18, 1982.

The Secretary announced on November 17, 1982, that the interest rate on the notes designated Series Y-1984, described in Department Circular—Public Debt Series—No. 31-82 dated November 12, 1982, will be 9-7/8 percent. Interest on the notes will be payable at the rate of 9-7/8 percent per annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 82-32125 Filed 11-22-82; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register

Vol. 47, No. 226

Tuesday, November 23, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD

Addition to the November 18, 1982 Meeting

TIME AND DATE: 10 a.m., November 18, 1982.

PLACE: Room 1027 (open), room 1012 (closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 12a. Reply to OMB Comments on Dockets 39932, 36294, 39504—Denied Boarding Compensation; Docket 40366—Domestic Baggage Liability; and Docket 38904—2-year Fitness Rules. (OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary.

[S-1687-82 Filed 11-19-82; 9:22 am]

BILLING CODE 6320-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Thursday, November 18, 1982.

LOCATION: Eighth floor conference room, 1111 18th Street NW., Washington, D.C.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Statutory Review

The staff and the Commission discussed issues related to statutory review. The Commission voted that agency business required holding this meeting without the usual notice and also voted to close the meeting.

CONTACT FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, Room 342, Westwood

Towers, 5401 Westbard Ave., Bethesda, MD. 20207; (301) 492-6800.

[S-1692-82 Filed 11-19-82; 3:52 pm]

BILLING CODE 6355-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Wednesday, November 24, 1982.

LOCATION: Eight floor conference room, 1111 18th Street NW., Washington, D.C.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Statutory Review

The staff and the Commission will discuss issues related to statutory review.

CONTACT PERSON FOR ADDITIONAL

INFORMATION: Sheldon D. Butts, Office of the Secretary, Room 342, Westwood Towers, 5401 Westbard Ave., Bethesda, Md. 20207, (301) 492-6800.

[S-1693-82 Filed 11-19-82; 3:53 pm]

BILLING CODE 6355-01-M

4

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From November 18th Closed Meeting November 18, 1982.

The following item has been deleted at the request of the Office of the General Counsel from the list of agenda items scheduled for consideration at the November 18, 1982 Closed Meeting and previously listed in the Commission's Notice of November 10, 1982.

Agenda, Item No., and Subject

Hearing—1—Petition for Reconsideration of Order authorizing transfer of control in the Westerville, Ohio comparative renewal proceeding (Docket Nos. 82-282 and 82-283).

Issued: November 18, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-1688-82 Filed 11-19-82; 12:35 pm]

BILLING CODE 6712-01-M

5

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From November 18th Open Meeting

November 17, 1982.

The following item has been deleted at the request of the Office of Commissioner Jones from the list of agenda items scheduled for consideration at the November 18, 1982 Open Meeting and previously listed in the Commission's Notice of November 10, 1982.

Agenda, Item No., and Subject

General—1—Title: Implementation of Recommendations of Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications. Summary: The Commission will consider the adoption of policy statements, legislative recommendations, and associated documents relating to implementation of various recommendations contained in the *Final Report of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications*, adopted in May 1982.

Issued: November 18, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-1689-82 Filed 11-19-82; 12:35 pm]

BILLING CODE 6712-01-M

6

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10 a.m., Wednesday, December 1, 1982.

PLACE: Board room, sixth floor, 1700 G Street, N.W., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Lockwood (202-377-6679).

MATTERS TO BE CONSIDERED:

Request to Purchase Home Office Building—Catano Federal Savings and Loan Association of Puerto Rico, Catano, Puerto Rico

Investment in Office Building—First Western Federal Savings and Loan Association, Rapid City, South Dakota

Request for Extension of Time to Open a Branch Office—First Federal Savings and Loan Association of Lake Worth, Lake Worth, Florida

Supervisory Merger of—Guaranty Trust Savings and Loan Association, Memphis, Tennessee into Home Federal Savings and Loan Association of Memphis, Memphis, Tennessee

Modification of Condition—Superior Savings and Loan Association (In Organization), Los Angeles, California

Request for Extension of Time—Superior Savings and Loan Association (In Organization), Los Angeles, California
 Full Trust Powers—Far West Federal Savings and Loan Association, Portland, Oregon
 Processing of Applications
 Delegation of Authority Regarding Holding Company Acquisition and Debt
 FSLIC Insurance Coverage of Loan Payments Held by Loan Servicers
 Amendments Relating to the Organization, Merger and Acquisition of Interim Savings and Loan Associations
 Definition of Scheduled Items; Amortization Methods for Discounts and Deferred Fees; State Concurrence in Use of Deferral Accounting
 Request for Modification of Insurance Condition—(Proposed) Financial Security Savings and Loan Association, Boca Raton, Florida
 Request for Commitment to Insure Accounts—People's First Financial Savings and Loan Association, Panama City, Florida

[No. 79, November 19, 1982]

[S-1691-82 Filed 11-19-82; 2:40 pm]

BILLING CODE 6720-01-M

7

FEDERAL RESERVE SYSTEM (Board of Governors)

TIME AND DATE: 10 a.m., Monday, November 29, 1982.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: November 19, 1982.

William W. Wiles,
Secretary of the Board.

[S-1694-82 Filed 11-19-82; 3:53 pm]

BILLING CODE 6210-01-M

8

LEGAL SERVICES CORPORATION

Meeting of the Audit and Appropriations Committee

TIME AND DATE:

2 p.m.-5 p.m., Sunday, December 5, 1982.
 9 a.m.-4 p.m., Monday, December 6, 1982.

PLACE: Cathedral Hill Hotel, Mezzanine Level, VanNess and Geary Streets, San Francisco, CA 94109.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

- 1983 Budget Allocation Issues
- Discussion of 1984 Budget
- Other business

CONTACT PERSON FOR MORE

INFORMATION: Anne Tracy, Office of the President (202) 272-4040.

Dated: November 17, 1982.

Clinton Lyons,
Acting President.

[S-1685-82 Filed 11-19-82; 9:21 am]

BILLING CODE 6820-35-M

9

LEGAL SERVICES CORPORATION

Meeting of Special Committee on Grants and Contracts

TIME AND DATE:

9 a.m.-5 p.m., Saturday, December 4, 1982.

9 a.m.-Noon, Sunday, December 5, 1982.

PLACE: Cathedral Hill Hotel, Mezzanine Level, VanNess and Geary Streets, San Francisco, CA 94109.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

- Recommendations regarding support options, special programs, and grant approaches for FY 1983
- Other Business

CONTACT PERSON FOR MORE

INFORMATION: Anne Tracy, Office of the President (202) 272-4040.

Dated: November 17, 1982.

Clinton Lyons,
Acting President.

[S-1686-82 Filed 11-19-82; 9:22 am]

BILLING CODE 6820-35-M

10

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-82-28]

TIME AND DATE: 9 a.m., Tuesday, November 30, 1982.

PLACE: NTSB Board Room, 800 Independence Ave., S.W., Washington, D.C. 20594.

STATUS: Open.Q02

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report:* Reeve Aleutian Airways, Inc., Nihon YS-11, N169RV, King Salmon, Alaska, February 16, 1982.
2. *Recommendations* to the Federal Aviation Administration regarding marking of emergency exit handles on YS-11 airplanes and the adequacy of periodic review of passenger briefing cards and oral briefings.
3. *Letter* to Kellogg Company regarding its Petition for Reconsideration of Probable Cause of Aircraft Accident involving Avions Marcel Dassault-Brequet Aviation, Falcon 10, N243K, Meigs Field, Chicago, Illinois, January 30, 1980.
4. *Brief* of Aviation Accident: Nonfatal accident near Jacksonville, Florida, July 8, 1981, involving N29312.

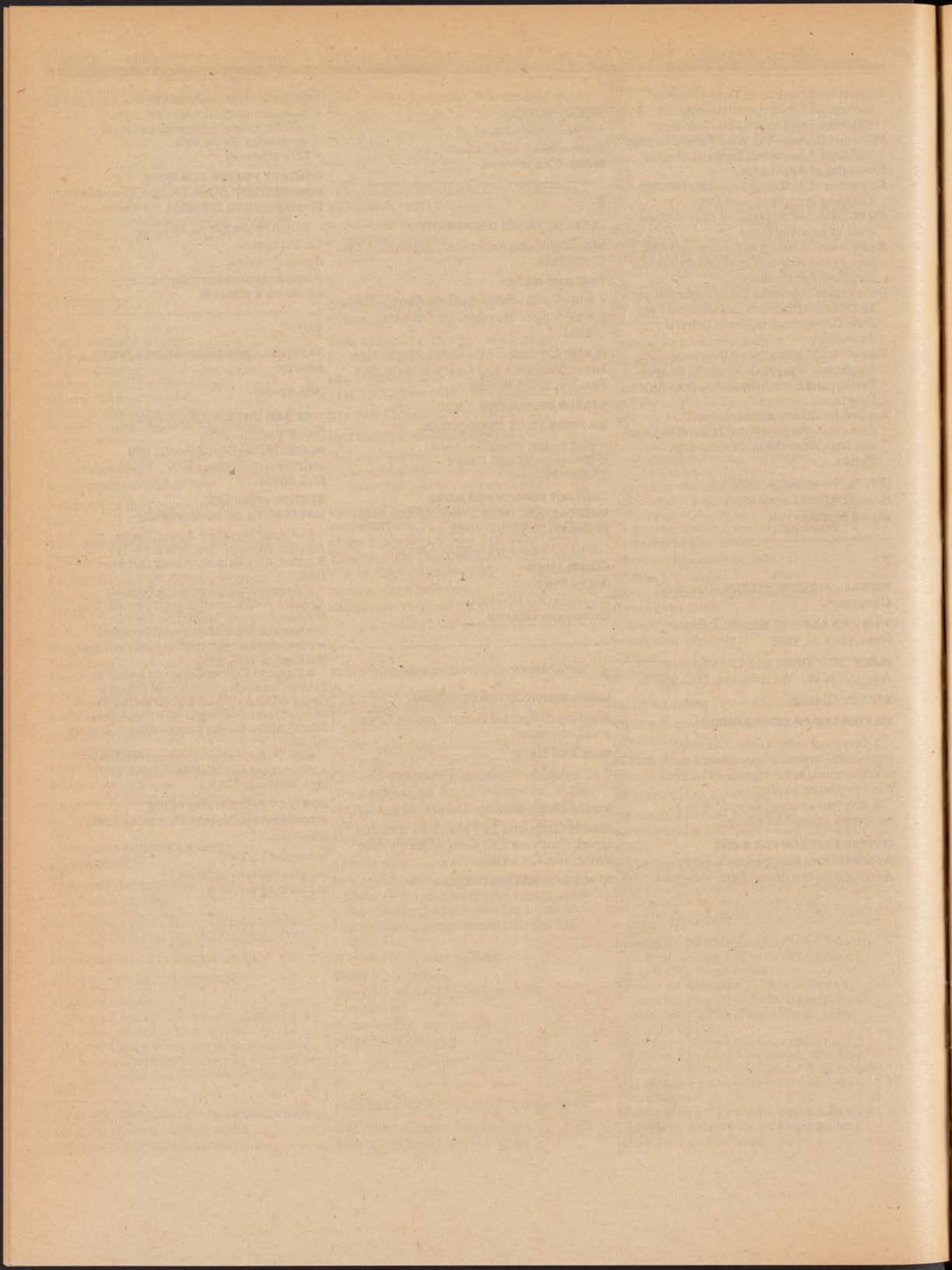
CONTACT PERSON FOR MORE

INFORMATION: Sharon Flemming (202) 382-6525.

November 19, 1982.

[S-1690-82 Filed 11-19-82; 2:06 pm]

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Leather Tanning and Finishing Industry Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards; Rule

**Tuesday
November 23, 1982**

Part II

Environmental Protection Agency

**Leather Tanning and Finishing Industry
Point Source Category; Effluent
Limitations Guidelines, Pretreatment
Standards and New Source Performance
Standards; Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 425

[WH-FRL 2231-5]

Leather Tanning and Finishing Industry Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This regulation limits the discharge of pollutants into navigable waters and into publicly owned treatment works by existing and new sources that are leather tanning and finishing facilities. The Clean Water Act and a consent decree require EPA to issue this regulation.

The purpose of this regulation is to specify effluent limitations for "best practicable technology", "best available technology", "best conventional technology", and "new source performance standards" for direct dischargers and to establish pretreatment standards for indirect dischargers.

DATES: In accordance with 40 CFR 100.01 (45 FR 26048), these regulations will be considered issued for purposes of judicial review at 1:00 P.M. Eastern time on (two weeks after Federal Register publication date). They will become effective January 6, 1983, except sections 425.04 (b) and (c) which contain information collection requirements which are under review at OMB. The compliance date for Pretreatment Standards for Existing Sources (PSES) is November 25, 1985.

Under Section 509(b)(1) of the Clean Water Act, any petition for judicial review of this regulation must be filed in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under Section 509(b)(2) of the Clean Water Act, the regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce its requirements.

ADDRESSES: Technical information may be obtained by writing to Donald F. Anderson, Effluent Guidelines Division, (WH-552), EPA, 401 M Street, S.W., Washington, D.C. 20460 or through calling (202) 382-7189. Economic information may be obtained from Joseph V. Yance, Office of Analysis and Evaluation (WH-586), at the same address, or through calling (202) 382-5379. Three weeks after the date of

publication of this regulation in the Federal Register, the Record, including copies of the development document and economic analysis, and responses to public comments will be available for public review in EPA's Public Information Reference Unit, Room 2404 (Rear) (EPA Library), 401 M Street, S.W., Washington, D.C. The EPA information regulation (40 CFR Part 2) allows the Agency to charge a reasonable fee for copying. Copies of the development document and the economic analysis may also be obtained from the National Technical Information Service, Springfield, Virginia 22161 (703/487-6000).

FOR FURTHER INFORMATION CONTACT: Technical information: Donald F. Anderson, (202) 382-7189; economic information: Joseph V. Yance, (202) 382-5379.

SUPPLEMENTARY INFORMATION:

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I. Legal Authority

This regulation is promulgated under the authority of Sections 301, 304, 306, 307, 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977 (Pub. L. 95-217)), also called the "Act." It also is promulgated in response to the Settlement Agreement in *Natural Resources Defense Council, Inc.*

v. Train, 8 ERC 2120 (D.D.C. 1976), *Modified*, 12 ERC 1833 (D.D.C. 1979).

II. Scope of This Rulemaking

This regulation applies to the leather tanning and finishing point source category which is included within the Standard Industrial Classification (SIC) Major Group 3100, Leather and Leather Products. That part of the industry covered by this regulation is the subgroup SIC 3111.

The regulation promulgated today establishes effluent limitations and standards to control specific toxic, nonconventional and conventional pollutants for nine subcategories in the leather tanning and finishing category: (1) Hair pulp, chrome tan, retan-wet finish; (2) hair save, chrome tan, retan-wet finish; (3) hair save, non-chrome tan, retan-wet finish; (4) retan-wet finish (sides); (5) no beamhouse; (6) through-the-blue; (7) shearling; (8) pigskin; and (9) retan-wet finish (splits).

Best practicable control technology currently available (BPT) effluent limitations are established for all subcategories. The technology basis of the BPT limitations is biological treatment, specifically high solids extended aeration activated sludge. They include mass based limitations (kg/kg or lb/1,000 lb of raw material) for one toxic pollutant (total chromium), and four conventional pollutants (BOD₅, TSS, oil and grease, and pH). These BPT mass limitations are derived utilizing subcategory median water use ratios and BPT effluent concentrations described later in appropriate sections of this preamble, and variability factors described in the Development Document.

BAT and BCT limitations also are established for all nine subcategories in the leather tanning and finishing point source category. For this regulation the technology basis of and mass based effluent limitations for BCT and BAT are the same as the promulgated BPT limitations. The BCT effluent limitations control four conventional pollutants (BOD, TSS, oil and grease, and pH). The BAT limitations control one toxic pollutant, total chromium.

NSPS are mass based and are established for all nine subcategories and limit one toxic pollutant (total chromium), and four conventional pollutants (BOD, TSS, oil and grease, and pH). NSPS are based on the same technology and effluent concentrations and the same variability factors as BAT, but the mass based limitations for NSPS are different from those for BAT because the NSPS limitations are based on reduced water use.

Finally, this regulation establishes categorical pretreatment standards for one toxic pollutant, total chromium, for all subcategories. These standards are concentration based and apply to existing and new source indirect dischargers. The categorical pretreatment standards for total chromium contained in this regulation do not apply to indirect dischargers in subcategory 1 processing less than 275 hides per day, in subcategory 3 processing less than 350 hides per day or in subcategory 9 processing less than 3600 splits per day. Categorical pretreatment standards also are established for the control of sulfides in subcategories 1, 2, 3, 6, and 8 where unhairing operations are included. However, this regulation includes a provision which allows the POTW to certify that discharge of sulfide from a particular facility does not interfere with its treatment works. If this certification is made and EPA determines that the submission is adequate, it will publish a notice in the *Federal Register* identifying those facilities to which the sulfide pretreatment standard would not apply.

Finally, the Agency is adopting a new format to make the regulations more readily usable and understood by regulating authorities, the industry, and the public.

III. Summary of Legal Background

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical and biological integrity of the Nation's waters" (Section 101(a)). To implement the Act, EPA was required to issue effluent limitations guidelines, pretreatment standards and new source performance standards for industrial dischargers.

The Act included a timetable for issuing these standards. However, EPA was unable to meet many of the deadlines and, as a result, in 1976, it was sued by several environmental groups. In settling this lawsuit, EPA and the plaintiffs executed a court-approved "Settlement Agreement." This Agreement required EPA to develop a program and adhere to a schedule in promulgating effluent limitations guidelines and pretreatment standards for 65 "priority" pollutants and classes of pollutants, for 21 major industries. [See *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976), modified, 12 ERC 1833 (D.D.C. 1979)].

Many of the basic elements of this Settlement Agreement were incorporated into the Clean Water Act of 1977 ("the Act"). Like the Settlement

Agreement, the Act stressed control of the 65 classes of toxic pollutants. In addition, to strengthen the toxic control program, Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" (BMP) to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

Under the Act, the EPA program is to set a number of different kinds of effluent limitations. These are discussed in detail in the proposed regulation and development document. The following is a brief summary:

1. *Best Practicable Control Technology Currently Available (BPT)*. BPT limitations generally are based on the average of the best existing performance at plants of various sizes, ages and unit processes within the industry or subcategory. In establishing BPT limitations, the Agency considers the total cost of applying the technology in relation to the effluent reduction derived, the age of equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes and nonwater-quality environmental impacts (including energy requirements). The total cost of applying the technology is balanced against the effluent reduction.

2. *Best Available Technology Economically Achievable (BAT)*. BAT limitations, in general, represent the best existing performance in the industrial subcategory or category. The Act establishes BAT as the principal national means of controlling the direct discharge of toxic and nonconventional pollutants to navigable waters. In arriving at BAT, the Agency considers the age of the equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes, the cost of achieving such effluent reduction and nonwater-quality environmental impacts. The Administrator retains considerable discretion in assigning the weight to be accorded these factors.

3. *Best Conventional Pollutant Control Technology (BCT)*. The 1977 Amendments added Section 301(b)(2)(E) to the Act establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in Section 304(a)(4) [biochemical oxygen demanding pollutants (e.g., BOD₅), total suspended solids (TSS), fecal coliform and pH] and any additional pollutants

defined by the Administrator as "conventional," i.e., oil and grease. (See 44 FR 44501; July 30, 1979.)

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the Act requires that BCT limitations be assessed in light of a two part "cost-reasonableness" test. *American Paper Institute v. EPA*, 660 F.2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the cost to publicly owned treatment works (POTWs) for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50732). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that a second cost test was not required.) The Agency has corrected data errors and applied a second cost test. A revised BCT methodology was proposed in the *Federal Register* on October 29, 1982 (47 FR 49176).

EPA identified no economically achievable technology beyond BPT (biological treatment) capable of removing significant amounts of conventional pollutants from leather tanning and finishing wastewaters. Therefore, BCT is being set equal to BPT, and is not subject to the "cost-reasonableness" test.

4. *New Source Performance Standards (NSPS)*. NSPS are based on the best available demonstrated technology. New plants have the opportunity and are required to install the best and most efficient production processes and wastewater treatment technologies.

5. *Pretreatment Standards for Existing Sources (PSES)*. PSES are designed to control the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of a publicly owned treatment works (POTW). They must be achieved within three years of promulgation. The Clean Water Act of 1977 requires pretreatment for pollutants that pass through the POTWs in amounts that would violate direct discharger effluent limitations or interfere with the POTWs treatment process or chosen sludge

disposal method. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based analogous to the best available technology. EPA has generally determined that there is pass through of pollutants if the percent of pollutants removed by a well-operated POTW achieving secondary treatment is less than the percent removed by the BAT model treatment system. The general pretreatment regulations, which served as the framework for the categorical pretreatment regulations, are found at 40 CFR Part 403 [43 FR 27736 (June 26, 1978); 46 FR 9462 (January 28, 1981)].

6. *Pretreatment Standards for New Sources (PSNS)*. Like PSES, PSNS control the discharge of pollutants to POTWs that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are issued at the same time as NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating PSES.

IV. Prior Regulations

EPA promulgated BPT, BAT, NSPS, and PSNS for the Leather Tanning and Finishing Point Source Category on April 9, 1974 (39 FR 12958; 40 CFR Part 425, Subparts A-F). The Tanners' Council of America (TCA) challenged these regulations, and the U.S. Court of Appeals for the Fourth Circuit left BAT and PSNS undisturbed, but remanded the BPT and NSPS regulations for several reasons (see *Tanners' Council of America vs. Train*, 540 F.2d 1188 [4th Cir. 1976]). EPA promulgated pretreatment standards for existing sources (PSES) within the Leather Tanning and Finishing Point Source Category on March 23, 1977 (42 FR 15696; 40 CFR Part 425, Subparts A-G). These regulations established general pretreatment prohibitions and specific pH standards for indirect dischargers. These PSES regulations were not challenged and are currently in effect.

Previously promulgated best practicable control technology currently available (BPT) and best available technology economically achievable (BAT) limitations, new source performance standards (NSPS), pretreatment standards for existing sources (PSES) and pretreatment standards for new sources (PSNS) are superseded by this regulation. This regulation also establishes best conventional pollutant control technology limitations (BCT).

On July 2, 1979 (44 FR 38746), EPA proposed BPT, BAT, BCT, NSPS, PSNS, and PSES regulations. EPA accepted comments on the proposed regulations until April 10, 1980. In their comments on the proposed regulations, the leather tanning industry claimed that the data and other supporting record material relied upon by EPA in proposing these regulations contained a large number of errors. The Agency has responded by not only completely reviewing the entire data base and all documentation supporting this rulemaking, but also by conducting a program to acquire supplemental data during and after the comment period.

In the *Federal Register* for June 2, 1982 (47 FR 23958), EPA made available for public review and comment supplementary technical and economic data and related documentation received after proposal of the regulations. The Agency also summarized the preliminary findings of how these supplementary record materials might influence final rulemaking.

V. Methodology and Data Gathering Efforts

The methodology and data gathering efforts used in developing the proposed regulation were discussed in the preamble to the proposal (44 FR 38749-38751, July 2, 1979). The notice of availability of supplementary record materials (47 FR 23958, June 2, 1982) also discussed data gathering and review efforts. In summary, before publishing the proposed regulation in 1979, the Agency conducted a data collection, analytical screening, and analytical verification program for the leather tanning and finishing industry. This program stressed the acquisition of data on the presence and treatability of the 65 toxic pollutants and classes of toxic pollutants discussed previously. The 65 toxic pollutants and classes of pollutants potentially includes thousands of specific pollutants. EPA selected 129 specific toxic pollutants for study in this rulemaking and other industry rulemakings. (Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants* (U.S. EPA, April 1977)). Based on the results of that program, EPA identified several distinct treatment technologies, including both end-of-pipe and in-plant technologies, that are or can be used to treat leather tanning and finishing industry wastewaters.

For each of these technologies, the Agency (i) compiled and analyzed historical and newly-generated data on effluent quality, (ii) identified its

reliabilities and constraints, (iii) considered the nonwater quality impacts (including impacts on air quality, solid waste generation and energy requirements), and (iv) estimated the costs and economic impacts of applying it as a treatment and control system. Costs and economic impacts of the technology options considered are discussed in detail in *Economic Impact Analysis of Effluent Limitations and Standards for the Leather Tanning and Finishing Industry* (EPA 440/11-82-001, November 1982). A more complete description of the Agency's study methodology, data gathering efforts and analytical procedures supporting the regulation can be found in the *Final Development Document for Effluent Limitations Guidelines New Source Performance Standards and Pretreatment Standards for the Leather Tanning and Finishing Industry Point Source Category* (EPA 440/11-82-016, November 1982).

VI. Subcategorization and Water Use

A. *Subcategorization*. In 1979, the Agency proposed seven subcategories for the leather tanning and finishing industry on the basis of hide or skin type, and process employed. The seven subcategories were as follows:

1. Hair Pulp, Chrome Tan, Retan-Wet Finish
2. Hair Save, Chrome Tan, Retan-Wet Finish
3. Hair Save or Pulp, Non-Chrome Tan, Retan-Wet Finish
4. Retan-Wet Finish
5. No Beamhouse
6. Through-The-Blue
7. Shearling

Upon further review of the industry and in response to public comment, EPA is establishing two additional subcategories, pigskins (subcategory 8) and retan-wet-finish-splits (subcategory 9). In the 1979 proposal, the processing of pigskins was included in subcategory 1. However, the nature of pigskin is different from that of cattlehide (the predominant raw material in subcategory 1), and the subprocesses utilized to produce finished leather are different. Given proper water conservation and recycle and reuse techniques, the processing of pigskins results in different water use and pollutant loads from the processing of cattlehides. Accordingly, a separate subcategory, pigskins (subcategory 8), was required. In the 1979 proposal, the retanning and wet finishing of splits was included in subcategory 4. However, a split is a different raw material than grain sides, and the subprocesses utilized to produce finished leather are

different. Given proper water conservation and reuse and recycle techniques, the retan-wet finishing of splits results in different water use and pollutant loads from the processing of grain sides. Accordingly, a separate subcategory, retan-wet finish-splits (subcategory 9), was added. These two new subcategories were discussed in the June 2, 1982 notice of availability.

Subcategorization in this industry is based primarily upon the raw materials and the three major groups of subprocesses utilized at a plant (beamhouse [hair removal], tanyard [tanning] and retan-wet finish [further tanning, coloring, oil replenishment, surface coating]). These factors have the most significant influence on water use and pollutant generation. These two factors are interdependent because the subprocesses utilized depend upon the nature of the raw materials and their state of preprocessing. For example, cattlehides to be processed into "crust" leather (largely finished leather, except for any special surface coating or color) require all three major groups of subprocesses: (1) Hair removal (hair dissolving or pulping), (2) tanning with trivalent chromium, and (3) retanning, coloring, oil replenishment (fatliquoring), and surface coating (subcategory one). Cattlehides and sheepskins without hair (wool) and acid preserved (pickled) require only chromium tanning, retanning, and wet finishing (subcategory five). Pigskins require some hair (stubble) removal, chromium tanning, retanning, and wet finishing (subcategory 8).

Subcategorization in this industry is incidentally related to the final products produced because as a result of the subcategorization factors i.e., the raw materials and subprocesses used, there is a typical mix of final products for each subcategory. For example, predominant final products are shoe uppers, upholstery and garment leather for subcategory one; they are shoe uppers, (cattlehides) garments, work gloves, and lining material for subcategory five; and shoe uppers (suede or grain) and work gloves for subcategory 8.

Commenters suggested that the Agency also should base subcategorization upon the quality of final products produced. The quality of final products is related both to quantitative and qualitative measures. Quantitative measures include standard tests utilized in industry laboratories by tanners and buyers (e.g., shoe manufacturers) to determine leather properties germane to their intended use. For example, determinations of the

percent of chromium content by weight, the "boil" test, and other tests of mechanical properties, provide standardized bases for determining whether final leather products are acceptable for their intended use. The qualitative measures of final product quality are subjective factors, such as the "feel" of leathers. The Agency has not used either the quantitative or qualitative measures of final product quality as a basis for subcategorization because industry has not produced any data and, as discussed below, the Agency does not have any data showing a correlation between water used and pollutants discharged, and final product quality. Furthermore, the Agency feels that it would be difficult if not impossible to quantify the subjective and variable qualitative measures of final product quality, such as the "feel" of leathers, and that such data would be impossible to procure. The data utilized by the Agency does, however, represent leather products of commercially salable qualities.

B. Water Use. The two primary subcategorization factors, the nature of the raw materials and the subprocesses utilized to produce a product, impact upon the volume of water needed for processing (water use). Therefore, the Agency has calculated typical water use ratios (gallons of water per pound of raw material processed) for each subcategory.

In 1979, the Agency proposed to use an average subcategory value, based upon individual data points, in order to determine water use for each subcategory. In response to commenters' concerns over the highly variable nature of the data, the Agency, in its June 2, 1982 notice of availability, applied a different methodology. First, EPA computed the arithmetic mean of every facility's data. Subcategory water use was then determined by using the median value of the mean plant values for each subcategory. The Agency believes that this methodology provides the most reasonable measurement of typical water use for each subcategory. This method gives equal weight to each facility's data, and provides a better estimate of central tendency since the median is less sensitive to extreme values in the data than the mean. The median water use ratios for plants in each of the subcategories are presented in Table 1, together with the total number of plants included in the data base and the number of plants operating below the median water use. The BPT, BCT, and BAT mass based effluent limitations were derived using the median water ratios identified for each

subcategory. Reduced water use was not used in deriving BAT mass based effluent limitations because the BAT Option I included BPT in plant and end-of-pipe technology. Water use reduction was incorporated into mass based effluent limitations for the two BAT options which were not selected. PSES are concentration based rather than mass based, and therefore median water use ratios are not a part of PSES.

TABLE 1

Subcategory	Number of plants in subcategory data base	Median flow ratio (gallon per pound)	Number of plants in data base operating below flow ratio
1	28	6.5	15
2	4	5.8	3
3	12	4.9	8
4	8	4.8	4
5	13	5.8	7
6	3	2.1	2
7	1	9.4	1
8	2	5.0	1
9	4	3.0	2

Reduced flow ratios for new sources in eight of the nine subcategories were established by the Agency. A reduced water use ratio was not identified in subcategory 7 because representative and verifiable data was available from only one plant. New sources can select very efficient processing methods and equipment which achieve further water use reductions identified for the eight subcategories. The Agency looked at all plants below the median and chose the flow ratio for the plant which demonstrated the most efficient processing methods available to new sources.

At least one plant in every subcategory has demonstrated these new source flow ratios. Table 2 presents a summary of flow ratios achievable by new sources. The number of plants achieving these ratios also are presented. These new source water use ratios were used in deriving the mass based NSPS effluent limitations. However, as for PSES, these water use ratios were not used for the concentration based PSNS limitations.

TABLE 2

Subcategory	New source flow ratio (gallon per pound)	Number of plants in data base achieving flow ratio
1	4.3	5
2	4.9	1
3	4.2	4
4	4.5	3
5	3.8	3
6	1.4	1
7	9.4	1
8	4.1	1

TABLE 2—Continued

Subcategory	New source flow ratio (gallon per pound)	Number of plants in data based achieving flow ratio
9.....	2.5	2

In response to the notice of availability, several commenters expressed serious concerns regarding the lack of homogeneity in raw materials, processing methods, and final product mix within subcategories as these relate to the validity and achievability of water use ratios for existing and new sources. The Agency again reviewed, and revised where appropriate, the data presented in the June 2, 1982 Federal Register (see 47 FR 23959) underlying the median and reduced water use ratios for all subcategories.

In reviewing the water use (and wastewater pollutant load) data, the Agency applied the same criteria as it employed in developing the water use ratios published in the June 2, 1982 notice of availability. These criteria are as follows:

(1) For a plants' data to be included in the data base utilized to characterize water use and waste loads for any subcategory, at least 80 percent of the plants' production must be in one subcategory, or data for each processing operation representing a separate subcategory at a plant must be for a segregated and measurable wastewater stream. Mixed subcategory plants which did not meet this criteria would not be included in the data base because water use ratios and pollutant loads derived from these plants would not be accurate for a single subcategory.

(2) The location at which the wastewater was sampled (i.e., before or after treatment and type of treatment) and the sampling technique (grab, composite, flow proportional) must be reported so that the data could be used properly to characterize raw waste and the performance of various treatment system components.

(3) Production and flow values must be reported for the days of sampling so that pollutant concentrations could be converted to mass and normalized to production. Average or estimated values were used only with the approval of the individual tannery and upon verification of the data source and validity of the averages or estimates.

(4) Production data (in pounds) must be reported on the basis specified for each type of raw material to allow flow and pollutant loads to be normalized for each subcategory.

Upon review of these criteria and in response to several commenters, adjustments were made in the number of plants included in the data base for subcategories one, three, four, five, and seven. Specifically, nine plants in subcategory one were dropped, seven because they were mixed subcategory plants which did not meet the criterion discussed above, one plant included in this subcategory by mistake, and one because of lack of documentation for water use estimates. In subcategory three, one plant was dropped because it was a mixed subcategory plant which did not meet the criterion discussed above. Three plants were deleted from the subcategory four data base, one plant due to undocumented water use estimates, one plant included in this subcategory by mistake, and one plant due to a limited and unverified period of water use data. In addition, the raw material weight basis for one plant was corrected and the plant's water use ratio recalculated. One plant in subcategory five was deleted due to undocumented water use estimates. One plant in subcategory seven was eliminated due to lack of documentation for the accuracy of the flow data. These changes are reflected in the median flow ratios represented in Table 1 and in the adjustments for new source flow ratios in four subcategories, as represented in Table 2. Mixed subcategory plants which were deleted from the data base (Tables 1 and 2) used to characterize water use and waste loads for each subcategory would, however, still receive prorated mass limitations. Examples of how prorated mass limitations are calculated for mixed subcategory plants can be found in the Development Document.

From an examination and analysis of all available flow and pollutant data, the Agency has determined that there is a direct relationship between the primary subcategorization factors of raw materials and groups of subprocesses utilized and water use and pollutant loadings. Accordingly, the Agency has developed water use ratios for each subcategory which are achievable for each plant within that subcategory. Since the raw materials and subprocesses utilized by individual plants within a subcategory are very similar, it is the Agency's judgment that water use for individual plants within a subcategory can also be similar. The water use for plants within a subcategory are, however, often different. The Agency believes that water conservation, recycling and reuse of water and/or good housekeeping practices can be used by each plant

within a subcategory in order to arrive at the flow ratios specified in Tables 1 and 2. Examples of plants which have utilized these techniques are addressed in Chapter VII of the Development Document. Since water conservation and recycle and reuse techniques are available for all three groups of subprocesses and, therefore, applicable for each of the subcategories for this industry, those techniques also are available for mixed subcategory plants. Examples of how mixed subcategory plants could achieve prorated water use ratios are addressed in Chapter VII of the Development Document.

In response to several commenters' concerns about the ability of plants which manufacture certain final products to meet the subcategory water use ratios, the Agency examined and analyzed all available water use data. The Agency attempted to separate further some subcategories by predominant final products and developed median water use ratios for these products. These water use ratios were not significantly different from the median water use ratios established for the subcategories from which these attempted separations were made. The data available to the Agency indicate that different plants making the same mix of salable final products have different water use ratios depending upon the extent to which they implement water conservation and recycle or reuse methods. Accordingly, the Agency has concluded from analysis of available data that there is no relationship between final products manufactured and water used which supports further separation of subcategories. A comparison of water use data and final product mixes is discussed in the Development Document.

Several commenters criticized the data base underlying flow ratios in certain subcategories as being meager. For example, in subcategory seven water use ratios were based on data from one plant out of the universe of eight plants. The Agency recognizes that in some instances the data base was limited. The Agency actively solicited data from the industry. Three data collection questionnaires were developed in cooperation with and mailed directly to member tanneries by the Tanners' Council of America. These cooperative data gathering efforts resulted in the bulk of the data used in this rulemaking. The Agency also visited plants, sampled wastewaters, and conducted related specific data gathering efforts to supplement these industry supplied data. All data

gathering efforts were described in the proposal (44 FR 38749), the notice of availability (47 FR 23958), and detailed in the Development Document. It is the Agency's belief, as confirmed by comment from the Tanners' Council of America, that all available data that exist have been acquired by EPA. In several instances, the industry submitted only a limited amount of accurate and verifiable flow data. For those subcategories, the Agency reviewed the manufacturing and raw material data for each plant in the subcategory. Since there were no significant differences in manufacturing and raw material data for plants within the subcategory, the available flow data was judged representative of the plants within the subcategory.

VII. Summary of Promulgated Regulations

The final regulations reflect the changes discussed above and other changes made in consideration of public comments provided in response to the proposal and the notice of availability, and further evaluation of the information upon which the notice of availability was based. Following are a review of the proposed regulation and the notice of availability, a summary of the changes from proposal to promulgation, and an explanation of the reasons for the changes.

A brief summary of the technology bases for each of the final regulations also is presented below. A more detailed summary is presented in the *Development Document for Effluent Limitations Guidelines and Standards for the Leather Tanning and Finishing Point Source Category*. The BPT, BAT, and NSPS technologies outlined below are the same and apply to all subcategories, and the final effluent concentrations resulting from the application of the technology are identical for all subcategories. However, the BPT, BCT, and BAT mass limitations for each subcategory vary due to different median water use ratios (see Table 1) among the subcategories. The NSPS mass limitations for each subcategory vary due to different reduced water use ratios achievable by new sources (see Table 2).

The Agency proposed PSES regulations which controlled sulfide and chromium to the same concentrations in all subcategories. The proposal also included control for ammonia. The promulgated PSES and PSNS regulations are based on different technologies, outlined below. These standards apply to two groups of subcategories. The first group are those with unhairing operations (subcategories 1, 2, 3, 6, and

8), and the second group are those without unhairing operations (subcategories 4, 5, 7, and 9).

PSES for the first group of subcategories includes concentration based standards for both sulfide and total chromium. As discussed below, the sulfide standard will not apply if the receiving POTW certifies, after consideration of all relevant factors, that the sulfide discharged by a particular facility does not interfere with the treatment works. If this certification is made and EPA determines that the submission is adequate, it will publish a notice in the *Federal Register* identifying those facilities to which the sulfide pretreatment standard would not apply. The chromium standard does not apply to small plants in subcategory 1 or subcategory 3.

PSES for the second group of subcategories includes only total chromium concentration based standards, which do not apply to small plants in subcategory 9. The PSNS model treatment technology and pretreatment standards are the same as those for PSES. Pretreatment standards for ammonia have been deleted for all subcategories.

The 30 day average limitations and standards that were proposed have been replaced with monthly averages based upon eight days of sampling, or approximately twice per week, during any calendar month. Eight day monthly averages were used in developing the monthly limitations and standards, because this sampling frequency is expected to be typical for compliance monitoring in this industry.

NPDES authorities may adopt more frequent monitoring requirements as may be necessary on a case-by-case basis. Moreover, individual plants in the industry may choose to sample more frequently than twice per week, for example to improve process control for biological treatment systems. Compliance by a given discharger with these (eight day) limitations would be based on the arithmetic average of the actual number of measurements taken during a calendar month, regardless of their frequency.

A. *BPT*. In these regulations, EPA is promulgating BPT effluent limitations guidelines for all nine subcategories of the leather tanning and finishing industry.

The BPT regulations promulgated by EPA on April 9, 1974 (39 FR 12958) were remanded by the United States Court of Appeals for the Fourth Circuit in *Tanners' Council of American v. Train*, *supra*. The court held that: (1) The Agency's basis for technology transfer

from the meat packing industry to the leather tanning and finishing industry was not supported in the record, and (2) EPA's consideration of seasonal variability in effluent concentrations and the need for cold climate adjustments was inadequate.

In 1979, the Agency proposed BPT regulations based upon equalization, primary coagulation-sedimentation, and biological treatment in the form of high solids extended aeration activated sludge. The same technology was the basis for tentative effluent limitations included in the June 2, 1982 notice of availability, and the BPT effluent limitations now being promulgated. Technology transfer from the meat packing industry is not the basis for this regulation. The use of this BPT technology has been demonstrated by plants in subcategories 1, 3, and 4, but it has not been applied in all remaining subcategories where wastewater treatment is uniformly inadequate. Most of the existing biological treatment systems in the industry are inadequate. For example, some of the plants: (1) Do not have the equipment necessary to be operated as high solids extended aeration activated sludge; (2) have overloaded activated sludge systems; (3) have simple lagoons with inadequate or no aeration facilities; (4) are poorly operated; or (5) suffer some combination of all of these inadequacies. EPA has documented these inadequacies on a plant-by-plant basis and evaluated the equipment and costs necessary to achieve extended aeration activated sludge treatment and the BPT effluent concentrations. The Agency believes that, given the similarity in the treatability of wastewaters in all subcategories, this technology will remove effectively pollutants from wastewaters of all subcategories and will remove them to the same final effluent concentrations in each subcategory. The basis for this conclusion is discussed in the Development Document. Consequently, the Agency has transferred this technology and the achievable final effluent concentrations, from subcategories 1, 3, and 4 in which this technology has been demonstrated, to the remaining subcategories. To ensure that these effluent limitations are achievable by plants in all subcategories, differences among subcategories in wastewater volumes and pollutant loads resulted in different unit process designs and associated costs. Most importantly, adjustments were made in the sizing of primary coagulation-sedimentation tanks and the aeration capacity and hydraulic

detention time required for activated sludge aeration basins. The Agency's design and costing procedures have been tailored further to each individual direct discharger.

As described previously in the June 2, 1982 notice of availability (47 FR 23960-61), EPA is adopting final effluent concentrations, as follows: BOD₅-40 mg/l; TSS-60 mg/l; Oil and Grease-20 mg/l; Chromium (Total)-1 mg/l. The variability factors listed in Appendix A of that notice (47 FR 23964), together with median flow ratios presented in Table 1 of this preamble, have been applied to the above long term final effluent concentrations to establish monthly average and maximum day mass based effluent limitations for all nine subcategories. Final effluent concentrations and variability factors can be combined with median water use ratios derived separately to develop mass limitations because the Agency has found that the wastewaters from all subcategories can be treated to the same concentrations, while the median water use ratios have been demonstrated separately by plants in each subcategory. In support of this methodology, the Agency found that these mass based BPT effluent limitations, or the effluent concentrations, or both, were achieved by the three representative plants (two POTWs, nos. 50 and 55, and one direct discharger, plant no. 47). The two POTWs are considered representative of direct dischargers because they both receive more than 95 percent of their wastewaters from tanneries, and because they both use the BPT model treatment technology, i.e., primary treatment followed by activated sludge biological treatment. Data from these plants includes periods of winter operation by the two POTWs, both located in Maine. Review of data in the record for these two POTWs reveals consistent effluent quality for winter periods. This finding demonstrates that periods of winter operation and cold climate locations do not warrant higher effluent limitations.

As noted previously, BPT effluent limitations are being promulgated for two new subcategories (no. 8; pigskins and no. 9; retan-wet finish, splits). However, the BPT limitations for these two new subcategories are based on the use of the same technology, biological treatment, as for the BPT limitations for all of the remaining seven subcategories proposed originally in 1979. The June 2, 1982 notice of availability included tentative effluent limitations for all nine subcategories. Thus the Agency believes that all commenters had an opportunity

to present their views on these new subcategories and that separate notice and comment is not necessary.

The Development Document presents the methodology for developing these BPT effluent limitations, the engineering aspects of achieving these effluent limitations, a description of the technology, the costs and effluent reduction benefits, and the non-water quality environmental impact of these effluent limitations.

The Agency's analysis indicates implementation of BPT will require investment costs of \$10.5 million, and total annualized cost of \$5.7 million (first quarter 1982 dollars) in order to upgrade existing treatment facilities for the 17 direct dischargers.

These costs are expected to result in closure of 2 plants causing approximately 155 people to become unemployed. This is approximately 1.3 percent of the plants and 0.8 percent of the total employment in the industry. The cost of production is estimated to increase by 0.6 to 2.3 percent. The total mass of regulated pollutants removed from existing discharge to BPT would be 5.3 million pounds per year of conventional pollutants (BOD₅, TSS, and Oil and Grease), and 44,000 pounds per year of total (trivalent) chromium from current discharges (547,000 pounds per year from raw waste). EPA has determined that the effluent reduction benefits of this regulation justify its costs.

B. BAT. The technology basis of the proposed BAT effluent limitations (see 44 FR 38753-38755; July 2, 1979) was BPT biological treatment, preceded by in-plant control, water conservation, stream segregation, and pretreatment of the segregated beamhouse stream by catalytic sulfide oxidation and flue gas coagulation-sedimentation, and followed by upgraded biological treatment through powdered activated carbon (PAC) addition, and multimedia filtration. The proposed BAT effluent limitations would have controlled one toxic pollutant (total chromium). Five nonconventional pollutants also would have been controlled (chemical oxygen demand (COD), TKN, ammonia, sulfide, and total phenols (as measured by the 4AAP procedure listed in 40 CFR Part 136, *Standard Methods*)). All of the pollutants controlled by BAT, including the conventional pollutants BOD, TSS, Oil and Grease, and pH, were proposed as indicators for the control of toxic organic pollutants discharged from leather tanning and finishing plants.

As a result of comments on the proposed regulations, and

comprehensive analysis of supplemental data and documentation gathered after proposal, the Agency indicated in the June 2, 1982 notice of availability (47 FR 23961) that it had reviewed the options previously set forth in the BAT proposal, and redefined those options. Proposed OPTION I had been based on the addition of in-plant controls and segregated stream pretreatment to BPT technology. However, in view of the increase in cost for this control technology and the economic posture of the industry, EPA announced that it would consider BAT OPTION I to be equal to BPT. In addition, EPA announced that it would combine the effluent limitations and costs of proposed OPTION II, based on activated sludge upgraded primarily by powdered activated carbon (PAC) addition, with those of proposed OPTION I, primarily based on in-plant control and segregated stream pretreatment. This combination would be considered BAT OPTION II. The addition of multimedia filtration, (previously OPTION III) which was the basis for the proposed BAT regulation, remained as OPTION III. The Agency also indicated that it was no longer seriously considering proposed OPTION IV, which was based on the end-of-pipe addition of granular activated carbon columns, because such technology would be too expensive and lacked demonstrated use in this industry. BAT OPTION II, as amended, would require an incremental investment cost beyond BPT of \$17.6 million, with total annualized cost of \$7.5 million. This OPTION would remove 4.2 million pounds per year of nonconventional pollutants (COD, TKN, ammonia, sulfide, and total phenol [4AAP]), and 2,000 pounds per year of total chromium. Incidentally, this OPTION would remove 0.84 million pounds per year of conventional pollutants (BOD₅, TSS, Oil and Grease). The Agency's economic analysis indicated that of the 13 plants analyzed, five may close if this OPTION were selected.

In reviewing all available engineering and economic data and information, the Agency concluded that attainment of BAT limitations based on BAT OPTION II would not be economically achievable for this industry. In addition, this technology has not been demonstrated in this industry at this time. Based on these findings, the Agency has determined that more stringent regulation of toxic pollutant discharges from the leather tanning industry is not justified at this time and that BAT effluent limitations should be established equal to BPT limitations. Therefore, review of BAT OPTION III

was not necessary because it was even more costly and would result in even more plant closures. Moreover, BAT OPTION III also has not been demonstrated in this industry.

The nonconventional pollutants TKN, ammonia, COD, sulfide, and total phenol (4AAP) were not controlled by BPT technology; these pollutants were controlled by BAT OPTIONS II and III. However, because BAT OPTIONS II and III were neither demonstrated nor economically achievable, EPA is not incorporating limitations for these nonconventional pollutants in the BAT (BPT) limitations.

State and local regulatory authorities may find it necessary to establish pollutant limitations in addition to and/or more stringent than those established by these regulations, where needed to achieve or maintain the appropriate receiving water quality. In these instances, the development document includes guidance on the range of anticipated performance of further control technologies. Specific effluent concentrations have not been included for BAT OPTIONS II and III because these technologies are not demonstrated in this industry at this time.

C. BCT. The proposed regulations had set BCT effluent limitations equal to those proposed for BAT (44 FR 38755). However, after review of the supplemented record, EPA indicated in the June 2, 1982 notice of availability (47 FR 23961-23962) that no economically achievable conventional pollutant control technology beyond BPT could be identified. Accordingly, EPA is promulgating BCT effluent limitations equal to BPT effluent limitations for all subcategories.

D. NSPS. The basis for new source performance standards (NSPS) under Section 306 of the Act is the best available demonstrated technology. New plants have the opportunity to design the best and most efficient leather tanning processes and wastewater treatment technologies, and, therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-pipe treatment technologies which reduce pollution to the maximum extent feasible.

The technology basis of proposed NSPS was the same as the technology basis for the proposed BAT limitations. The proposed NSPS standards (44 FR 38755), were therefore the same as the proposed BAT effluent limitations.

The June 2, 1982 notice of availability (47 FR 23962) indicated that the Agency was considering adopting BAT (BPT) technology with reduced flows as the basis for NSPS mass based standards.

The Agency is promulgating NSPS based upon the same end-of-pipe technology and effluent concentration limitations as utilized in the promulgated BAT (BPT) with reduced flows because this is the best available demonstrated technology.

The Agency received comments on the basis for and the achievability of new source water use ratios. As noted previously in this preamble, the Agency reviewed the data base in response to those comments and adjustments were made in new source water use ratios for four subcategories. These new source ratios (see Table 2), identified in eight of the nine subcategories, have been demonstrated by at least one plant in each of these eight subcategories, and have been incorporated in the mass based NSPS standards.

The cost of NSPS would be less than BAT for an existing source in eight of the nine subcategories because new plants can use more efficient processing methods which require less water use (see Tables 1 and 2). Because the cost of treatment technology is most dependent upon wastewater volume, new sources would be able to build smaller and less costly treatment systems. Similarly, the mass of pollutants discharged by these new source systems would be less than the mass of pollutants discharged by existing sources. This is true because new sources can achieve the same final effluent concentrations as existing sources. In the shearling subcategory, the new source water use ratio was the same as the median water use ratio. Therefore, the costs of end-of-pipe technology and the mass of pollutants discharged by new sources would be the same as for existing sources. Examples of costs and pollutant removals for selected model plants are presented in the Development Document. The economic analysis indicates that these NSPS regulations are not expected to significantly discourage entry into the industry or result in any differential economic impacts to new plants.

E. PSES. The Clean Water Act of 1977 requires pretreatment for pollutants that pass through POTWs in amounts that would violate direct discharger effluent limitations or interfere with the POTW's treatment process or chosen sludge disposal method. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based, analogous to the best available technology. EPA has generally determined that there is pass through of pollutants if the percent of pollutants removed by a well-operated POTW achieving secondary treatment is less than the percent removed by the BAT model treatment system.

As noted in the June 2, 1982 notice of availability (47 FR 23962-23963), EPA reviewed the entire basis for the proposed PSES concentration limitations for ammonia, sulfide, and chromium. As part of that review and in response to comments, EPA developed two additional technology options (TECHNOLOGY OPTIONS I and II) which are less costly and require less space for installation than the technology option (TECHNOLOGY OPTION III) which served as the basis for the proposed PSES regulations. These two new technology options were described, along with their costs and projected economic impacts, in the notice of availability. Details on these technology options are presented in the Development Document. Discussion of the regulatory option selected by EPA for the promulgated regulations follows.

Ammonia. In-process substitution of epsom salts for ammonia in the deliming process served as the basis for the proposed pretreatment standard for ammonia. In their comments on the proposed regulations, industry supplied data and information on side-by-side pilot processing tests with and without in-process substitution. Based on that data and information, the Agency agrees with the industry that the substitution of epsom salts for ammonia may adversely affect finished leather quality and increase costs because of its operational difficulty. There are no other available pretreatment technologies which afford substantial removal of ammonia. Accordingly, EPA has decided that pretreatment standards for ammonia will not be promulgated.

Sulfide. EPA proposed (44 FR 38756-38757) a pretreatment standard for sulfide of "zero discharge" (not detectable by the 304(h) analytical method) based upon catalytic oxidation of segregated unhairing wastewaters. The standard would have been applicable to all subcategories. Sulfides were controlled by PSES because of the potential for interference resulting from release of massive quantities of hydrogen sulfide gas in sewers, headworks, and sludge management facilities at POTWs. Fatalities attributable to release of hydrogen sulfide gas have been documented. In response to the proposal, the industry commented that the standard (0.0 mg/l) was not achievable, and that the standard would not improve treatment efficiency or water quality.

The June 2, 1982 notice of availability (47 FR 23963) indicated that the severity of these problems varies by pH and time (slug loading), and by POTW (comingling of varying quantities of

municipal and industrial wastewaters in collection sewers). Review of the supplemented data base regarding the performance of catalytic sulfide oxidation technology revealed that a long term average effluent concentration of 9 mg/l could be achieved in total sewer discharges, with a maximum day variability factor of 2.7. EPA further indicated that only a maximum day limitation would be effective, because the most severe hazard posed by hydrogen sulfide occurs during rapid fluctuations in pH caused by unequalized slug loading. The maximum day concentration would reduce the potential for interference problems to the maximum extent feasible by available technology. The Agency indicated that it was considering applying the maximum day pretreatment standard (24 mg/l) to plants in subcategories (nos. 1, 2, 3, 6, and 8) which incorporate sulfide unhairing operations and discharge high concentrations of sulfides. Sulfides are discharged by plants in the remaining subcategories, but at concentrations typical of domestic sewage, thus not imposing any additional interference or operational costs than would be experienced without these wastewaters. Pretreatment Technology OPTIONS I, II, and III, discussed in the June 2, 1982 notice of availability, all include sulfide control for these five subcategories.

The Agency has included in this regulation a sulfide analytical method different from that promulgated under Section 304(h) of the Act. This was necessary because the 304(h) sulfide analytical method was subject to interferences. The method included in this regulation is that utilized by the Society of Leather Trades' Chemists, Method SLM 4/2. The sulfide pretreatment standard is based upon this method. Although this method has not been formally proposed by the Agency, it served as the basis for the tentative sulfide pretreatment standards announced in the June 2, 1982 notice of availability, and it was referenced in the supplemented record. Therefore, the Agency has determined that there has been adequate opportunity for comment.

The Agency indicated in the June 2, 1982 notice of availability that it was considering two regulatory options for sulfide control. The first option was to promulgate a categorical pretreatment standard applicable to all plants in the above noted five subcategories. The second option was to promulgate a categorical pretreatment standard which would include a provision for waivers from this standard. A waiver could be requested by the POTWs receiving

unhairing wastewaters from tanneries and would be based upon evaluation of site specific factors which determine the degree of interference (hazard to human life) attributable to the high sulfide concentrations.

Those state and local authorities which commented generally agreed with the need for sulfide control. However, site specific factors were cited as important in determining the degree of interference that would exist. Most tanners either rejected totally the need for sulfide control or recommended that waivers be allowed for individual POTWs. Some commenters indicated that a waiver process would impose unnecessary procedural burdens, and that some POTWs would choose not to invoke the waiver process even if sulfide control were not necessary.

EPA is promulgating a categorical sulfide pretreatment standard applicable to subcategories with unhairing operations (nos. 1, 2, 3, 6, and 8) based on catalytic sulfide oxidation technology in order to prevent interference to the maximum extent feasible by available technology. EPA estimates that the investment cost of sulfide pretreatment and wastewater neutralization alone would be as high as \$54 million with total annual costs of \$18 million if all plants in these five subcategories are required to comply with the standard. No closures were anticipated for this cost. This cost would effect removal of 5.3 million pounds/year of sulfide.

Hydrogen sulfide at POTWs presents serious fatal hazards to life. Occurrences of hydrogen sulfide related deaths have been noted at POTWs receiving tannery wastewater. However, because the degree of interference will vary, EPA is adopting a waiver procedure which would allow affected POTWs to certify that uncontrolled discharge of sulfide does not interfere with their particular treatment works. The POTW would make this finding based upon an evaluation of a nonexclusive list of criteria set out in the regulations. After making these findings the POTW would be required to allow for public comment by notice in a local newspaper, and by public hearing if requested. The POTW would then forward its findings and results of public comments and certify in writing to the Water Management Division Director in the appropriate EPA regional office that local circumstances do not require a categorical pretreatment standard for sulfide. The regulations also include a procedure with appropriate deadlines for POTWs to follow for invoking this waiver.

The Agency recognizes that it is virtually impossible to cover all possible combinations of factors which could occur at individual POTWs. Therefore, the Agency has elected to include in the regulations a list of general factors which, at a minimum, must be considered by POTWs when certifying that there is no interference caused by sulfide in their treatment works. These factors are:

(1) The presence and characteristics of other industrial wastewaters which can change sulfide concentrations, pH, or both.

POTWs that serve few if any industrial indirect dischargers, other than tanneries which employ unhairing operations, have little or no wastewater to contribute either to sulfide concentration changes, or to pH changes, especially decreases in pH which tend to liberate hydrogen sulfide gas.

POTWs that have significant industrial wastewater contributions, especially wastewaters that are not equalized and may include sludge loads or consistently low pH wastewater, may experience substantial difficulty in maintaining very high concentrations of sulfide in solution and are likely to have interference.

(2) The characteristics of the sewer/interceptor collection system which either minimize or enhance opportunities for release of hydrogen sulfide gas.

Leather tanneries with unhairing operations connected to POTWs by short pressure mains will experience little or no difficulty in maintaining sulfides in alkaline solution during wastewater transit from the indirect discharger to the POTW headworks. In this instance, the pressurized sewer system contributes to maintaining dissolved sulfides, thus decreasing the likelihood of interference.

POTWs with long gravity interceptor sewers, with "dead spots" and other discontinuities in hydraulic profile probably will have difficulty maintaining sulfides in solution, and interference is likely. In this case, reducing the sulfide concentration entering the sewer by sulfide pretreatment will minimize the potential for release of massive quantities of hydrogen sulfide gas during wastewater transit to the POTW.

(3) The characteristics of the receiving POTWs headworks, preliminary and primary treatment systems, and sludge management facilities which either minimize or enhance opportunities for release of hydrogen sulfide gas.

POTWs with facilities that have very short hydraulic detention times and are enclosed in well ventilated buildings have reduced opportunities for release of hydrogen sulfide gas.

POTWs with facilities that are enclosed in very confined and poorly ventilated buildings and have long hydraulic detention times have enhanced opportunities for release of hydrogen sulfide gas and substantial risk to human life.

(4) The history of any sulfide related interference problems at affected POTWs is of major importance in determining the need for a pretreatment standard for sulfide.

Five years is the suggested minimum period of historical review of any interference incidents as they relate to the presence of elevated sulfide concentrations from leather tanneries with unhairing operations, and to the first three factors relating to the POTW noted above.

The Agency considered relying solely on the prohibited discharge standards (Section 403.5) of the general pretreatment regulations in place of a categorical pretreatment standard for sulfide. However, the Agency rejected this approach because of the special interference problems presented by the very high concentrations of sulfides in the unhairing wastewaters generated by this industry, the very serious nature of the problem, and the availability of control technology.

Chromium. The proposed regulation (44 FR 38756-57) included a pretreatment standard (concentration limitation) for chromium (total), 2 mg/l, applicable to all plants and based upon coagulation-sedimentation of combined wastewater streams. The June 2, 1982 notice of availability (47 FR 23963) reasserted the Agency's concern for pass through of chromium (trivalent) based on the performance of well operated POTWs. For the cities studied, chromium removal by well operated POTWs achieving secondary treatment averaged 65 percent. This is substantially lower than the removals required by BAT level treatment (95-98 percent), and therefore the Agency indicated that it was considering a categorical pretreatment standard for chromium. The Agency indicated that its basis for the standard was pretreatment Technology Option II, which included coagulation-sedimentation of segregated and equalized tanyard and retan-wet finish wastewaters. It also was noted that from 5-10 percent of the plants might not have adequate interior space or adjacent land to install this technology.

Comments submitted by the industry focused on three major issues. First, the industry claimed that the Agency's finding of chromium pass through based on the POTW study was erroneous. The industry cited the low POTW effluent concentrations as the significant finding of the POTW study, not the percent removals. Second, the industry asserted that trivalent chromium is not significantly harmful to the environment, citing as supporting evidence the EPA Office of Solid Waste action that removed all tannery wastes (process solid wastes and wastewater treatment sludges) from the list of hazardous wastes because they did not contain hexavalent chromium. Third, the industry commented that the number of plants which do not have adequate space to install pretreatment technology was greater than estimated by EPA. Parts of the industry further objected to the Agency's assumption that parking lot space was available for treatment facilities.

The Agency has decided to promulgate a categorical pretreatment standard for chromium (total). Categorical pretreatment standards are necessary in this case because the percent of chromium removed by well operated POTWs achieving secondary treatment requirements is less than required by BAT for direct dischargers. This definition of pass through satisfies two competing objectives set by Congress: (1) That standards for indirect dischargers be analogous to standards for direct dischargers, while, at the same time, (2) that the treatment capability and performance of the POTW be recognized and taken into account in regulating the discharge of pollutants from indirect dischargers. The Agency compares percentage removal rather than the mass or concentration of pollutants discharged from the POTW because the former would not take into account the mass of pollutants discharged to the POTW from non-industrial sources and the latter would credit the indirect discharger with the dilution of the pollutants in the POTW effluent to lower concentrations due to the addition of large amounts of non-industrial wastewater.

EPA has decided to regulate trivalent chromium in these pretreatment standards because the total quantity of trivalent chromium generated by indirect dischargers in this industry is nationally significant (5.7 million lbs/yr) when compared to other industrial categories, such as the metal finishing industry (8.9 million lbs/yr) and inorganic chemicals industry-chrome pigments subcategory (1.4 million lbs/yr), where chromium also is regulated.

Information in the record indicates that while trivalent chromium is not as toxic as hexavalent chromium from the *human health* standpoint, trivalent chromium exhibits chronic *aquatic* toxicity (24 hr toxicity value approximately 50 µg/l), as confirmed by ongoing EPA studies to develop a water quality criteria for trivalent chromium. Therefore, both forms of chromium (trivalent and hexavalent) are environmentally significant and are appropriate to be regulated under the Clean Water Act. The commenters submitted no information which would justify excluding chromium from these regulations.

The basis for the chromium pretreatment standard is Technology Option II with two different concentration limitations depending upon subcategory. The achievable long term effluent concentration for chromium (total) is 8 mg/l for those subcategories (nos. 4, 5, 7, and 9) which do not have beamhouse operations. The achievable long term effluent concentration for chromium (total) is 5 mg/l for those subcategories (nos. 1, 2, 3, 6, and 8) which do have beamhouse operations.

EPA's economic analysis projected that the cost of chromium control would result in disproportionate economic impacts on small plants in subcategories 1, 3 and 9. 4-5 of 6 small plants in subcategory 1, 1-2 of the 3 small plants in subcategory 3, and 4-5 of 9 small plants in subcategory 9 were projected to close. No less costly chromium control technology options or less stringent chromium standards could be identified for these plants. Therefore, the PSES regulations for chromium do not apply to small plants which process less than 275 hides/day in subcategory 1, less than 350 hides/day in subcategory 3, and less than 3600 splits/day in subcategory 9. However, small plants in subcategories 1 and 3 would still be subject to sulfide pretreatment standards, and small plants in subcategories 1, 3 and 9 would still be required to comply with general pretreatment regulations.

Pretreatment Technology Option II includes both sulfide and chromium control. The total investment cost of chromium control alone could be as high as \$105 million with total annualized costs of as high as \$28 million if all plants not exempted from these regulations were required to install this technology. This cost may result in the closure of one to three plants among all plants covered by these chromium pretreatment standards. The total mass

of trivalent chromium removed would be 5.2 million pounds per year.

Constraints on the availability of interior plant space and adjacent land were considered by EPA, and an attempt was made to develop further separations within subcategories or alternative effluent limitations to take this factor into account. The Agency specifically solicited comment in the notice of availability as to whether any plants would have inadequate space to install the recommended chromium control technology. However, EPA did not receive and does not have the detailed information and data needed to define the total population of indirect discharging plants that do not have adequate space to install the model chromium treatment technology. Therefore, the Agency believes that the more appropriate approach is to grant variances from the chromium pretreatment standard based upon a specific demonstration by the indirect discharger, as provided by the general pretreatment regulation (§ 403.13), of the fundamentally different factor (FDF) of inadequate interior plant space or adjacent land. In the event that sufficient detailed submissions are received within 180 days of the effective date of these regulations, as required by § 403.13, to precisely define those plants which do not have adequate space for chromium removal technology, an amendment of PSES regulations may be possible. Such submissions would have to conform to the requirements of § 403.13, and include at a minimum: (1) Detailed information and data on interior plant layout and adjacent land (diagrams noting all areas with current uses and dimensions); (2) details on the least costly pretreatment system including all unit processes to be used to meet the chromium standard and the area required, as well as pertinent details of any pretreatment facilities already in place; (3) the itemized cost of each of the additional treatment system unit processes which must be added, and the cost of any additional land which must be obtained, or other plant modifications that would be necessary to accommodate the additional facilities; (4) process flow diagram and production rates; and (5) the pretreatment standards which could be achieved if the discharger were to spend an amount equal to the Agency's model pretreatment Technology Option II (that portion not required to achieve the sulfide pretreatment standard).

In reviewing the information and data submitted by plants in support of their request for FDF variances, it must be noted that the Agency considers

reallocation of that portion of available interior plant space and adjacent land (including parking lots) necessary to install pretreatment technology to be an appropriate requirement. Reallocation of all or a portion of parking lots for treatment facilities has been implemented by a few plants in this industry and by plants in other industrial categories.

It must be noted that the Agency has promulgated concentration based pretreatment standards for sulfide and chromium. The amount of water used at any plant is not germane to the achievability of these standards. Therefore, indirect dischargers will have added flexibility because water use reduction is not necessary to achieve these standards. The Agency believes that the cost of pretreatment technology can be minimized by first reducing to the maximum extent feasible the volume of wastewater to be treated. For this reason, the Agency has utilized reduced water use ratios (see Section V of the Development Document) achieved by existing sources only in calculating the costs of PSES.

The Agency has considered the time for compliance for PSES. Few leather tanning and finishing plants have installed and are properly operating the treatment technology for PSES. Additionally, many plants in this and other industries will be installing the treatment equipment suggested as model technologies for this regulation at about the same time, and this may result in delays in engineering, ordering, installing, and operating this equipment. For these reasons, the Agency has decided to set the PSES compliance date at three years after publication of this regulation.

F. PSNS. The Agency proposed pretreatment standards for new sources (PSNS) which were based on the same technology required for PSES, plus physical-chemical treatment by the Chappell Process. One of the comments received by the Agency was that the Chappell Process was not reliably demonstrated. EPA agreed that this process has not been demonstrated for immediate use in all subcategories. Therefore, in the June 2, 1982 notice of availability (47 FR 23963), EPA indicated that it was considering establishing PSNS based on the same pretreatment technology option chosen for existing sources (PSES). The Agency has decided to adopt Technology Option II and the same concentration based pretreatments standards for sulfide and chromium (total) as promulgated for PSES. As noted in the discussion of PSES, reduced

water use is not necessary to achieve these concentration based standards.

It must be noted that because new sources can select among the most efficient processing methods and the most advantageous sites at which to locate, variances based upon fundamentally different factors (FDF) (Section 403.13) are not available. However, if a POTW certifies that the discharge of a new facility (operating in any of subcategories 1, 2, 3, 6, or 8) would not interfere with its treatment works, the sulfide pretreatment standards would not apply as noted for PSES. EPA does not consider the sulfide waiver to be an FDF variance because the waiver relates to conditions at the POTW, not conditions at the new source.

VIII. Costs and Economic Impact

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. Major rules are defined as those which result in an annual cost of \$100 million or more, or meet other economic impact criteria, such as cause major increase in costs or prices, or significant adverse effects on the ability of domestic producers to compete with foreign enterprises, or on competition, investment, productivity, or innovations. The promulgated regulation for leather tanning is not a major rule according to the definition and therefore does not require a formal regulatory impact analysis. This rulemaking satisfies the requirements of the Executive Order for a non-major rule.

The complete economic impact assessment is presented in *Economic Impact Analysis of Effluent Limitation Guidelines and Standards for the Leather Tanning Industry*. EPA 440/11-82-001. This report details the investment and annual costs for the industry as a whole and for typical plants covered by the proposed regulation. Compliance costs are based on engineering estimates of capital requirements and annual costs for the effluent control systems described earlier in this preamble, and include cost estimates for waste treatment sludge disposal. The report assesses the impact of effluent control costs in terms of price changes, production changes, plant closures, employment effects, and balance of trade effects. The impacts of each regulatory option are discussed in the report.

EPA has identified 158 facilities engaged in wet tanning which are covered by this regulation. Total investment costs for BPT, BCT, BAT, and PSES are estimated to be as high as

\$170 million, with total annual costs of \$51 million, including depreciation and interest. These costs are expressed in first quarter 1982 dollars and are based on the determination that plants will move from existing treatment to BAT, and from no assumed pretreatment to PSES. They are considered an estimate of the upper limit of actual costs that will be incurred because the sulfide pretreatment standards may not apply to all indirect dischargers in the affected subcategories, some POTWs may grant credits for chromium removal and reduce substantially (if not totally) the cost to individual plants of chromium pretreatment, and some plants may be granted FDF variances from chromium pretreatment standards because of lack of available space for installation of technology. Furthermore, some plants may find less expensive technologies, than used by EPA in this analysis, to comply with the regulations. Finally, while EPA assumed no treatment in place at indirect discharging plants for purposes of economic impact analysis, as many as 25 percent of the plants actually have in place portions of the technology needed to comply with PSES.

The major economic impact projected as a result of compliance costs for this regulation is the potential closure of 3 to 5 tanneries employing 255-460 persons. Closure estimates are those projected to result from the regulation after estimating baseline closures. Leather price increases are expected to reduce the demand for domestically produced leather by 1.5 to 2.0 percent, as a result of somewhat increased imports of leather and leather products. EPA has determined that these costs are justified in light of the effluent reduction benefits.

In order to evaluate the potential impacts, economic model plants were developed to represent plants according to industry subcategory, size and type of discharge (direct or indirect). The major decision criteria for plant closure are based on net present values (NPV) and cash flows. The cash-flow analysis projects revenues and expenditures for each year over the life of the investment, and indicates whether the firm could meet debt repayments. The NPV analysis discounts the cash flows of the plant over the life of the investment to estimate whether the owners would choose to close rather than comply with the regulation.

In response to comments on the proposal and the notice of availability, changes were made in the Agency's analysis. The profitability of the model plants were reduced by about 40 percent to reflect average conditions over the past 12 years. The cash flow test now

uses a five-year repayment period for loans, instead of the 15 years assumed previously. In addition, costs were added for sludge disposal. These changes are discussed further in the comments section of this preamble.

BPT/BAT/BCT. As stated previously, the Agency is promulgating BAT and BCT limitations which are the same as BPT limitations. These regulations will affect 17 existing plants. Investment beyond the pollution control equipment already in place is estimated at \$10.5 million, with total annualized costs of \$5.7 million.

These costs are estimated to increase the cost of production at the tanneries by 0.6 to 2.3 percent. This regulation may result in the closure of 2 plants causing approximately 155 people to become unemployed. This is approximately 1.3 percent of the plants and 0.8 percent of the employment in the industry.

PSES. Investments to implement the promulgated pretreatment standards are estimated to incur costs of as high as \$159 million, with an annualized cost of \$45 million if all 141 plants were covered by these standards. These costs could increase the cost of production of 0.5 to 3.3 percent over the life of the investment. This regulation may result in the closure of 1 to 3 plants causing approximately 100 to 305 people to become unemployed. This is approximately 1 to 2 percent of the plants and 0.5 to 1.6 percent of the employees in the industry. These economic effects take into account that small plants in the retan-wet finish, splits subcategory, and small plants in the hair save or pulp, nonchrome tan, retan-wet finish subcategory and extra-small plants in the hair pulp, chrome tan, retan-wet finish subcategory are not covered by the chromium pretreatment standards. This exclusion is necessary in order to avoid any disproportionate economic impacts on this segment of the industry. Without the exclusion, the analysis of compliance costs indicates significant impacts for these small plants. The 6 extra small plants in subcategory 1, 3 small plants in subcategory 3, and 9 small plants in subcategory 9, would have incurred an additional investment cost of \$9.4 million, and total annual costs of \$2.4 million. Plants corresponding to the small model plants are the least profitable and are currently operating at marginal levels. EPA estimates that if these plants were subject to the chromium pretreatment standards, 9-12 of these 18 small plants may have closed rather than install treatment technology. Since all 18 plants represented by the

model plants are marginally profitable, and the model plants were projected closures, the chromium pretreatment standards do not apply to any of these 18 small plants. No less costly technology to control chromium could be identified for these plants. However, all of these plants remain subject to general pretreatment regulations, and the six small plants in subcategory 1 and subcategory 3 may still be required to comply with the sulfide pretreatment standards.

NSPS and PSNS. While the industry in general has been declining in terms of production and number of plants, some new tanneries have been established near cattle slaughtering facilities away from the traditional centers. Since NSPS and PSNS are essentially the same as BPT and PSES, these regulations for new sources have no incremental economic effect. In fact, cost to new sources may be less than costs for existing sources because new sources can utilize the most efficient processing methods which generate less wastewater and, therefore, install smaller sized control technologies.

In addition, EPA has conducted an analysis of the incremental removal cost per pound equivalent for each of the proposed technology-based options. A pound equivalent is calculated by multiplying the number of pounds of toxic pollutant discharged by a weighting factor for that pollutant. The weighting factor is equal to the water quality criterion for a standard pollutant (copper), divided by the water quality criterion for the pollutant being evaluated. The use of "pound equivalent" gives relatively more weight to removal of more toxic pollutants. Thus, for a given expenditure, the cost per pound equivalent removed would be lower when a highly toxic pollutant is removed than if a less toxic pollutant is removed. This analysis, entitled, "Cost-Effectiveness Analysis for the Leather Tanning Industry," is included in the record of this rulemaking.

Regulatory Flexibility Analysis. Public Law 96-354 requires that a Regulatory Flexibility Analysis be prepared for regulations proposed after January 1, 1981 that have a significant impact on a substantial number of small entities. Although this regulation was proposed before January 1981 and all significant impacts on small entities have been eliminated by exempting some small leather tanners from chromium standards required by the PSES regulation, the Agency has prepared a Regulatory Flexibility Analysis. This analysis must:

- Describe the reasons, objectives, and legal basis for the final rule;
- Describe, and where feasible, estimate the number of small entities, as (in most cases) defined by Small Business Administration (SBA) affected by the final rule;
- Describe the reporting, recordkeeping, and other compliance requirements;
- Identify any Federal rules that may duplicate, overlap, or conflict with the final rule;
- Describe any significant alternatives that would accomplish the stated objectives, and minimize any significant economic impacts of the final rules on small entities.

This analysis may be done in conjunction with or as a part of any other analysis conducted by the Agency. This final rulemaking and the economic impact analysis supporting the final rule satisfy the requirements of the Regulatory Flexibility Act.

Many of the provisions of the Initial Regulatory Flexibility Analysis have been addressed in detail in other sections of this preamble. Sections I and II discuss the legal authority and objectives of the proposed rule. Section XV of this preamble discusses public participation. The Agency is not aware of any other Federal rules that may overlap or conflict with this final rule.

The economic analysis underlying the Regulatory Flexibility Analysis was included in the Economic Impact Analysis of the proposed regulations, and in the Economic Impact Analysis and the Leather Tanning Economic Summary which accompanied the June 2, 1982 notice of availability. The accompanying economic impact analysis includes a revised assessment of the impacts associated with this rule and outlines the other regulatory options the Agency considered.

Approximately 60 percent of this industry or 94 plants, have 200 or fewer employees per facility. (The SBA has proposed to define small businesses in the leather tanning industry as entities with 200 or fewer employees. See 47 FR 18993, May 3, 1982). The Agency estimated initially that application of PSES Technology Option II, chromium removal, to all indirect dischargers would cause closures of 10-15 small plants. Nine to twelve estimated closures were concentrated in the smallest size groups in subcategories 1, 3, and 9, with one to three projected closures in other size groups and subcategories. To reduce the economic impact, the Agency excluded 18 existing plants corresponding to the extra-small subcategory 1 model plant, the small subcategory 3 model plant, and the

small subcategory 9 model plant from the requirements of PSES Technology Option II (chromium removal). These small plants are required to comply with the general pretreatment regulations. Moreover, the small plants in subcategory 1 and subcategory 3 are required to meet the PSES sulfide pretreatment standard. It is not expected that the plants excluded from the chromium requirement would close as a result of the remaining requirements of this regulation. These exclusions would not provide relief for one to three small plants in two subcategories; however, no further exclusions were made because the total number of plants corresponding to the affected size groups in the applicable subcategories is 24-27; hence a large number would receive relief compared to the few projected to require relief.

At the selected option for BAT (BPT), 2 out of the 14 small direct discharge plants would close. The Agency believes that this technology is economically achievable despite these closures in light of the significant pollutant removal.

IX. Nonwater Quality Environmental Impacts

Eliminating or reducing one form of pollution may cause other environmental problems. Sections 304(b) and 306 of the Act require EPA to consider the nonwater quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, the Agency considered the effect of this regulation on air pollution, solid waste generation, water scarcity, and energy consumption. This regulation was circulated to and reviewed by EPA personnel responsible for nonwater quality programs. While it is difficult to balance pollution problems against each other and against energy use, the Agency believes that this regulation will best serve often competing national goals. The Administrator has determined that the impacts identified below are justified by the benefits associated with compliance with the limitations and standards.

A. Air Pollution. Implementation of PSES, PSNS, BAT (BPT), BCT, and NSPS are not expected to have any significant air pollution impacts. However, minimal amounts of volatile organic compounds may be released to the atmosphere by aeration systems in activated sludge treatment facilities at direct dischargers.

B. Solid Waste. Implementation of these regulations by existing and new sources will generate sludges from wastewater treatment which must be disposed. As noted previously, separate Agency action removed both process

solid wastes and wastewater treatment sludges from the list of hazardous wastes under RCRA, thus facilitating disposal at substantially lower cost than for hazardous wastes. Implementation of PSES by Technology Option II will generate 116,000 kkg (metric tons) per year (wet basis, 20 percent solids) of sludge. Implementation of BAT (BPT) will generate 30,000 kkg (metric tons) per year (wet basis, 20 percent solids) of sludge. The Agency has assumed that these sludges will be disposed in available off-site landfills. The cost of off-site landfill disposal of these sludges was assumed to be \$20 per wet ton, or \$100 per dry ton (20 percent solids). The resulting total annual O & M cost for sludge disposal is \$2.5 million for all indirect dischargers, and \$0.7 million for all direct dischargers.

The sludge generation rates and unit disposal costs associated with PSES and BAT (BPT) are projected to be the same for PSNS and NSPS. The mass of sludge and disposal costs for selected model plants are presented in the Development Document.

C. Consumptive Water Loss. Treatment and control technologies which require extensive recycling and reuse of water may, in some cases, require cooling mechanisms. Where evaporative cooling mechanisms are used, water loss may result and contribute to water scarcity problems, of concern primarily in arid and semi-arid regions. These regulations do not envision recycling requiring evaporative cooling mechanisms and, therefore, will create no additional consumptive water loss.

D. Energy Consumption. Implementation of PSES by Technology Option II will require 53 million kwh/yr of electric power. Implementation of BAT (BPT) will require 17 million kwh/yr of electric power. This represents an increase of approximately 1 percent above power usage for production to achieve PSES, and an increase of approximately 3 percent above power usage for production to achieve BAT (BPT). Similar percent increases in energy usage would be expected for new sources.

X. Pollutants and Subcategories Not Regulated

Paragraph 8 of the modified Settlement Agreement, approved by the District Court for the District of Columbia on March 9, 1979 (12 ERC 1833), contains provisions authorizing the exclusion from regulation, in certain circumstances, of toxic pollutants and industry categories and subcategories.

A. Exclusion of Pollutants. On December 18, 1980, EPA submitted an affidavit explaining that the Agency decided not to regulate certain of the 129 toxic pollutants under the authority of Paragraph 8(a)(iii) of the modified Settlement Agreement. Since that time, the Agency acted to remove three organic compounds from the list of toxic pollutants. All three of these pollutants were among those excluded from regulation because "they are not detectable by Section 304(h) analytical methods or other state-of-the-art methods."

The Agency has gathered additional data since these regulations were proposed, as described previously in the Methodology and Data Gathering Efforts section of this preamble. Based upon analysis of this additional data, together with the data used in the proposal, the Agency is revising its exclusion of pollutants. Of the 126 toxic pollutants, 71 are excluded from regulation under the authority of Paragraph 8(a)(iii) of the modified Settlement Agreement because "they are not detectable by Section 304(h) analytical methods or other state-of-the-art methods."

Among indirect dischargers, 54 of the remaining pollutants are excluded from regulation because there is no available pretreatment technology which is economically achievable that will remove these pollutants prior to discharge to POTWs. Pretreatment standards for existing sources (PSES) and new sources (PSNS) are included in these regulations to control the remaining toxic pollutant, chromium.

Among direct dischargers, 34 pollutants are excluded from regulation because "they are detected in treated effluents in trace amounts and neither cause nor are likely to cause toxic effects;" 7 pollutants are excluded from regulation because "they are detected at only a small number of sources within a subcategory and are uniquely related to those sources;" and 13 pollutants are "present in amounts too small to be effectively reduced by technologies known to the Administrator." These pollutants are excluded under authority of Paragraph 8(a)(iii). The pollutants and the specific reasons for their exclusion are presented in Appendix B. The pollutant (total) chromium is controlled by BPT; because BAT is being promulgated equal to BPT, total chromium is controlled.

B. Exclusion of Subcategories and Point Sources. On May 10, 1979, the Agency submitted an affidavit excluding from regulation leather products manufacturing, including Shoes and Related Footwear (SIC 3131-3149), and Gloves, Luggage, Personal Goods, and

Miscellaneous (SIC 3151-3199) under the authority of Paragraph 8(a)(iv) of the Settlement Agreement. The Agency is not regulating this portion of SIC major group 3100 because the amount and toxicity of each pollutant in the discharges do not justify the development of national regulations.

XI. Best Management Practices

Section 304(e) of the Clean Water Act gives the Administrator authority to prescribe "best management practices" (BMPs). EPA, through its Office of Water Enforcement, is offering guidance to permit authorities in establishing BMPs required by unique circumstances for a given plant. BMPs are not addressed in this regulation.

XII. Upset and Bypass Provisions

A recurring issue is whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is an unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations is necessary because such upsets will inevitably occur even in properly operated control equipment. Because technology-based limitations require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have disagreed on whether an explicit upset or excursion exemption is necessary, or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co. v. EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser v. Costle*, 590 F.2d 1011 (D.C. Cir. 1978) and *Corn Refiners Assn., et al. v. Costle*, 594 F.2d 1223 (8th Cir. 1979). See also *American Petroleum Institute v. EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International, Inc. v. Train*, 540 F.2d 1320 (8th Cir. 1976); *FMC Corp. v. Train*, 539 F.2d 973 (4th Cir. 1976).

An upset is an unintentional episode during which effluent limits are exceeded; a bypass, however, is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. We have, in the past, included bypass provisions in NPDES permits.

We determined that both upset and bypass provisions should be included in NPDES permits and have promulgated Consolidated Permit Regulations that include upset and bypass provisions. [See 40 CFR 122.60, 45 FR 33290 (May 19, 1980).] The upset provision establishes

an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Consequently, although permittees will be entitled to upset and bypass provisions in NPDES permits, this final regulation does not address these issues.

XIII. Variances and Modifications

Upon the promulgation of this regulation, the effluent limitations for the appropriate subcategory must be applied in all Federal and State NPDES permits thereafter issued to direct dischargers in the leather tanning and finishing industry. For the BPT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. [See *E.I. du Pont de Nemours & Co. v. Train* 430 U.S. 112 (1977); *Weyerhaeuser Co. v. Costle*, supra.] This variance recognizes factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973-1976 industry regulations, it is now included in the NPDES regulations and will not be included in the leather tanning and finishing or other industry regulations. (See the NPDES regulations at 40 CFR Part 125, Subpart D.)

The BAT limitations in this regulation are also subject to EPA's "fundamentally different factors" variance. BAT limitations for nonconventional pollutants are subject to modifications under Sections 301(c) and 301(g) of the Act. These statutory modifications do not apply to toxic or conventional pollutants. To apply for these modifications a discharger must be in compliance with BPT. Because this rule will make BAT equal to BPT, EPA does not expect any applications for Section 301(c) or 301(g) modifications. [See 43 FR 40895 (September 13, 1978).]

Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTWs. (See 40 CFR 403.7, 403.13; 43 FR 27736 (June 26, 1978)). Pretreatment standards for new sources are subject only to the credits provision in 40 CFR 403.7.

NSPS are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. (See *E. I. du Pont de Nemours and Co. v. Train*, supra.)

XIV. Relationship to NPDES Permits

The BPT limitations and NSPS in this regulation will be applied to individual leather tanning and finishing plants through NPDES permits issued by EPA or approved State agencies, under Section 402 of the Act. As discussed in the preceding section of this preamble, these limitations must be applied in all Federal and State NPDES permits except to the extent that variances and modifications are expressly authorized. Other aspects of the interaction between these limitations and NPDES permits are discussed below.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit-issuing authorities. The promulgation of this regulation does not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulations, guidelines, or policy. For example, even if this regulation does not control a particular pollutant, the permit issuer may still limit such pollutant on a case-by-case basis when limitations are necessary to carry out the purposes of the Act. Where manufacturing practices or treatment circumstances warrant additional controls, such limitations may be technology-based in conformance with the legislative history of the Act. However, such limitations are subject to administrative and judicial review as part of the permit issuance process. In addition, to the extent that State water quality standards or other provisions of State or Federal law require limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

A second topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which were considered in developing this regulation. The Agency emphasizes that although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. The Agency has exercised and intends to exercise that discretion in a manner that recognizes and promotes good-faith compliance efforts.

XV. Public Participation

The Agency solicited public comment on the proposed rules and the notice of availability of additional information published in the *Federal Register* on July 2, 1979, and June 2, 1982. Also, on February 15, 1980, in Washington, D.C., the Agency held a public hearing on the

proposed pretreatment standards for the leather tanning and finishing industry.

Individual public comments received on the proposed regulation and the notice of availability, and the Agency's responses, are presented in two reports, "Responses to Public Comments, Proposed Leather Tanning and Finishing Industry Effluent Guidelines and Standards," and "Responses to Public Comments, Notice of Availability," which are part of the public record for this regulation.

A summary of the Agency's responses to major comments follows:

1. *Comment:* In their comments, members of the leather tanning industry claimed that the data and other supporting record material relied upon by EPA in proposing these regulations contained a large number of errors. Instances of repetitive data, unsupported data, and misuse of data were noted.

Response: In response to this comment, the Agency reviewed the entire data base and all documentation supporting this rulemaking. All historical data points were examined for background documentation, accuracy, and applicability. In its review of the data base, the Agency has corrected errors relating to data previously submitted by the industry, including production levels, water use ratios, and technology cost. As discussed in detail in the Subcategorization and Water Use section of this preamble and the Development Document, data points from a number of plants were eliminated from the data base utilized to develop water use ratios.

EPA also conducted a program to acquire new data during the comment period. This program involved sending 56 information requests (developed in cooperation with and distributed by the Tanners' Council of America), 43 site visits, and 10 wastewater sampling visits. The Agency acquired a significant amount of additional information and data on production levels, wastewater flow, as well as control and treatment technology performance and cost. The Agency is confident that the available data base accurately reflects the nature of the leather tanning industry, its water use and pollutant loads.

2. *Comment:* A number of industry representatives, the TCA, and several consultants questioned the pollutant removal efficiencies stated by the Agency for the recommended treatment technologies. The commenters said that there was a difference between "capability to achieve" the specified removal efficiencies and the level of removal efficiency achievable with

"reliable performance." The commenters believed that the limitations and standards should be based on "reliable performance."

Response: As stated in the June 2, 1982 notice of availability (47 FR 23958-23965), the Agency has reviewed and revised its basis for evaluation of effluent limitation and standards. The Agency recognizes that levels of "reliable performance" may not be as stringent as the "capability to achieve," and has established the limitations and standards in this regulation based upon performance which can be reliably achieved. The review and analysis of the updated data base also included recalculation of variability factors for regulated pollutants. The resulting long term average performance and the normal variability which describe the effluent reduction achievable by BPT and PSES technologies are representative of "reliable performance" by full scale operating data submitted by tanneries. More stringent long term average effluent concentrations and variability factors as proposed and as represented by non-selected BAT and PSES options were capable of being achieved but did not represent "reliable performance."

3. *Comment:* Several tanneries presented data documenting previous efforts to reduce water consumption. The commenters said they had taken all of the feasible water conservation steps and that further reduction in water use which would be necessary to meet mass based limitations and standards would result in adverse changes in finished leather quality.

Response: As discussed previously in this preamble, the Agency does not have any data showing a correlation between subcategorization and final product quality. The reduced flow rates for existing and new sources were derived from data which show these values can be achieved and are being achieved or surpassed in every subcategory by at least one plant which utilizes raw materials and processing methods typical of each subcategory to produce salable final products of commercially acceptable qualities. A more detailed discussion of final product quality and subcategorization is presented in the Subcategorization and Water Use section of this preamble and in the Development Document.

4. *Comment:* Several commenters claimed that the median and reduced water use ratios utilized by the Agency were not representative for a subcategory because the data did not represent homogeneous processing methods and final products. For this

reason several industry members claimed that establishing mass based limitations and standards, utilizing specific water consumption values related to production levels, significantly reduces the tanners' ability to alter processes to accommodate varying raw material and final product mixes.

Response: The Agency concludes that the tanners ability to alter processes to accommodate varying raw materials and final product mixes will not be constrained by application of these regulations. Moreover, the Agency believes that the water use ratios are representative for each subcategory. The revised median water use ratios developed by the Agency, and summarized in Table 1 of the June 2, 1982 notice of availability (47 FR 23959), were based upon extensive data supplied by 90 plants in the industry. In utilizing these data, the Agency considered a broad range of differences in raw materials (cattlehide, sheepskin, pigskin, shearling, blue splits and grain sides, etc.) and three major groups of subprocesses (beamhouse, tanyard, and retan-wet finish). The Agency subcategorized the leather tanning industry based on these factors because they had significant influence on water use and waste load generation. Subcategorization was found to be related incidentally to the final products produced because, as a result of the primary subcategorization factors i.e., the raw materials and groups of subprocesses used, there is a typical mix of final products for each subcategory. Day to day variations in raw materials, final product mixes, and attendant water consumption are reflected by the individual data points which underlie these median flow ratio values.

Since the raw materials and subprocesses utilized by individual plants within a subcategory are very similar, it is the Agency's judgment that water use for individual plants within a subcategory also can be similar. The Agency believes that water conservation, recycling and reuse of water and/or good housekeeping practices can be used by plants within a subcategory in order to arrive at the flow ratios specified in Tables 1 and 2.

In response to comments, the Agency attempted to separate further some subcategories by predominant final products and developed a median water use ratio for these predominant final products. These water use ratios were not significantly different from the median water use ratios established for the applicable subcategory. Therefore, the data available to the Agency

indicate that different plants making the same mix of salable final products of commercially acceptable quality have different water use ratios depending upon the extent to which they implement water conservation and recycle or reuse methods. Accordingly, the Agency has concluded from analysis of available data that there is no relationship between final products manufactured and water used which supports further subcategory separations.

Those plants with unique mixes of processing methods and final products covering more than one subcategory would have mass based NPDES permits or mass based pretreatment standards if the local POTW elected to do so, developed in a prorated basis to provide discharge allowances for each product or process utilized at a given plant. Since water conservation and recycle and reuse techniques are available for all three groups of subprocess and, therefore, applicable for each of the subcategories for this industry, those techniques also are available for mixed subcategory plants. Examples of how mixed subcategory plants could achieve reduced water use are addressed in the Development Document.

5. *Comment:* In response the notice of availability, the Tanners' Council of America provided examples for each subcategory of plant water use data which they claimed were misused or not representative of that subcategory. The Tanners' Council of America criticized the Agency's data base as being meager in some subcategories and provided examples of subcategories with inadequate data bases.

Response: The Agency has reviewed each individual example of alleged data verification from contributing plants. While the Agency believes that major changes in subcategorization are not necessary, minor adjustments have been made in the data bases for four subcategories and are summarized previously in this preamble. These adjustments are discussed in the *Water Use* section of this preamble, and detailed in the Development Document. Most notably, seven plants were deleted from subcategory one because they were mixed subcategory plants. Three plants were deleted from subcategory four, two because of inadequate documentation and one because of an error in subcategory placement, and a fourth plant had its raw material weight basis corrected and flow ratio recalculated; all resulting in an increased median flow ratio and substantially increased reduced flow ratios for subcategory four. In cases

where subcategory flow ratios increased, costs were recalculated completely (PSES costs for subcategories 4 and 7). For those subcategories where flows decreased, costs remained the same (PSES costs for subcategories 1, 3, [small changes] and 5 [large change]).

The number of plants included in the data base utilized to define water use for each subcategory closely reflects the total number of plants in each subcategory of the industry; some of the subcategories do not have many plants in them. Therefore, the Agency found a commensurately limited amount of accurate and verifiable data in the following subcategories: hair save, chrome tan, retan-wet finish (subcategory 2)—4 plants; through-the-blue (subcategory 6)—3 plants; shearling (subcategory 7)—1 plant; pigskin (subcategory 8)—2 plants; and retan-wet finish (splits) (subcategory 9)—4 plants. The Agency has actively solicited data from the industry. In several instances, the industry submitted only a limited amount of accurate and verifiable flow data. For those subcategories the Agency reviewed the manufacturing and raw material data for each plant in the subcategory. Since there were no significant differences in manufacturing and raw material data for plants in the same subcategory, the available data was judged representative for all plants within the subcategory.

6. *Comment:* A number of commenters claimed that trivalent chromium is not significantly harmful to the environment, and should not be regulated. As supporting evidence that trivalent chromium is non-toxic, these commenters cited actions taken by the EPA Office of Solid Waste (OSW) to delist all tannery wastes (from processing and wastewater treatment) which contain trivalent chromium, and to specify hexavalent chromium in the hazardous waste listing criteria.

Response: Since chromium (total) is a toxic pollutant as defined by the Clean Water Act and occurs in nationally significant amounts (6.3 million lbs/yr), the Agency must set effluent limitations for chromium. Moreover, as discussed below, there is pass through of chromium at POTWs and the Agency is required to set pretreatment standards for chromium. Information and data available indicate that trivalent chromium is not nearly as toxic as hexavalent chromium from the *human health* standpoint, which was the basis used by OSW in delisting all tannery wastewater treatment sludges and process solid wastes. However, trivalent chromium does exhibit chronic *aquatic*

toxicity. Ongoing EPA efforts to develop water quality criteria for trivalent chromium confirm chronic aquatic toxicity (24 hr. toxicity value approximately 50 µg/l). Therefore, the Agency believes that it is appropriate to regulate trivalent chromium.

7. Comment: A number of commenters indicated that chromium pass through at POTWs receiving tannery waste has not been properly evaluated. They believe that the significant finding in the POTW study interim report is that very low chromium concentrations were found. They believe that chromium pretreatment is not necessary because the POTWs discharge low concentrations even through the study also showed POTW removal rates to be lower than those required of direct dischargers with BAT limitations.

Response: Section 307(b) of the Act requires that categorical pretreatment standards be established if EPA determines that the introduction of pollutants from a point source category would interfere with, pass through, or otherwise be incompatible with a POTW. Pursuant to the general pretreatment regulations, categorical pretreatment standards are necessary where the percent removal by POTWs is less than required by BAT for direct dischargers (i.e., pass through). Because there is pass through of chromium at POTWs, chromium pretreatment standards for indirect dischargers were established by the Agency. At POTWs where chromium does not pass through, removal credits may be granted to tanneries to reduce the amount of pretreatment necessary. If the POTWs achieve chromium removals comparable to those required by BAT, the POTW would grant removal credits to the indirect dischargers which would increase the standards to concentrations typical of raw wastewaters, thus eliminating the need for pretreatment.

8. Comment: Several commenters cited the increased costs associated with disposal of tannery sludges if they are classified as a hazardous waste due to the presence of chromium. The commenters contend that trivalent chromium does not interfere with land application of sludge and therefore should not be used as a limiting factor in sludge disposal.

Response: Chromium bearing wastes are no longer listed as hazardous by the Resource Recovery and Conservation Act (RCRA). This action should facilitate the disposal of sludges from treatment of tannery wastewater.

9. Comment: Tanners and their consultants commented on the proposed sulfide limit of 0.0 mg/l as being impossible to meet and unnecessary.

Since domestic sewage contains sulfide in measurable quantities, requiring an industrial discharger to a POTW to remove all sulfide would place a burden on the industry which would not result in any improvement in either water quality, treatment efficiency, or personnel safety.

Response: In response to comments, the Agency has reviewed data in the supplemented record on the performance of sulfide oxidation and finds that, for indirect dischargers with unhairing (beamhouse) operations, a long-term average total sulfide concentration of 9.0 mg/l can be achieved in total sewer discharge. Accordingly, the Agency has revised the basis for the sulfide pretreatment standard from 0.0 mg/l to 9.0 mg/l for indirect dischargers with unhairing operations which discharge very high sulfide concentrations. Sulfide limitations are not necessary for indirect dischargers in the "no beamhouse" subcategories (subcategories numbers 4, 5, 7, and 9) because the sulfide concentrations in raw wastewaters from plants in these subcategories typically are less than 9.0 mg/l. Achievement of the sulfide pretreatment standard will minimize sulfide interference to the extent feasible by existing technology, including the very serious sulfide-related risks to human life in sewage collection and treatment systems at affected POTWs. A more stringent technology based sulfide pretreatment standard, which would relate to human safety criteria, cannot be supported at this time. The preliminary treatment step of sulfide oxidation for beamhouse subcategories has the added benefit of reducing the oxygen demand in subsequent aerobic treatment processes at POTWs.

10. Comment: Industry representatives commented on the lack of a proven substitute for ammonia in the deliming process and indicated that ammonia substitutes do not produce leather of acceptable quality.

Response: As indicated in the June 2, 1982 notice of availability, EPA has withdrawn the proposed ammonia pretreatment standards and effluent limitations and eliminated all associated costs for in-process ammonia substitution previously included in BAT and PSES technology options. EPA also is no longer considering regulation of ammonia as part of the BAT, discharge limitations. Although the Agency did not find final product quality to be a factor requiring further subcategorization, the Agency did consider leather quality in eliminating in process substitution for ammonia as a recommended technology. This decision was based upon the

comments that in-process substitution for ammonia with epsom salts would not be feasible in light of its adverse effect on the properties of leather, and that its costs were substantial.

EPA recognizes, however, that site specific water quality problems may require more stringent permit requirements for ammonia on a case-by-case basis. Accordingly, the Agency has retained the cost, in BAT OPTION II, of technology to achieve nitrogen control by biological nitrification (i.e., pretreatment of segregated streams to reduce TKN in raw wastewater, and additional aeration and chemical addition to control pH in activated sludge systems). EPA engineering evaluation of end-of-pipe technologies (i.e., BAT OPTION II) indicates that consistently low TKN and ammonia effluent concentrations can be achieved with proper design and diligent operation of wastewater treatment systems. However, these concentrations have not been demonstrated in this industry.

11. Comment: Several commenters were concerned that the Chappell process, the basis for the proposed PSNS, is not proven and should be investigated further before it is accepted as providing pollutant removals equal to proposed BAT end-of-pipe treatment technology (extended aeration activated sludge upgraded with powdered activated carbon addition followed by multimedia filtration).

Response: The Chappell process was operated for only a short time at a small (25,000 gallons per day of wastewater) tannery which did not operate a beamhouse. The Agency has decided that, due to a lack of operating data from sustained, full-scale operation including treatment of unhairing wastewaters, the process cannot be recommended as an alternative to biological treatment by extended aeration activated sludge, and will not be used as the basis for PSNS.

12. Comment: Several direct dischargers commented that their present discharge does not have any adverse effects on the receiving water and therefore no additional treatment processes should be required.

Response: The Clean Water Act requires existing industrial dischargers to achieve "effluent limitations requiring the application of the best practicable control technology currently available" (BPT) (Section 301(b)(1)(A)), and "effluent limitations requiring the application of the best available technology economically achievable" (BAT) (Section 301(b)(2)(A)). The Agency has found that the best

included in the economic impact analysis of the proposed regulations.

Response: In developing revised costs, EPA developed credits for in place control technology for direct dischargers. These credits were estimated on a plant specific basis by the following methodology. First, estimates were prepared for the cost of upgrading each plant to BPT technology utilizing as much as possible of in place technology. Second, estimates were prepared for the total cost of BPT technology assuming that no technology was in place at any of the plants. Finally, the plant specific credit was the difference between these two costs. These credits were utilized in the economic impact analysis for each plant.

22. Comment: The industry sponsored economic analysis stated that the economic effects of the proposed regulations were understated for three major reasons, as follows:

- The compliance costs estimated by EPA were too low; therefore the consultants' sensitivity analysis calculated closures also using compliance costs which were two and three times those estimated by EPA;
- The 21-year time period over which EPA calculated the economic impacts of pollution control expenditures was too long; the study concluded that a five-year period was appropriate; and
- The interest rate used by the EPA to discount cash flows to obtain the net present value after pollution controls (9.9 percent) was too low; the analysis concluded that a higher discount rate of 15.9 percent, representing the "opportunity cost of capital," should have been used.

The industry consultant said that the proposed regulation would cause many more tanneries to close than EPA's data or studies indicated. The study concluded that as many as half the current total number of tanneries would close.

Response: Since the proposal, and as noted previously in this preamble, EPA has reviewed carefully and revised where appropriate the compliance costs of all control technologies. As a result, capital costs have increased considerably. However, annual costs, which were used in the net present value analysis and which considered both capital as well as operation and maintenance costs, have increased only modestly. Accordingly, EPA believes that the TCA consultant's estimates of costs two and three times the Agency's estimates were overstated.

The 21 year period over which the EPA economic models were calculated covers the construction period and the

operating life of the equipment. The industry study concluded that the five-year period it incorporated was more appropriate for the calculation of impact because it better reflected the uncertainty in the industry. EPA believes that the uncertainty factor was adequately reflected in its assumption that the loan for pollution control equipment must be repaid in five years. By using a five year period, industry appears to have placed little value on the years of useful economic life remaining in the plant and pollution control equipment at the end of five years. In effect, the cost of pollution control and producing leather over the five year period were overstated, leading to an overestimate of closure impacts.

Subsequent to the proposal, the Agency revised its discount rate to 11 percent. The Agency believes that this was a reasonable estimate of the after-tax cost of capital to the tanning industry. This discount rate was based on industry data for recent years which indicates a pre-tax cost of debt of 17 percent and a pre-tax rate of return on equity of 17.5 percent.

In net present value analysis, a higher cost of capital increases the likelihood that a company's earnings would be judged an inadequate return on investment and that the company would be a closure prospect. The Agency carried out analyses using the industry's assumption of a 16 percent cost of capital, and found that closure was predicted, even with no pollution control expenditures, for six out of 22 model plants. Because this is a higher incidence of closure than would be expected under average conditions (and with no pollution control costs), the closure estimates resulting from the 16 percent discount rate were inconsistent with the known rate of industry closure since proposal (1979). Therefore, the industry closure estimates were overstated. The Agency believes that these three factors taken together overstated substantially the likely closures resulting from the cost of these regulations.

23. Comment: The industry sponsored economic study questioned the assumption that costs would not be passed through in higher prices. It was stated that many tanners would attempt to pass on cost increases, although probably only those in a strong competitive position would be able to do so.

Further, it was stated that the added costs would weaken the position of U.S. tanners with respect to foreign manufacturers. It was estimated that an increase in the price of domestically

produced leather of 3 to 6 percent, as suggested by the 1979 EPA report, would cause a reduction in the demand for domestic leather production of 4.5 to 9 percent.

Response: The 1979 EPA economic report did not assume that costs would be passed through in higher prices for finished leather goods. In response to comments received on the notice of availability, the Agency has done a detailed analysis of the relationship between costs and increased prices and the consequent effects on imports and exports.

The Agency now agrees that there would be some increase in the price of domestically produced leather, and that this would cause some increase in the imports of leather and leather products, resulting in a reduction in the demand for domestically produced leather by 1.5 to 2.0 percent. The industry study overestimated the likely leather price increase, as well as its effect on demand for leather. The relationship between price increases and demand for leather is discussed in the economic analysis of these regulations.

24. Comment: The notice of availability assumed that pollution control expenditures would be financed in large part by 15 year loans. The Tanners' Council stated that probably no more than 10 percent of the firms would qualify for long-term borrowing without guarantee and that the economic implications for industry members would be very serious if loans were made for shorter periods, even up to five years. The commenter noted that many companies would simply be unable to obtain the required financing.

Response: In response to this comment, the Agency conducted a telephone survey of tanners and bankers on the terms of financing that would be available for pollution control equipment. Based on the survey, the Agency found that loans for pollution control equipment would likely be for shorter periods than 15 years—three to seven years. The Agency then revised its economic analysis to use a 5 year repayment period. A cash flow analysis was then carried out incorporating the assumption of a five year repayment period.

Regarding the comment that loans would not be available at all, the impact analysis assumes that if the plant would be viable by the net present value test, and it could cover the loan repayment, loans would be available.

25. Comment: The Tanners' Council of America stated that EPA had apparently determined not to conduct a Regulatory Flexibility Analysis to assess the impact

17. *Comment:* Numerous commenters indicated that the use of indicator pollutants for BAT to reflect removal of toxics in a failure of EPA to set specific numerical standards as required by the NRDC Settlement Agreement. The industry preferred specific toxic pollutant limitations.

Response: EPA examined carefully the presence and level of toxic pollutants in the industry's wastewaters. As explained previously, EPA has established a specific limitation for the one toxic pollutant, chromium, which it found at treatable levels. No other toxic pollutants or indicators will be controlled by BAT because no economically achievable technology beyond BPT was identified which also afforded treatment specifically for toxic pollutants found in these effluents. The 12 toxic pollutants, other than chromium, found in treated effluents (see Table 4, 47 FR 23959) are not projected to be at concentrations which are effectively treatable by any available technology known to the Administrator, and therefore these 12 toxic pollutants have been excluded from regulation as provided by Paragraph 8(a)(iii) of the revised Settlement Agreement.

18. *Comment:* Commenters noted that the conditions in the leather tanning industry deteriorated substantially between the time economic data was collected [1976] for the proposal and their publishing [1979].

Response: In response to these comments, EPA completed a reassessment of the economic conditions of the industry, with the assistance of summary data provided by the TCA, financial data provided by a number of individual firms, and other data collected by the Agency. The basis for the economic analysis was updated to reflect conditions through 1979, including hide prices, demand for and prices of finished leather, plant utilization rates, international competition, and related factors, with control technology cost data expressed in first quarter 1980 dollars. As part of this reassessment, EPA evaluated seven additional model plants for indirect dischargers, in addition to the 15 model plants evaluated for the proposed regulations. Plant specific analyses were performed again for 13 of the 20 direct dischargers, including consideration of an allowance for previous expenditures on in-place control technologies.

19. *Comment:* The Tanners' Council of America criticized EPA's use of data from 1975 and 1976 noting that this period was not representative for the industry. The TCA noted that significant changes in the economic condition of the

industry, unrelated to the recession, have occurred since proposal of the regulations in 1979. Since the last half of 1981 and the first half of the 1982, the long-term decline of the industry has taken a sharply accelerated pace due to accelerated decline in the U.S. production of shoes and other leather products; increased foreign competition in leather markets; failure of negotiated agreements with leather exporting countries; rise of unfavorable fashion trends; and rebound in export of U.S. hides. The TCA claimed that the capital investment and operating expenses necessary to implement the technical options being considered will have greater impact on the industry than perceived by EPA.

Response: The Agency agrees that the profit rates for the model plants were based on a period which was nonrepresentative for the industry. The profit rates were largely based on a plant survey taken in 1976 and primarily reflect profit rates for 1974 and 1975 when profits were the highest over the past 12 years. In response to this comment, the Agency revised the profit rates by using an average profit rate for the period of 1969-1981 instead of a profit rate based on the years 1974 and 1975. Accordingly, the profitability of the model plants has been reduced by approximately 40 percent. This change increased the number of potential plant closures resulting from installing the treatment equipment.

The factors cited for the decline in the leather tanning industry, however, were not unique to the end of 1981 and 1982. The factors cited were cyclical and their effect on the decline in the industry is captured in the long-term data used in the economic analysis. The current sharp decline is due predominately to the generally weak economic conditions, not an underlying change in the factors cited by the TCA.

20. *Comment:* Many commenters stated that the capital, as well as operation and maintenance costs, used for the recommended technologies were significantly underestimated. To document this the TCA prepared their own model plant costs for tanneries in subcategories 1, 2, 3, 4, and 5.

Response: EPA performed a comprehensive review and revision of the entire engineering design and cost development procedure. All the cost estimates appearing in the June 2, 1982 notice were updated to first quarter 1980 values. Design factors of the unit processes for all treatment technologies were found generally to be correct, while a number of inadequacies were found in the cost development procedure used for the proposed

regulations. The Agency has revised the subcategory median water use ratios, which generally increased, and the cost curves. Moreover, the Agency has revised the cost estimates by now including a 23 percent allowance for engineering and contingency costs, and for interest during construction. In addition, the Agency has revised its costs by assuming that all construction work is to be done by contract labor instead of tannery workers. In reference to this last item, EPA's cost estimates may now be higher than what actual installed costs would be, since historically tanners have used in-house labor extensively for installation of treatment systems. Taken together, these changes have resulted in substantial increases in the cost of control and treatment technologies. The cost estimates submitted by TCA were three to five times higher than the estimates used by the Agency to evaluate the economic impact of the proposed regulation. The Agency's revisions in cost have served to reduce the discrepancies between the TCA and Agency estimates.

There are, however, remaining differences between the TCA and Agency estimates. A portion of the remaining differences were attributed to the fact that the TCA model plant costs included items that EPA believes were not justified. For instance, the TCA included the cost of recovery and reuse systems for vegetable tanning (Subcategory Three), brine (Subcategory Five), and degreasing solvent (Subcategory Five). These systems are used extensively in the industry and provide return on investment. Therefore, the Agency believes these costs should not be included as wastewater treatment costs. In addition, the TCA did not take into account the reduced chemical purchase requirements for production purposes which occur due to operation of chemical reuse and recovery systems. The TCA model plant costs also include expenditures for reconstructing process equipment to facilitate waste stream segregation and chemical recovery and reuse. As an example, the cost of constructing a new beamhouse was included for Subcategories One and Two. The Agency believes that these measures are not required by this regulation and must be justified to improve production efficiency.

21. *Comment:* Several commenters stated that capital expenditures made for wastewater treatment and pretreatment in contemplation of complying with the 1972 Act should be

practicable control technology currently available that also is economically achievable and cost effective is equalization, primary coagulation-sedimentation, and biological treatment in the form of extended aeration activated sludge. This technology achieves significant reduction in all pollutants, toxic as well as conventional and nonconventional pollutants. Accordingly, this technology serves as the basis for BPT effluent limitations. The Agency's review of the direct dischargers indicated that the existing effluent quality generally was very poor; in a small number of cases final effluent concentrations were found to be only marginally lower than raw waste concentrations either periodically or consistently. Environmental analysis of existing discharges indicated that aquatic and human health toxicity values for certain toxic pollutants (e.g., pentachlorophenol, trivalent chromium, naphthalene) were exceeded under low flow conditions. In light of these findings, the Agency has found it to be environmentally necessary and cost-effective to require upgrading of existing treatment facilities in order to improve the general level of effluent quality of most plants, and to improve the consistency of effluent quality of other plants. It must be noted, however, that the Agency has not found additional technology options and associated effluent limitations more stringent than BPT to be economically achievable for the category as a whole at this time. Therefore, the Agency has decided BAT should be no more stringent than BPT. However, the Agency also recognizes that in certain instances site specific water quality considerations may require permit requirements more stringent than BPT effluent limitations based on case-by-case analysis.

13. Comment: Several tanneries and POTW's stated that indirect dischargers located in large metropolitan areas may contribute only a small percentage to the total waste stream. Application of national pretreatment standards to these tanneries therefore is not necessary to assure proper operation of the POTW.

Response: The Agency recognizes that some indirect dischargers located in large metropolitan areas may contribute only a small percentage to the total wastestream. Under the Clean Water Act and the general pretreatment regulations, pretreatment standards for indirect dischargers are required if the introduction of pollutants would result in pass through, interference, or otherwise would be incompatible with POTW's. The Agency has determined that pretreatment standards are

necessary for the leather tanning industry because trivalent chromium passes through POTW's and because sulfide can interfere with POTW's. Where chromium does not pass through the POTW, removal credits are available to reduce the need for pretreatment. POTW's also may certify that the sulfide pretreatment standard should not apply to certain contributing indirect dischargers if site specific evaluation indicates that sulfide interference is not a problem.

14. Comment: Several tanneries and POTW's commented that the pretreatment standards in the proposed regulations could require duplicate treatment in instances where the POTW has facilities specifically constructed for the treatment of tannery wastewater. Furthermore, in some cases construction of these facilities has been financed by the tannery while ownership and operation is the responsibility of the POTW.

Response: As noted in the response to the previous comment, categorical pretreatment standards are necessary where pass through has been demonstrated. However, § 403.7 of the general pretreatment regulations provides for granting of removal credits achieved at POTW's. In cases where POTW facilities have been specifically designed to treat leather tanning and finishing wastewaters, it is likely that the POTW would be able to grant a credit for chromium removal to the indirect discharger. Where the POTW achieves removals comparable to BAT, credits probably would eliminate the need for pretreatment.

15. Comment: The Tanners' Council of America commented that the proposed pretreatment regulation discouraged the use of POTW's by industry by requiring new sources to provide pretreatment equivalent to BAT, and thereby contravened the intent of the Act to encourage joint treatment.

Response: The proposed pretreatment standards for new sources (PSNS) were based upon technology equivalent to BAT. The proposed PSNS contained limitations equal to BAT for ammonia, sulfide, and chromium, which were more stringent than those proposed for PSES, as well as limitations for BOD₅, COD, TSS, Oil and Grease, Total Kjeldahl Nitrogen, and Phenol. A specific range was included for pH. After review of the entire technology, performance, and cost basis for the proposed PSNS, EPA revised PSNS. The PSNS being promulgated today is based on the same technology and regulates the same pollutants to the same concentrations as PSES, not BAT.

16. Comment: Several tanners cited the lack of available space for construction of wastewater pretreatment facilities as a constraint on the industry's ability to comply with the proposed PSES. The Tanners' Council of America, in responding to the notice of availability, also objected to the use of employee parking space for pretreatment facilities.

Response: During the comment period for the proposed regulations, the Agency's representatives visited a total of 59 of the 141 indirect discharging tanneries including tanneries in the urban areas of Chicago, IL; Milwaukee, WI; Peabody-Salem, MA; and Gloversville-Johnstown, NY. Based on the findings of these visits the Agency predicted that 5 to 10 percent of the leather tanning industry does not have space available for construction of wastewater pretreatment facilities.

The Agency did not have sufficient data to identify all indirect discharging tanneries with inadequate space to install chromium pretreatment technology, and could not establish specific exemptions or alternative effluent limitations for these plants. Therefore, in the notice of availability the Agency solicited comment and additional data concerning plants with inadequate space to install the recommended pretreatment technology (47 FR 23962). However, additional substantive input was not received, even though EPA extended the comment period to facilitate receipt of such comments. EPA does not have sufficient detailed information regarding space availability to define the population of plants which have less than adequate space to install the recommended pretreatment technology for chromium. The Agency believes that the more appropriate approach is to grant waivers based upon a specific demonstration by the indirect discharger, as provided by the general pretreatment regulation (§ 403.13), of the fundamentally different factor of inadequate interior plant space or adjacent land. Should sufficient detailed data be received to identify those plants which do not have adequate space for chromium pretreatment technology, an amendment of PSES regulations may be possible. The Agency considers reallocation of that portion of available interior plant space and adjacent land (including parking lots) necessary to install pretreatment technology to be an appropriate requirement. Reallocation of all or a portion of parking lots for treatment facilities has been implemented by plants in other industrial categories.

of the regulation on small business. As part of its comment, the Tanners' Council reviewed the criteria of the Regulatory Flexibility Act, as well as the EPA guidelines for implementing the Act, and provided such an assessment for indirect dischargers. Defining small businesses as those with 200 or fewer employees, the TCA found 68 percent of the 140 indirect dischargers would be classified as small business. For these tanneries, the TCA noted that the criteria for a significant impact would be met, in varying degrees, for three of the four criteria suggested in the EPA Regulatory Flexibility guidelines:

- Compliance costs more than 5 percent of production cost;
- Compliance costs as a percent of sales for small entities more than 10 percent higher than for large entities (diseconomies of small scale);
- Capital costs a significant portion of capital available.

The TCA concluded it was therefore imperative for EPA to give consideration, under the terms of the Regulatory Flexibility Act, to the dramatic impact that the regulation would have on small business.

Response: While the draft economic report did not contain a separate section on small business analysis, Chapter VIII of the draft report, which presents estimates of impacts on model plants of various sizes, provides the information for such an analysis. A regulatory flexibility analysis is included in the final report.

EPA believes that, in terms of the three criteria considered by the TCA, either the impacts were not as dramatic as indicated by the Council, or that the impacts were not confined to small plants.

TCA estimated a significant impact in terms of compliance cost as a percent of production cost based on data in the economic report on annualized cost for the first year of operation. This figure overstated compliance cost because it did not take into account the tax implications of pollution control expenditures and because the economic model estimated the highest costs in the first year of operation, and lower costs for subsequent years. A better measure of compliance cost was provided by the statistic on price increase required to maintain a company's rate of return on investment equal to its baseline value. Averaged over the years of operation of the pollution control equipment, this did not exceed five percent for any of the model plants. Over the first five years of operation, which were of most immediate concern, the required price increase exceeded five percent for only one model plant (small nonchrome tan).

The criterion referring to adverse scale diseconomies holds for all sizes of model plants, except for the largest model plant in each subcategory. Hence, for the tanning industry, this criterion was not useful for distinguishing impacts on small plants.

In assessing impacts in terms of the third criterion, capital requirements and capital availability, the Tanners' Council commented that most of the small tanneries would not qualify for 15-year loans. However, as the TCA also stated, this also appeared to be true for tanners in general. Hence, on this criterion alone, there was not a basis for distinguishing impacts on small plants.

The Agency believed that more stress should be placed on the fourth regulatory flexibility criterion, not mentioned by the TCA in this context, the likelihood of closures. EPA believed that the economic effects of concern would best be assessed in terms of closure analysis. For the notice of availability, no closures were projected for indirect dischargers (and only one for the direct dischargers). However, as a result of comments received, the Agency revised its economic analysis. The initial result was that a substantial number of closures were projected among small plants with indirect discharge. In order to reduce the economic impacts, PSES was revised so that the smallest plants in subcategories 1, 3 and 9 would not be covered by the chromium removal requirement. The details of this analysis, and the exclusions, are given in this Regulatory Flexibility Analysis portion of this preamble.

26. Comment: In response to the notice of availability, one commenter questioned EPA's operation and maintenance costs as understated because of omission of sludge disposal and effluent monitoring costs.

Response: EPA has reviewed its operation and maintenance costs carefully, compared to those provided by the commenter. The Agency has found that sludge disposal costs, while included in preliminary costs and economic analysis, were inadvertently omitted from the costs summarized in the June 2, 1982 notice of availability. The cost of treatment system sludge disposal now has been added. The cost of installing and operating effluent monitoring facilities were included in the notice of availability for all plants. However, the cost of sample analysis for sulfide and total chromium was omitted for indirect dischargers; these costs now have been included.

27. Comment: The Tanners' Council of America and other commenters considered the long term average

concentrations for the BAT options not selected [BAT OPTIONS II and III] very stringent and not demonstrated within the industry. They expressed the concern that these concentrations could be misused by permitting authorities.

Response: The Agency agrees that the concentrations projected for BAT OPTIONS II and III have not been demonstrated, and therefore could be misused by permitting authorities. Accordingly, the Agency has deleted these concentrations from the Development Document. The final Development Document, however, includes the range of expected performance for these technologies, in place of concentrations because the specific concentrations included in the notice of availability have not been demonstrated in this industry at this time.

28. Comment: In response to the notice of availability, most industry members commented that sulfide pretreatment standards were not necessary and should be used as guidance. Some commenters were concerned that the waiver process suggested in the notice of availability would impose unnecessary procedural burdens, and that some POTWs would choose not to invoke the waiver process even if sulfide control was not necessary. State and local authorities generally agreed with the need for sulfide pretreatment standards, and some considered the limitations under consideration too lenient.

Response: Under Section 307 of the Clean Water Act and the general pretreatment regulations, pretreatment standards for indirect dischargers are required if the introduction of pollutants would result in interference with POTWs. The Agency believes that a pretreatment standard for sulfide is necessary to minimize the potential for interference, such as the hazard to human life associated with very high sulfide concentrations in wastewaters from plants with unhairing operations. Accordingly, EPA has decided to adopt a sulfide pretreatment standard, but will allow POTWs to certify to EPA that these standards should not apply to specified indirect dischargers upon consideration of factors discussed previously in this preamble. The Agency will require POTWs to certify that these factors have been considered and that waivers are warranted. The Agency has streamlined the procedural process for sulfide waivers and believes that the procedural burden will be minimized.

The concentration limitation is achievable by the catalytic sulfide oxidation technology, affords

substantial reduction in sulfide concentrations, and minimizes the attendant risk to the extent feasible. As discussed above, a more stringent pretreatment standard cannot be supported at this time.

XVI. Small Business Administration (SBA) Financial Assistance

The Agency is continuing to encourage small manufacturers to use Small Business Administration (SBA) financing as needed for pollution control equipment. Three basic programs are in effect: the Guaranteed Pollution Control Program, the Section 503 Program, and the Regular Guarantee Program. All the SBA loan programs are only open to businesses with net assets less than \$6 million, with an average annual after-tax income of less than \$2 million and with fewer than 250 employees.

The guaranteed pollution control program authorizes the SBA to guarantee the payments on qualified contracts entered into by eligible small businesses to acquire needed pollution control facilities when the financing is provided through pollution control bonds, bank loans and debentures. Financing with SBA's guarantee of payment makes available long-term financing comparable with market rates. The program applies to projects that cost from \$150,000 to \$200,000.

The Section 503 Program, as amended in July 1980, allows for long-term loans to small and medium-sized businesses. These loans are made by SBA-approved local development companies, which for the first time are authorized to issue Government-backed debentures that are bought by the Federal Financing Bank, an arm of the U.S. Treasury.

Through SBA's Regular Guarantee Program, loans are made available by commercial banks and are guaranteed by the SBA. This program has interest rates equivalent to market rates.

For additional information on the Regular Guarantee and Section 503 Programs contact your district or local SBA Office. The SBA coordinator at EPA headquarters is Ms. Frances Desselle who may be reached at (202) 426-7874.

For further information and specifics on the Guaranteed Pollution Control Program contact: U.S. Small Business Administration, Office of Pollution Control Financing, 4040 North Fairfax Drive, Rosslyn, Virginia 22203, (703) 235-2902.

XVII. List of Subjects in 40 CFR Part 425

Leather and leather products industry, Water pollution control, Waste treatment and disposal.

XVIII. OMB Review

The regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M St., SW., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday excluding federal holidays.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this regulation will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

Dated: November 7, 1982.

Anne M. Gorsuch,
Administrator.

XIX. Appendices

Appendix A.—Abbreviations, Acronyms and Other Terms Used in This Notice

AGENCY—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable, under section 301(b)(2)(A) of the Act.

BCT—The best conventional pollutant control technology, under section 301(b)(2)(E) of the Act.

BMPs—Best management practices, under section 304(e) of the Act.

BPT—The best practicable control technology currently available, under section 301(b)(1)(A) of the Act.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Public Law 95-217).

Direct discharger—A facility where wastewaters are discharged or may be discharged into waters of the United States.

Indirect discharger—A facility where wastewaters are discharged or may be discharged into a publicly owned treatment works.

NPDES PERMIT—A National Pollutant Discharge Elimination System permit issued under section 402 of the Act.

NSPS—New source performance standards under section 306 of the Act.

POTW (POTWs)—Publicly owned treatment works.

PSIS—Pretreatment standards for existing sources of indirect discharges, under section 307(b) of the Act.

PSNS—Pretreatment standards for new sources of indirect discharges, under section 307(c) of the Act.

RCRA—Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580), Amendments to Solid Waste Disposal Act.

The Act—The Clean Water Act of 1977.

Appendix B—Toxic Pollutants Excluded

(1) Toxic pollutants not detectable with the use of analytical methods approved pursuant to section 304(h) of the Act:

Acenaphthene
Acrolein
Acrylonitrile
1,2,4-Trichlorobenzene
Hexachloroethane
1,1-Dichloroethane
Chloroethane
Bis(2-Chloroethyl) Ether
2-Chloroethyl Vinyl Ether
2-Chloronaphthalene
Parachlorometa Cresol
2-Chlorophenol
1,3-Dichlorobenzene
1,2-Dichloropropane
1,3-Dichloropropylene
2,4-Dinitrotoluene
2,6-Dinitrotoluene
Fluoranthene
4-Chlorophenyl Phenyl Ether
4-Bromophenyl Phenyl Ether
Bis(2-Chloroisopropyl) Ether
Bis(2-Chloroethoxy) Methane
Methyl Chloride
Methyl Bromide
Bromoform
Dibromochloromethane
Hexachlorobutadiene
Hexachlorocyclopentadiene
2,4-Dinitrophenol
4,6-Dinitro-O-Cresol
N-Nitrosodimethylamine
N-Nitrosodi-N-Propylamine
Butylbenzyl Phthalate
Di-N-Octyl Phthalate
Dimethyl Phthalate
1,2-Benzanthracene
3,4-Benzopyrene
3,4-Benzofluoranthene
11,12-Benzofluoranthene
Acenaphthylene
1,12-Benzoperylene
1,2,5,6-Dibenzanthracene
Indeno (1,2,3-CD) Pyrene
Pyrene
Vinyl Chloride
Aldrin
Dieldrin
Chlordane
4,4'-DDT
4,4'-DDE (P,P'-DDX)
4,4'-DDD (P,P'-TDE)
Alpha-Endosulfan
Beta-Endosulfan
Endosulfan Sulfate
Endrin
Endrin Aldehyde
Heptachlor
Heptachlor Epoxide
Alpha-BHC
Beta-BHC
Gamma-BHC (Lindane)
Delta-BHC
PCB-1242 (Arochlor 1242)
PCB-1254 (Arochlor 1254)
PCB-1221 (Arochlor 1221)
PCB-1232 (Arochlor 1232)
PCB-1248 (Arochlor 1248)
PCB-1260 (Arochlor 1260)
PCB-1016 (Arochlor 1016)
Toxaphene
2,3,7,8-Tetrachlorodibenzo-P-Dioxin

(2) Toxic pollutants detected at only a small number of sources within a subcategory and uniquely related to the source:

Benzene
Benzidine
1,1,1-Trichloroethane
2,4-Dichlorophenol
2,4-Dimethylphenol
Naphthalene
Toluene

(3) Toxic pollutants detected in treated effluents in trace amounts and neither cause nor are likely to cause toxic effects:

Tetrachloromethane
Chlorobenzene
Hexachlorobenzene
1,2-Dichloroethane
1,1,2-Trichloroethane
1,1,2,2-Tetrachloroethane
Chloroform
1,4-Dichlorobenzene
3,3-Dichlorobenzidine
1,1-Dichloroethylene
1,2-Trans-Dichloroethylene
1,2-Diphenylhydrazine
Dichlorobromomethane
Isophorone
Nitrobenzene
2-Nitrophenol
N-Nitrosodiphenylamine
Di-N-Butyl Phthalate
Diethyl Phthalate
Chrysene
Anthracene/Phenanthrene
Fluorene
Tetrachloroethylene
Trichloroethylene
Antimony
Arsenic
Asbestos
Beryllium
Cadmium
Mercury
Selenium
Silver
Thallium

(4) Toxic pollutants in treated effluents present in amounts too small to be effectively reduced by technologies known to the Administrator:

Copper
Lead
Nickel
Zinc
Cyanide
1,2-Dichlorobenzene
2,4,6-Trichlorophenol
Ethylbenzene
Methylene Chloride
4-Nitrophenol
Pentachlorophenol
Phenol
Bis(2-Ethylhexyl) Phthalate

(5) Toxic pollutants excluded from regulation because there is no available pretreatment technology which is economically achievable that will remove these pollutants prior to discharge to POTWs:

Benzene
Benzidine
Tetrachloromethane
Chlorobenzene
Hexachlorobenzene

1,2-Dichloroethane
1,1,1-Trichloroethane
1,1,2-Trichloroethane
1,1,2,2-Tetrachloroethane
Chloroform
2,4-Dichlorophenol
2,4-Dimethylphenol
1,4-Dichlorobenzene
3,3-Dichlorobenzidine
1,1-Dichloroethylene
1,2-Trans-Dichloroethylene
1,2-Diphenylhydrazine
Dichlorobromomethane
Isophorone
Nitrobenzene
2-Nitrophenol
N-Nitrosodiphenylamine
Di-N-Butyl Phthalate
Diethyl Phthalate
Naphthalene
Toluene
Chrysene
Anthracene/Phenanthrene
Fluorene
Tetrachloroethylene
Trichloroethylene
Antimony
Arsenic
Asbestos
Beryllium
Cadmium
Copper
Lead
Mercury
Nickel
Selenium
Silver
Thallium
Zinc
Cyanide
1,2-Dichlorobenzene
2,4,6-Trichlorophenol
Ethylbenzene
Methylene Chloride
4-Nitrophenol
Pentachlorophenol
Phenol
Bis(2-Ethylhexyl) Phthalate

Part 425 of Title 40 is revised to read as follows:

PART 425—LEATHER TANNING AND FINISHING POINT SOURCE CATEGORY

General Provisions

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- 425.01 Applicability.
425.02 General definitions.
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425.04 Applicability of sulfide pretreatment standards.
425.05 Compliance date for pretreatment standards for existing sources (PSES).
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Subpart A—Hair Pulp, Chrome Tan, Retan-Wet Finish Subcategory

- 425.10 Applicability; description of the hair pulp, chrome tan, retan-wet finish subcategory.
425.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

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- 425.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
425.13 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
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Subpart B—Hair Save, Chrome Tan, Retan-Wet Finish Subcategory
425.20 Applicability; description of the hair save chrome tan, retan-wet finish subcategory.
425.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
425.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
425.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
425.24 New source performance standards (NSPS).
425.25 Pretreatment standards for existing sources (PSES).
425.26 Pretreatment standards for new sources (PSNS).

Subpart C—Hair Save or Pulp, Non-Chrome Tan, Retan-Wet Finish Subcategory

- 425.30 Applicability; description of the hair save or pulp, non-chrome tan, retan-wet finish subcategory.
425.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
425.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
425.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
425.34 New source performance standards (NSPS).
425.35 Pretreatment standards for existing sources (PSES).
425.36 Pretreatment standards for new sources (PSNS).

Subpart D—Retan-Wet Finish-Sides Subcategory

- 425.40 Applicability; description of the retan-wet finish-sides subcategory.
425.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable

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control technology currently available (BPT).

425.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

425.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

425.44 New source performance standards (NSPS).

425.45 Pretreatment standards for existing sources (PSES).

425.46 Pretreatment standards for new sources (PSNS).

Subpart E—No Beamhouse Subcategory

425.50 Applicability; description of the no beamhouse subcategory.

425.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

425.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

425.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

425.54 New source performance standards (NSPS).

425.55 Pretreatment standards for existing sources (PSES).

425.56 Pretreatment standards for new sources (PSNS).

Subpart F—Through-the-Blue Subcategory

425.60 Applicability; description of the through-the-blue subcategory.

425.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

425.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

425.63 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

425.64 New source performance standards (NSPS).

425.65 Pretreatment standards for existing sources (PSES).

425.66 Pretreatment standards for new sources (PSNS).

Subpart G—Shearling Subcategory

425.70 Applicability; description of the shearling subcategory.

425.71 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

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the application of the best conventional pollutant control technology (BCT).

425.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

425.74 New source performance standards (NSPS).

425.75 Pretreatment standards for existing sources (PSES).

425.76 Pretreatment standards for new sources (PSNS).

Subpart H—Pigskin Subcategory

425.80 Applicability; description of the pigskin subcategory.

425.81 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

425.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

425.83 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

425.84 New source performance standards (NSPS).

425.85 Pretreatment standards for existing sources (PSES).

425.86 Pretreatment standards for new sources (PSNS).

Subpart I—Retan-Wet Finish-Splits Subcategory

425.90 Applicability; description of the retan-wet finish-splits subcategory.

425.91 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

425.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

425.93 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

425.94 New source performance standards (NSPS).

425.95 Pretreatment standards for existing sources (PSES).

425.96 Pretreatment standards for new sources (PSNS).

Authority: Sections 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1337 (b) and (c), and 1361; 86 Stat. 816 et seq., Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

General Provisions

§ 425.01 Applicability.

This part applies to any leather tanning and finishing facility which

discharges or may discharge process wastewater pollutants to the waters of the United States, or which introduces or may introduce process wastewater pollutants into a publicly owned treatment works.

§ 425.02 General definitions.

In addition to the definitions set forth in 40 CFR Part 401, the following definitions apply to this part:

(a) "Sulfide" shall mean total sulfide as measured by the Society of Leather Trades' Chemists method SLM 4/2 as described in § 425.03.

(b) "Hide" means any animal pelt or skin as received by a tannery as raw material to be processed.

(c) "Retan-wet finish" means the final processing steps performed on a tanned hide including, but not limited to, the following wet processes: retan, bleach, color, and fatliquor.

(d) "Hair pulp" means the removal of hair by chemical dissolution.

(e) "Hair save" means the physical or mechanical removal of hair which has not been chemically dissolved, and either selling the hair as a by-product or disposing of it as a solid waste.

(f) "Chrome tan" means the process of converting hide into leather using a form of chromium.

(g) "Vegetable tan" means the process of converting hides into leather using chemicals either derived from vegetable matter or synthesized to produce effects similar to those chemicals.

(h) "Raw material" means the hides received by the tannery except for facilities covered by Subpart D and Subpart I where "raw material" means the hide or split in the condition in which it is first placed into a wet process.

(i) "Monthly average" means the arithmetic average of eight (8) individual data points from effluent sampling and analysis during any calendar month.

(j) "Interference" means the discharge of sulfides in quantities which can result in human health hazards and/or risks to human life, and an inhibition or disruption of POTW as defined in 40 CFR 403.3(i).

§ 425.03 Sulfide analytical method.

The following method is to be used for the determination of sulfide in alkaline wastewaters.

(a) *Outline of Method.* The sulfide solution is titrated with standard potassium ferricyanide solution in the presence of a ferrous dimethylglyoxime ammonia complex. The sulfide is oxidized to sulfur. Sulfite interferes and must be precipitated with barium chloride. Thiosulfate is not titrated

under the conditions of the determination. (Charlot, Ann. chim. anal., 1945, 27, 153; Booth, J. Soc. Leather Trades' Chemists, 1956, 40, 238).

(b) *Reagents.* (1) 0.1N potassium ferricyanide—32.925 g. per liter—this solution must be kept in the dark.

(2) Buffer. 200 g. NH_4Cl 200 ml. ammonia (Sp. g. 0.880) per liter

(3) Barium Chloride Solution—12.5 g. per liter 10 ml. of this solution will precipitate the equivalent of about 0.3 g. sodium sulfite.

(4) Indicator—10 ml. 0.6% FeSO_4 50 ml. 1% dimethylglyoxime in ethanol 0.5 ml. conc. H_2SO_4 .

(c) *Procedure.* (1) The liquor is filtered rapidly through glass wool or a coarse filter paper to remove suspended matter.

(2) 20 ml. buffer, 1 ml. indicator and excess barium chloride solution up to a maximum of 25 ml. are placed in a 250 ml. stoppered flask.

(3) A suitable sample of the sulfide solution containing, if possible between 0.04 and 0.08 g. sodium sulfide is added. The flask is stoppered and left for one minute to precipitate the sulfite.

(4) The solution is then titrated with the standard ferricyanide solution until the pink color is destroyed. During titration the solution sometimes goes a dirty color but near completion the pink color becomes more definite and disappears momentarily before the final end point is reached. The solution is titrated until there is no reappearance of the pink color after 30 seconds.

1 ml. 0.1N ferricyanide = 0.00390 g. Na_2S .

(i) In order to reduce loss of sulfide the determination should be carried out as rapidly as possible and the solution titrated with the minimum of agitation. It is recommended that a rough titration be made and then in further titrations the ferricyanide added rapidly to within 1 ml. of the expected value.

(ii) If it is suspected that the concentration of sulfite is high, and approaches that of the sulfide, the waiting time after the addition of barium chloride should be extended to ten minutes, to allow for complete precipitation of the barium sulfite.

Source: *Official Methods of Analysis*, Society of Leather Trades' Chemists, Fourth Revised Edition, Redbourn, Herts., England, 1965.

§ 425.04 Applicability of sulfide pretreatment standards.

(a) A POTW receiving wastewater from a facility subject to this part may require more stringent pretreatment standards for sulfide than those established by this part without EPA approval.

(b) The pretreatment standards for sulfide established by this Part will not apply if the POTW receiving wastewater from a facility subject to this Part certifies in writing with explanation of relevant factors considered, in accordance with the provisions of paragraph (c) of this section, that the discharge of sulfide from the facility does not interfere with the operation of the POTW. In making this determination, the POTW shall consider all relevant factors including but not limited to the following:

(1) The presence and characteristics, of other industrial wastewaters which can increase or decrease sulfide concentrations, pH, or both.

(2) The characteristics of the sewer/interceptor collection system which either minimize or enhance opportunities for release of hydrogen sulfide gas.

(3) The characteristics of the receiving POTW's headworks, preliminary and primary treatment systems, and sludge holding and dewatering facilities which either minimize or enhance opportunities for release of hydrogen sulfide gas.

(4) The occurrence of any prior sulfide related interference as defined in § 425.02(j).

(c)(1) On March 7, 1983, a POTW which intends to certify that the sulfide pretreatment standard should not apply must publish, in a local newspaper with the largest circulation, a notice that presents the findings supporting this determination consistent with paragraph (a) of this section. Allowance for public hearing of these findings also must be provided. The POTW shall identify all existing facilities to which the sulfide pretreatment standard otherwise established by this part would not apply.

(2) On June 5, 1983, a POTW which intends to certify that the sulfide pretreatment standard should not apply must file a written certification with the Regional Water Management Division Director, Environmental Protection Agency, in the appropriate Regional Office. This certification shall include the findings supporting this determination and the results of public comments, and public hearing(s) if held.

(3) On July 5, 1983, EPA shall acknowledge to the POTW receipt of any certification submitted under paragraphs (c)(1) and (c)(2) of this section, and shall indicate to the POTW the adequacy of the submission based upon a review of the factors set forth in paragraph (b) of this section.

(4) Within 30 days of the date of receipt of adequate submissions under paragraphs (c)(1), (c)(2), and (c)(3) of

this section, EPA shall publish a notice in the Federal Register identifying those facilities to which the sulfide pretreatment standards of this part shall not apply.

(5) A POTW may certify that the sulfide pretreatment standards of this part should not apply to a new source planning to discharge into the POTW. This certification must be submitted prior to the commencement of discharge, and must conform at a minimum with criteria in paragraph (b) of this section and the general procedures and intervals of time contained in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this section.

§ 425.05 Compliance date for pretreatment standards for existing sources (PSES).

Existing sources subject to PSES shall comply by November 25, 1985. The Consent Decree in *NRDC v. Train*, 12 ERC 1833 (D.D.C. 1979) specifies a compliance date for PSES of no later than June 30, 1984. EPA will be moving for a modification of that provision of the Decree. Should the Court deny that motion, EPA will be required to modify this compliance date accordingly.

§ 425.06 Monitoring requirements.

Compliance with monthly average discharge limitations is required regardless of the number of samples analyzed and averaged.

Subpart A—Hair Pulp, Chrome Tan, Retan-Wet Finish Subcategory

§ 425.10 Applicability; description of the hair pulp, chrome tan, retan-wet finishing subcategory.

The provisions of this subpart are applicable to process wastewater discharges resulting from any tannery which, either exclusively or in addition to other unhairing and tanning operation, processes raw or cured cattle or cattle-like hides into finished leather by chemically dissolving the hide hair, chrome tanning, and retan-wet finishing.

§ 425.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
	Kg/kg (or pounds per 1000 lb) of raw material	
BOD ₅	9.1	4.1
TSS.....	13.2	6.0
Oil and Grease.....	3.8	1.7
Total Chromium.....	0.23	0.09
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 425.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The effluent limitations are those for BOD₅, TSS, Oil and Grease, and pH contained in § 425.11.

§ 425.13 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The effluent limitations are those for Total Chromium contained in § 425.11.

§ 425.14 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Maximum for monthly average
	Kg/kg (or pounds per 1000 lb) of raw material	
BOD ₅	5.3	2.4
TSS.....	7.7	3.5
Oil and Grease.....	2.2	1.0
Total Chromium.....	0.14	0.05
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 425.15 Pretreatment standards for existing sources (PSES).

(a) Except as provided in § 425.04 and

40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403, and achieve the following pretreatment standards:

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	Milligrams per liter (mg/l)	
Sulfide.....	24	
Total chromium.....	12	8
pH.....	(¹)	(¹)

¹ Within the range 7.0 to 10.0.

(b) Any existing source subject to this subpart which processes less than 275 hides/day shall comply with § 425.15(a), except that the Total Chromium limitations contained in § 425.15(a) do not apply.

§ 425.16 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 425.04, any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403, and achieve the pretreatment standards contained in § 425.15.

Subpart B—Hair Save, Chrome Tan, Retan-Wet Finish Subcategory

§ 425.20 Applicability; description of the hair save, chrome tan, retan-wet finish subcategory.

The provisions of this subpart are applicable to process wastewater discharges resulting from any tannery which processes raw or cured cattle or cattle-like hides into finished leather by hair save unhairing, chrome tanning, and retan-wet finishing.

§ 425.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
	Kg/kg (or pound per 1,000 lb) of raw material	
BOD ₅	8.2	3.7
TSS.....	11.8	5.4
Oil and grease.....	3.4	1.5
Total chromium.....	0.21	0.08
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 425.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The effluent limitations are those for BOD₅, TSS, Oil and Grease, and pH contained in § 425.21.

§ 425.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The effluent limitations are those for Total Chromium contained in § 425.21.

§ 425.24 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Maximum for monthly average
	Kg/kg (or pound per 1,000 lb) of raw material	
BOD ₅	6.9	3.1
TSS.....	9.9	4.5
Oil and grease.....	2.9	1.3
Total chromium.....	0.18	0.06
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 425.25 Pretreatment standards for existing sources (PSES).

Except as provided in § 425.04 and 40 CFR 403.7 and 403.13, any existing source subject to this subpart that

introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403, and achieve the following pretreatment standards:

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
Milligrams per liter (mg/l)		
Sulfide.....	24	
Total Chromium.....	12	8
pH.....	(¹)	(¹)

¹ Within the range 7.0 to 10.0.

§ 425.26 Pretreatment standards for new sources (PSNS)

Except as provided in 40 CFR 403.7 and 425.04, any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403, and achieve the pretreatment standards contained in § 425.25.

Subpart C—Hair Save or Pulp, Non-Chrome Tan, Retan-Wet Finish Subcategory

§ 425.30 Applicability; description of the hair save or pulp, non-chrome tan, retan-wet finish subcategory.

The provisions of this subpart are applicable to process wastewater discharges resulting from any tannery which processes raw or cured cattle or cattle-like hides into finished leather by hair save or pulp unhairing, vegetable tanning or alum, syntans, oils and other agents for tanning, and retan-wet finishing.

§ 425.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
Kg/kg (or pound per 1,000 lb) of raw material		
BOD ₅	6.9	3.1
TSS.....	9.9	4.5
Oil and grease.....	2.9	1.3
Total chromium.....	0.18	0.06
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 425.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The effluent limitations are those for BOD₅, TSS, Oil and Grease, and pH contained in § 425.31.

§ 425.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The effluent limitations are those for Total Chromium contained in § 425.31.

§ 425.34 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Maximum for monthly average
Kg/kg (or pound per 1,000 lb) of raw material		
BOD ₅	5.9	2.7
TSS.....	8.5	3.9
Oil and grease.....	2.4	1.1
Total chromium.....	0.15	0.06
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 425.35 Pretreatment standards for existing sources (PSES).

(a) Except as provided in § 425.04 and 40 CFR 403.7 and 403.13, any existing sources subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403, and achieve the following pretreatment standards:

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
Milligrams per liter (mg/l)		
Sulfide.....	24	
Total Chromium.....	12	8
pH.....	(¹)	(¹)

¹ Within the range 7.0 to 10.0.

(b) Any existing source subject to this subpart which processes less than 350 hides/day shall comply with § 425.35(a), except that the Total Chromium limitations contained in § 425.35(a) do not apply.

§ 425.36 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 425.04, any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403, and achieve the pretreatment standards contained in § 425.35.

Subpart D—Retan-Wet Finish-Sides Subcategory

§ 425.40 Applicability; description of the retan-wet finish-sides subcategory.

The provisions of this subpart are applicable to process wastewater discharges resulting from any tannery which processes previously tanned hides and skins (grain side only) into finished leather by retan-wet finishing.

§ 425.41 Effluent limitations representing the degree of effluent reduction attainable by the control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
Kg/kg (or pounds per 1,000 lb) of raw material		
BOD ₅	6.7	3.0
TSS.....	9.7	4.4
Oil & Grease.....	2.8	1.3
Total Chromium.....	0.17	0.06
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 425.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The effluent limitations are those for BOD₅, TSS, Oil and Grease, and pH contained in § 425.41.

§ 410.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The effluent limitations are those for Total Chromium contained in § 425.41.

§ 425.44 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Maximum for monthly average
Kg/kg (or pounds per 1,000 lb) of raw material		
BOD ₅	6.3	2.8
TSS.....	9.1	4.2
Oil & Grease.....	2.7	1.2
Total Chromium.....	0.16	0.06
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 425.45 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403, and achieve the following pretreatment standards:

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
Milligrams per liter (mg/l)		
Total Chromium.....	19	12
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 10.0.

§ 425.46 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR 403, and achieve the pretreatment standards contained in § 425.45.

Subpart E—No Beamhouse Subcategory

§ 425.50 Applicability; description of the no beamhouse subcategory.

The provisions of this subpart are applicable to process wastewater discharges resulting from any tannery which processes cattle hides, sheepskins, or splits (hair previously removed and pickled) into finished leather by chrome or non-chrome tanning, and retan-wet finishing.

§ 425.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
Kg/kg (or pounds per 1,000 lb) of raw material		
BOD ₅	8.2	3.7
TSS.....	11.8	5.4
Oil & Grease.....	3.4	1.5
Total Chromium.....	0.21	0.08
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 425.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional control technology (BCT): The effluent limitations are those for BOD₅, TSS, Oil and Grease, and pH contained in § 425.51.

§ 425.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The effluent limitations are those for Total Chromium contained in § 425.51.

§ 425.54 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Maximum for monthly average
Kg/kg (or pounds per 1,000 lb) of raw material		
BOD ₅	5.3	2.4
TSS.....	7.7	3.5
Oil & Grease.....	2.2	1.0
Total Chromium.....	0.14	0.05
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 425.55 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403, and achieve the following pretreatment standards:

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
Milligrams per liter (mg/l)		
Total chromium.....	19	12
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 10.0.

§ 425.56 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR 403, and achieve the pretreatment standards contained in § 425.55.

Subpart F—Through-the-Blue Subcategory**§ 425.60 Applicability; description of the through-the-blue subcategory.**

The provisions of this subpart are applicable to process wastewater discharges resulting from any tannery which processes raw or cured cattle or cattle-like hides through the blue tanned state by hair pulp unhairing and chrome tanning; no retan-wet finishing is performed.

§ 425.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
Kg/kg (or pounds per 1,000 lb) of raw material		
BOD ₅	3.0	1.3
TSS.....	4.3	1.9
Oil & Grease.....	1.2	0.6
Total Chromium.....	0.08	0.03
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 425.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The effluent limitations are those for BOD₅, TSS, Oil and Grease, and pH contained in § 425.61.

§ 425.63 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application

of the best available technology economically achievable (BAT): The effluent limitations are those for Total Chromium contained in § 425.61.

§ 425.64 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Maximum for monthly average
Kg/kg (or pounds per 1,000 lb) of raw material		
BOD ₅	2.0	0.88
TSS.....	2.8	1.3
Oil and grease.....	0.8	0.4
Total chromium.....	0.05	0.02
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 425.65 Pretreatment standards for existing sources (PSES).

Except as provided in § 425.04 and 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403, and achieve the following pretreatment standards:

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
Milligrams per liter (mg/l)		
Sulfide.....	24	
Total chromium.....	12	8
pH.....	(¹)	(¹)

¹ Within the range 7.0 to 10.0.

§ 425.66 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 425.04, any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment must comply with 40 CFR Part 403, and must achieve the pretreatment standards contained in § 425.65.

Subpart G—Shearling Subcategory**§ 425.70 Applicability; description of the shearling subcategory.**

The provisions of this subpart are applicable to process wastewater discharges resulting from any tannery which processes raw or cured sheep or

sheep-like skins with the wool or hair retained into finished leather by chrome tanning, and retan-wet finishing.

§ 425.71 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

Pollutant or pollutant property	BPT Limitations	
	Maximum for any 1 day	Maximum for monthly average
Kg/kg (or pound per 1,000 lb) of raw material		
BOD ₅	13.2	5.9
TSS.....	19.1	8.7
Oil and grease.....	5.6	2.5
Total chromium.....	0.34	0.12
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 425.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The effluent limitations are those for BOD₅, TSS, Oil and Grease, and pH contained in § 425.71.

§ 425.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The effluent limitations are those for Total Chromium contained in § 425.71.

§ 425.74 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Maximum for monthly average
Kg/kg (or pound per 1,000 lb) of raw material		
BOD ₅	13.2	5.9
TSS.....	19.1	8.7
Oil and grease.....	5.6	2.5
Total chromium.....	0.34	0.12
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.**§ 425.75 Pretreatment standards for existing sources (PSES).**

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403, and achieve the following pretreatment standards:

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
Milligrams per liter (mg/l)		
Total chromium.....	19	12
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 10.0.**§ 425.76 Pretreatment standards for new sources (PSNS).**

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403, and must achieve the pretreatment standards contained in § 425.75.

Subpart H—Pigskin Subcategory**§ 425.80 Applicability; description of the pigskin subcategory.**

The provisions of this subpart are applicable to process wastewater discharges resulting from any tannery which processes raw or cured pigskins into finished leather by chemically dissolving or pulping the hair and tanning with chrome, then retan-wet finishing.

§ 425.81 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application

of the best practicable control technology currently available (BPT):

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
Kg/kg (or pounds per 1,000 lb) of raw material		
BOD ₅	7.0	3.2
TSS.....	10.1	4.6
Oil and grease.....	3.0	1.3
Total chromium.....	0.18	0.07
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 6.9.**§ 425.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).**

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The effluent limitations are those for BOD₅, TSS, Oil and Grease and pH contained in § 425.81.

§ 425.83 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The effluent limitations are those for Total Chromium contained in § 425.81.

§ 425.84 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Maximum for monthly average
Kg/kg (or pounds per 1,000 lb) of raw material		
BOD ₅	5.8	2.6
TSS.....	8.3	3.8
Oil and grease.....	2.4	1.1
Total chromium.....	0.15	0.05
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.**§ 425.85 Pretreatment standards for existing sources (PSES).**

Except as provided in § 425.04 and 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403, and achieve the following pretreatment standards:

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
Milligrams per liter (mg/l)		
Sulfide.....	24	
Total chromium.....	12	8
pH.....	(¹)	(¹)

¹ Within the range 7.0 to 10.0.**§ 425.86 Pretreatment standards for new sources (PSNS).**

Except as provided in 40 CFR 403.7 and 425.04, any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403, and achieve the pretreatment standards contained in § 425.85.

Subpart I—Retan-Wet Finish-Splits Subcategory**§ 425.90 Applicability; description of the retan-wet finish-splits subcategory.**

The provisions of this subpart are applicable to process wastewater discharges resulting from any tannery which processes previously unhaired and tanned splits into finished leather by retan-wet finishing.

§ 425.91 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

Pollutant or pollutant property	BPT Limitations	
	Maximum for any 1 day	Maximum for monthly average
Kg/kg (or pounds per 1,000 lb) of raw material		
BOD ₅	4.2	1.9
TSS.....	6.1	2.8

Pollutant or pollutant property	BPT Limitations	
	Maximum for any 1 day	Maximum for monthly average
Oil & Grease.....	1.8	0.79
Total Chromium.....	0.11	0.04
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 425.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The effluent limitations are those for BOD₅, TSS, Oil and Grease, and pH contained in § 425.91.

§ 425.93 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations

representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The effluent limitations are those for Total Chromium contained in § 425.91.

§ 425.94 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Maximum for monthly average
Kg/kg (or pounds per 1,000 lb) of raw material		
BOD ₅	3.5	1.6
TSS.....	5.1	2.3
Oil & Grease.....	1.5	0.66
Total Chromium.....	0.09	0.03
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 425.95 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces process

wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403, and must achieve the following pretreatment standards:

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
Milligrams per liter (mg/l)		
Total Chromium.....	19	12
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 10.0.

(b) Any existing source subject to this subpart which processes less than 3,600 splits/day shall comply with § 425.95(a), except that the Total Chromium limitations contained in § 425.95(a) do not apply.

§ 425.96 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403, and achieve the pretreatment standards contained in § 425.95.

[FR Doc. 82-31139 Filed 11-22-82; 8:45 am]

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Test Report Federal Register

Tuesday
November 23, 1982

PART III

Department of Health and Human Services

Office of the Secretary

Protection of Human Subjects;
Compensating for Research Injuries;
Request for Comments on Report of the
President's Commission for the Study of
Ethical Problems in Medicine and
Biomedical and Behavioral Research

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Protection of Human Subjects; Compensating for Research Injuries; Request for Comments on Report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research

AGENCY: Department of Health and Human Services.

ACTION: Notice of Report for Public Comment.

SUMMARY: This notice requests public comment on the Report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research entitled "compensating Research Subjects," which was issued in June 1982.

DATES: The comment period will close January 24, 1983.

ADDRESSES: Please send comments or requests for additional information to: Carol Young, Office for Protection from Research Risks, National Institutes of Health, 5333 Westbard Avenue, Room 3A18, Bethesda, Md. 20205; telephone 301-496-7163, where all comments received will be available for inspection weekdays (Federal holidays excepted) between the hours of 9:00 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION: On November 9, 1978, the Public Health Service Act was amended by Pub. L. 95-622 to establish the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. Although the issue of compensating research injuries was not within the Commission's statutory mandate, the Commission addressed the issue at the request of former Secretary Patricia Roberts Harris. Its report entitled "Compensating Research Injuries" was issued in June 1982.

In this report the Commission recommends that the Secretary of Health and Human Services design and conduct, with appropriate consultation with other governmental bodies which sponsor or conduct research, a small scale experiment in which several institutions would receive Federal support over three to five years for the administrative and insurance costs of providing compensation on a nonfault basis to injured research subjects. Information derived from this experiment would permit HHS to determine the need for a full-scale

program, if any, and the best method for achieving the desired results.

Dated: October 7, 1982.
Edward N. Brandt, Jr.,
Assistant Secretary for Health.

Approved: November 5, 1982.
Richard S. Schweiker,
Secretary.

COMPENSATING FOR RESEARCH INJURIES

A Report on the Ethical and Legal Implications of Programs to Redress Injuries Caused by Biomedical and Behavioral Research

Volume One: Report, June 1982

President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research

Morris B. Abram, M.A., J.D., LL.D.,
Chairman, New York, N.Y.
George R. Dunlop, M.D.,¹ University of Massachusetts
Renée C. Fox, Ph.D., D.H.L.,² University of Pennsylvania
Mario Garica-Palmieri, M.D., University of Puerto Rico
Francis K. Graham, Ph.D.,² University of Wisconsin
Albert R. Jonsen, S.T.M., Ph.D., University of California, San Francisco
Donald N. Medearis, Jr., M.D.,² Harvard University
Armo G. Motulsky, M.D., University of Washington
Daher B. Rahi, D.O.,¹ St. Clair Shores, Michigan
Anne A. Scitovsky, M.A., Palo Alto Medical Research Foundation
Seymour Siegel, D.H.L.,¹ Jewish Theological Seminary of America, New York
Lynda Smith, B.S.,³ Colorado Springs, Colorado
Charles J. Walker, M.D., Nashville, Tennessee
Carolyn A. Williams, Ph.D., University of North Carolina, Chapel Hill

Staff

Alexander M. Capron, LL.B., *Executive Director*
Barbara Mishkin, M.A., J.D., *Deputy Director*
Anne Wilburn, *Administrative Officer*
Joanne Lynn, M.D.; Alan J. Weisbard, J.D.

Professional Staff

Mary Ann Bailey, Ph.D.; Dan Brock, Ph.D.; Andrew Burness, M.B.A., Kathryn Kelly, M.S.; Susan Morgan;

¹ Sworn in February 11, 1982.

² Term expired February 11, 1982.

³ Sworn in March 12, 1982.

Marian Osterweis, Ph.D.; Renie Schapiro, M.P.H.; Daniel Wilker, Ph.D.

Research Assistants

Michelle Leguay, Jeffrey Stryker

Consultants

Bradford H. Gray, Ph.D.; Dorothy Vawter

Support Staff

Florence Chertok, Ruth Morris, Clara Pittman, Kevin Powers, Nancy Watson

President's Commission, Commonwealth Fellows, and Student Interns

Joshua Abram (1980), Deborah Blacker (1980), Cheryl Cooper (1980), Jeffrey Katz (1981), Ruth Oratz (1981), Henry S. Richardson (1981), Jennifer Seton (1980), David Tancredi (1981), William Thompson (1981), Mindy Werner (1982)

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Volume Two: Appendices, which contains studies prepared for the Commission, material submitted for its consideration, and possible compensation plans, is available from the Superintendent of Documents.

SUMMARY AND CONCLUSIONS

The origin of this study by the President's Commission was a suggestion conveyed by Dr. David

Hamburg, the Vice Chairman of the Ethics Advisory Board in the Department of Health, Education and Welfare (HEW), when he testified at the Commission's first meeting in January 1980. Dr. Hamburg explained that the Board would be unable, prior to its demise in September 1980, to offer the Secretary the advice she had requested concerning the advisability of the recommendations for a program to compensate subjects injured in research that had been submitted to the Secretary by an HEW Task Force in 1977. Like virtually all committees and individuals who had studied the subject, the HEW Task Force had concluded that people who are harmed as a result of participating in research ought to receive some compensation for their injuries. The Secretary informed the Commission that she would be pleased to have it take up the inquiry and would provide support for necessary studies.

The more deeply the Commission looked into the subject, the more difficult it became to provide a simple reply to the questions originally posed by the Secretary. The Commission has concluded that it would be ethically desirable to remedy as a matter of course any harm suffered by subjects as a direct consequence of the added risks of participating in research. Yet even if it is ethically desirable for compensation to be provided, it does not follow that the Federal government has an ethical obligation to establish or to require a formal compensation program in all research projects supported or regulated by the government. For the latter, it is necessary to demonstrate the existence of unmet need and to weigh that need against other needs in the public arena.

The Question at Issue

In this Report the Commission seeks the answer for the following question: Are subjects who deserve compensation for research injuries not receiving it? ¹ In light of the many earlier examinations of the subject of research compensation, the Commission began with the hypothesis that the answer to this question was "yes." If the answer to the question were in the affirmative, the Commission understood its further task to be the design of a compensation plan that would respond to the needs uncovered in its study.

It is apparent that the hypothesis that the Commission set out to test actually

¹ In other contexts the term "compensation" connotes payment for services rendered. In this Report the term is used solely to indicate payments made to redress an injury after the fact; payment for the time and trouble of participating in research is termed "remuneration."

encompasses issues of both an empirical and a philosophical nature. Specifically, the original question reflects several underlying questions: (1) What does one mean by "deserve compensation"? (2) How many such subjects are injured each year in research, and how severely? and (3) Which of these subjects receive no compensation at present, and why? The Commission has found itself more able to answer some of these questions than others. The question of what ought to be encompassed within "compensation for research injuries" and the question of who deserves such compensation are fully addressed in this report. In investigating the empirical issues, however, the Commission was able to expand upon the existing knowledge but unable to find data sufficient to resolve fully the questions of the extent of present injuries and of present redress. The absence of data on injuries is not, needless to say, the same as data on the absence of injuries.

Alternative Responses to Inconclusive Data

From this outcome several conclusions might be drawn. One might conclude that what is needed is further data gathering about the existence of research injuries. Indeed, in its First Biennial Report on *Protecting Human Subjects*, submitted to the President and Congress in December 1981, the Commission recommended that investigators conducting Federally funded research routinely submit data on the number of subjects involved in such research and the number and extent of injuries suffered, on an annual basis. From such data, as well as supplementary inquiries, it ought to be possible to provide a better answer to the empirical questions addressed in this report.

There are, however, reasons to doubt that this approach will provide sufficient data. In the absence of a formal compensation mechanism there is good reason to doubt that subjects or investigators will adequately report the occurrence and extent of injuries suffered by subjects in research. Furthermore, it is only through experience with compensation programs that two of the most difficult questions that are always raised in opposition to such programs can be answered: first, what are the administrative costs of the programs, including the costs of distinguishing between injuries deserving compensation and those claims that do not deserve to be compensated (and that, it is assumed, would not be asserted in the absence of a compensation program)? Second, do

feasible means exist to differentiate harm to subjects in therapeutic research that results from research procedures from harm that flows from the medical intervention being tested? *

Clearly, an experimental trial of one or more compensation programs is more likely than simply collecting data in the absence of such programs to provide the necessary information for the formulation of appropriate public policy. Yet that approach would entail greater costs, since an experiment to gather the data would involve the expenditure of time and money in design and execution. At a time when the Federal funds available for biomedical and behavioral research are not keeping up with the rate of inflation, there are more than the usual reasons to question any suggested expenditures in new areas. It may well be, therefore, that those with responsibility for the decision in the Department of Health and Human Service (HHS) will conclude that an experiment of the sort set forth in this Report is not justified at this time. On balance, however, the Commission recommends that such an experiment be undertaken, because in the absence of such an investigation of the need for, and feasibility of, compensation programs, it believes that policymakers will be in no better position to answer the questions addressed by this Report in five years than they are today.

The Recommended Experiment

The suggestion of compensation for research injuries has been a mainstay of ethical and public-policy discussions of research with human subjects for many years. The time has come to determine the wisdom of those suggestions. The failure to resolve the issue not only exposes subjects of research to a possible wrong, it exposes the entire research enterprise to the public recriminations that could follow from one or a series of serious, uncompensated injuries to subjects. The importance of biomedical and behavioral research for this country is manifested in the many billions of dollars that such research receives each

*The term "therapeutic research" is used loosely to describe any experimental or innovative steps taken as part of an attempt to treat subjects suffering from disease (in comparison with "nontherapeutic research," which employs subjects not affected by the disease being studied). The Commission uses the term to mean research to evaluate practices or procedures that are intended to provide, or that have some reasonable possibility of providing, therapeutic, diagnostic or preventive health benefits to subjects. Such research therefore involves two parts: (1) the practice or procedure that is being evaluated and (2) any nonbeneficial research procedure that is unnecessary for a subject's own welfare and is performed solely as an aid to the research process.

year in an attempt to conquer disease and to relieve human suffering. The formal ethical standards and individual consciences of investigators, as well as Federal rules and guidelines developed in the past two decades, have done much to protect research subjects and to reduce the risk of injury to them. Some risk remains nevertheless—risk that though statistically small may manifest itself in serious ways for individuals. A social policy experiment is needed to see whether compensation programs might provide a feasible means further to reduce the risk of unremedied injury to subjects and to avoid the occurrence of events that might needlessly tarnish the reputation of research.

Accordingly, the Commission recommends that the Secretary of Health and Human Services conduct a small-scale experiment in which several institutions would receive Federal support over three to five years for the administrative and insurance costs of providing compensation on a nonfault basis to injured research subjects. At different institutions the features of the compensation plan could be varied (i.e., the level of benefits provided; means of determining causation; whether nonphysical injuries would be covered; whether certain injuries arising in therapeutic as well as nontherapeutic research would be covered; etc.). Information derived from such variations, as well as from the experience of comparable institutions without research compensation programs, should permit HHS to determine not only the need for a full-scale program, if any, but also the format and auspices that appear best suited to achieve the desired results.

The Format of the Report

The first part of this Report explores the origin and context of the issue of compensating for research injuries. The first chapter introduces such social and cultural factors as the relationship of subjects to the research enterprise and concerns about cost-spreading in a risk-conscious society. Chapter Two places the present study into the setting of research regulation since World War II. During this period, proposals for injured subjects' compensation were made in many contexts but seldom were accompanied by more than a rough sketch of the details of a plan of implementation.

Part Two delves into the several parts of the basic question: Are injured subjects who might deserve compensation not receiving it? Chapter Three examines the ethical theories—sometimes competing and sometimes

complementary—that shed light on the question of subjects' deserts. In the case of injuries to voluntary, informed subjects, a strong moral claim for recompense does not emerge. Whether such ideal subjects actually exist is a serious ethical issue, and one that cannot be ignored in policy formulation. It would, moreover, appear to be morally preferable, on grounds both of fairness and of gratitude, not to insist that subjects waive all claims for redress as part of consenting to research, particularly nontherapeutic research.

Chapter Four analyzes the existing data on the incidence and severity of research injuries. While data from existing programs suggest that nonfault insurance is an efficient and inexpensive means of providing recompense for research injuries, there also appear to have been few injuries at the handful of institutions that already have formal compensation programs. Why are other injured subjects not guaranteed recompense? In Chapter Five, existing legal rights and remedies are examined. The limitations of negligence and strict liability as bases for recovery at law arise from the restricted nature of the legal duties owed to subjects, the waiver of rights implied by consent, and the difficulty of proving causation. Under nonfault systems, some although not all of these barriers to recovery are removed.

Through this examination, the Commission arrives at a partially affirmative answer to the question of whether or not there is an unmet obligation to injured research subjects. Available information does not, however, provide the definitive basis for a recommendation to undertake a compensation program, through Federal sponsorship or under the mandate of Federal regulations. Instead, in Part Three of this Report, the Commission sets forth the issues that could be resolved through a "social policy experiment." Since the request for this study came from what is now the Department of Health and Human Services (HHS), which is the major Federal sponsor of biomedical and behavioral research with human beings, and since the Commission has previously recommended that the Department become the lead agency in overseeing regulations on the protection of research subjects, the Commission believes that the experimental compensation programs should be conducted under the aegis of HHS.

PART I: HOW DID THIS ISSUE ARISE?

Chapter 1: Introduction to the Social and Cultural Setting

The power of medicine to cure and to prevent illnesses has increased enormously during the present century. All those having access to medical care have been the beneficiaries. Advancements in preventive measures and therapeutic techniques have reduced the threat of early death and crippling disability. The result has been a significant improvement in the quality as well as the quantity of life.

An outstanding feature of contemporary medicine is its commitment to research and to the scientific application of research findings. Exploration and experimentation distinguish the new, more effective therapeutics from the old more than any other factor. Indeed, one of the modern science's most visible and humanly significant contributions is the progress of medicine in the past half century. The social benefits of medical research have been enormous, and its value is reaffirmed with each successful act of treatment or prevention.

The ratio of benefits to costs in medical experimentation has been remarkably favorable. This has been true not only of the dollar costs of laboratories and the like but also of the human costs sustained as research-related injuries. At the same time, however, these human costs must not be disregarded. New techniques, unless they are adopted blindly, must be tested, and testing in turn requires not only laboratory and animal studies but also the use with human subjects of uncertain methods whose range of effects cannot be predicted precisely in advance. Risk is thus inherent in medical research, no matter how conscientious the investigator and careful the research. Quite obviously not all experimental drugs and techniques prove to be more successful than other existing treatments; and many experiments are performed on healthy volunteers who need no treatment in the first place. Even when a new treatment proves to be a relative success, the initial experiments may reveal that certain patients cannot benefit or may be especially susceptible to toxic side effects.

These untoward results of medical experimentation occur far less frequently than do the benefits, but to those who are affected they can be real and serious. Research-related injuries are harms¹ that occur as a nearly

unavoidable result of an enterprise undertaken for social benefit. Those who receive the benefits—and this includes nearly all members of society—recognize a responsibility for collective support if the research enterprise is to be successful, as is attested by the magnitude of funding for biomedical research from governmental bodies and charitable contributions. Naturally, that responsibility would seem to extend to the human costs of the research enterprise. The chapters which follow address the question: What is a fair system of fulfilling that responsibility? The issue is approached through consideration of the need for a program, the ethical arguments for and against, and the formulation of possible proposals and recommendation of a social policy experiment to test out alternative policies.

The balance of this chapter attempts to sketch the social and cultural setting of the problem of research-related injuries. The cultural ethos colors one's appreciation of the facts specifically relevant to the issue. Furthermore, the problem of research injuries is not *sui generis*. It is but one instance of a much larger set of issues with which American society is presently grappling, that of the risks imposed by technological progress. For example, large-scale enterprises such as energy production and mass immunization, while conducted largely for the social good, put certain individuals at special risk. The plight of those, relatively few in number, who actually sustain injury is made vivid by the communications media and presents the nation with questions of conscience: Who is responsible for the welfare of these people? What are they owed, and by whom? Why were they put at risk, and should steps be taken to ensure that there will be no more victims? Our policy on research injuries will inevitably reflect the development of any public consensus on these wider problems of risk. In turn, the policy on research injuries could conceivably influence the course of the larger debate and raises questions of "horizontal equity" in redressing injuries of one type but not of others.

To explore the wider context in which the problem of compensation of injured research subjects arises, this chapter

wrongfulness or the occurrence of something for which a plaintiff can seek redress. Ordinary discourse does not make so clear a distinction, however. In this Report, the terms are used synonymously to mean damage regardless of wrongfulness, fault, or responsibility. Since, in common parlance, the concern of the Report is with injured research subjects, *injury* will be the term used in most instances.

¹The terms *injury* and *harm* have distinct meaning in the law; the former connotes

first considers the place of the research enterprise in society, that of the volunteer subject, and differing conceptions of the relationship between them. The varied, often inchoate, images of research and its subjects greatly complicate the task at hand. In the next section, the Commission examines another factor that complicates thinking about compensation—social attitudes toward risk and toward spreading the risks beyond those whom they touch directly. The chapter concludes by considering a number of basic social issues that underlie the debate over research injury.

Roles and Relationships in Human Experimentation

The Role of Biomedical and Behavioral Research. Since World War II, the magnitude of biomedical and behavioral research in the United States has increased tremendously, as has the Federal government's participation. By 1980, health research had become an \$8-billion-a-year enterprise, with over half the funding coming from the Federal government,² through the National Institutes of Health and over twenty other agencies; furthermore, a large proportion of the privately sponsored research on drugs, medical devices, other consumer products, and pesticides is conducted pursuant to extensive Federal regulation, although not supported by public funds.

The centrality of research in medicine, particularly in American society in recent decades, makes it easy to forget that the role of the professional clinical investigator and the institutionalization of clinical research are historically recent, 20th century developments. Nevertheless, over the past fifty years and particularly since World War II, certain changes are discernible in the settings and modes of organization of biomedical and behavioral research. A progressive shift has occurred from the type of small, collegial, personally directed units such as those depicted in the 1950s by Means and Fox³ to massive, sprawling institutions which often dominate the academic environments they inhabit or which are conducted under industrial and governmental control.

Americans generally share the benefits of enhanced understanding of human physiology and advances in therapy. Similarly, although

contributions to the public purse are not strictly proportionate, it is the citizenry as a whole that sponsors publicly supported research. Research, then, is an enterprise that is collectively sponsored and responsive to the collective good.

The widespread enthusiasm shown in recent decades for medical research can be at least partly explained by one single fact: all of us are threatened by disease and disability. The risks of nature affect everyone, rich or poor, black or white, male or female (though some risks are higher for less-advantaged groups). Research offers the promise of reducing some of these risks. Research can also help to reduce some of the risks imposed by health care itself, for a significant amount of clinical research is designed to test the safety and efficacy of currently accepted medical practices. For example, two clinical trials which spawned widely publicized litigation by injured subjects—the University of Chicago study of the use of diethylstilbestrol (DES) during pregnancy to prevent miscarriage, and the multi-center clinical trial with premature infants examining the relationship of oxygen therapy to the incidence of blindness resulting from retrolental fibroplasia—provided the scientific basis for rejecting or modifying those therapies. Were such research never conducted, these therapies might still be employed in general medical practice.⁴ Thus, acceptance of controlled risks in clinical research can, and regularly does, result in knowledge which reduces the "risks of everyday life," including those risks associated with standard medical care, for all members of the society.⁵

Increased freedom from risks is, then, one promise of research. But there is no easy path toward this goal. Scientists must test out hypotheses, and they must sometimes use human beings—meaning their own bodies or others'—as a laboratory to understand normal physiology as well as abnormal conditions, and to fill in important gaps

⁴Some of the most important evidence about the effects of DES come from a controlled experiment at the University of Chicago in the early 1950s. Three of the women involved in this experiment are now suing the university for having put them at the risk. The university and others will be more careful in the future, thus increasing the risk that new cancer sources will go undetected. Meanwhile the fear of lawsuits in making doctors and hospitals reluctant to help track down DES daughters, thus increasing the risks that some of them will get cancer that isn't caught in time.—Michael Kinsley, *Fate and Lawsuits*, 182 *The New Republic* 20, 25 [June 14, 1980].

⁵In noting these facts, the Commission expresses no judgments on the ethical or legal questions, including those of informed consent, raised in ongoing or recently concluded litigation.

in knowledge about the efficacy and safety of new medical interventions. Thus, in its pursuit of preventive, diagnostic, and therapeutic interventions which are intended to reduce the risks caused both by nature and by human activities, research imposed other risks. These risks of research are borne by only a tiny fraction of the number of persons who face the risks of disease and disability that research is designed to combat. More importantly, the manifestation of these research risks as actual injuries is not spread evenly over the entire population; they occur for an unfortunate few among those we serve as subjects.

The Role of the Research Subject. One's thinking on the question of the compensation for research injuries is directly affected by the way in which one conceives of the subject's role. Two experts on these matters contend that "[p]art of the difficulties that have surrounded legal and policy efforts to deal with the issue of compensating persons for research-related injuries . . . reside in our lack of understanding about the development, social roles and attributes of clinical research and its participants."⁶

Research subjects may be popularly clothed with certain images—for example, those of *hero*, of *victim*, and of *employee* or *contractor*—and each of these images colors our conclusions about the character, moral status, and claims of the research subject. The appropriateness of providing compensation for research-related injury varies with the definition of the subject's role. For the *hero*, the wellsprings of public gratitude are overflowing; witness the donation of funds to provide \$800,000 of accident insurance for the astronauts on the space shuttle. The claim of the *victim* is different, but also powerful; disclosure of the Tuskegee abuses resulted, finally, in the provision of compensation by the Federal government.⁷ And for an *employee* or

⁶Judith P. Swazey and Leonard H. Glantz, *A Social Perspective on Compensation for Injured Research Subjects* (1981); see Appendix A to this Report. Major portions of this chapter are based upon this paper, which develops themes which emerged at a meeting of consultants with several members of the Commission's staff on November 25, 1981. In addition to Dr. Swazey of Medicine in the Public Interest and Professor Glantz of Boston University the participants included Commissioner Renée C. Fox, and Professors Roy Lubove of the University of Pittsburgh, Barbara Rosenkrantz of Harvard University, and Stephen Toulmin of the University of Chicago.

⁷James H. Jones, *Bad Blood*, Free Press, New York (1981) at 217-19.

²National Institutes of Health, *Basic Data Relating to the National Institutes of Health—1980*, U.S. Government Printing Office, Washington (1980), Figures 1 and 2, Tables 1-3.

³J. H. Means, *Ward 4*, Harvard University Press, Cambridge, Mass. (1958); Renée C. Fox, *Experiment Perilous*, The Free Press, Glencoe, Ill. (1959).

contractor, compensation may be a matter regarded as a proper subject of negotiation.

The category into which research subjects are placed also has a bearing on the importance and significance attached to the research subject's informed consent. The consent of a hero is not an issue; heroism results from spontaneous action or deliberate "volunteering." The notion of victim, however, has quite different resonances; the victim is often passive, and formal consent—if any has even been obtained—may be viewed as uninformed or the result of duress. Consent is most compatible with the image of research subject as employee or contractor. Although questions may arise about the relative freedom and negotiating power of an employee compared with those of the person or firm offering employment, voluntary agreement of all parties is the essence of the relationship.

Finally, the different images of the research subject connote quite different views of intent and of moral status. To the hero is ascribed the intention to help; his or her intent is seen as beyond the ordinary call of duty and thus the appropriate object of praise and respect. The victim, on the other hand, does not merit moral esteem but rather is seen as an object of others' sympathy (and, perhaps, of guilt). The case of the employee or contractor tends toward moral neutrality, with attention being directed more toward the fairness of the bargaining process than to any particular outcome.

Society views of research subjects appear to be ambivalent and shifting. It is notable that in the period through the 1940s, the most common image in the press and in literature was that of the research subject as hero or as selfless societal benefactor. Patients who also served as subjects, the physician-investigators who carried on medicine's long tradition of self-experimentation, and the normal (healthy) persons who volunteered to contract malaria, inhale new nerve gases, be injected with curare, and so forth, were recognized, valued and often celebrated for giving of themselves to advance medical knowledge and technique. The Walter Reed Society, composed of some 500 persons who had volunteered for high-risk experiments, embodied a view of research subjects as identifiable, often heroic societal benefactors.⁸

Beginning with the revelations at Nuremberg of barbaric medical "experiments" by the Nazis and increasingly over the following decades, a second image—that of the victim—came to influence the way research subjects were perceived. Public revelations about the research projects associated with the names Tuskegee,⁹ Willowbrook,¹⁰ and the Brooklyn Jewish Chronic Disease Hospital,¹¹ focused renewed public attention on the possible abuses of the rights and welfare of subjects in the name of research. The importance of research, and the necessity and value of the research subject, continued to be affirmed. The horror stories were generally felt to be the unusual instances rather than the tip of an iceberg of "malresearch." Nonetheless, new protection for research subjects were put in place, designed to ensure that subjects participated voluntarily and that no unnecessary risks were imposed—in short, to prevent future research subjects from becoming "victims."¹²

The growth of the clinical research enterprise during the 1960s and 1970s helped to shape another image of the research subject, one that seems to have increasing prominence today. As research increased in volume, especially with the growth of large controlled clinical trials, the role of the research subject became more routinized and less visible. For many in the society, research subjects became less readily identifiable, either as heroes or victims. A few research institutions now hire people as subjects quite in the manner of an ordinary job,¹³ complete with negotiations over salary and benefits, and coverage under an insurance plan similar to workers' compensation. Moreover, a "consent form" is often viewed as a contract between a subject and an investigator.

The question of how subjects ought to be viewed may have no satisfactory answer, simply because none of the images sketched here fit all subjects or fit any subjects uniquely. Indeed, the difficulty of choosing between these and other images probably accounts for some of the difficulty encountered by this Commission and by other groups in deciding whether the prospective

subject's informed consent should be taken as relieving researchers and their sponsors of responsibility for the injuries which may result. The arguments and programs set forth in this Report try to take into account the several images of research subjects and the probability that there may be some truth in each.

The Relationship of Subjects to the Research Enterprise. The relationship of the various parties to the research enterprise may also be viewed in different ways. For example, the relationship of investigator to subject may be assimilated, perhaps unconsciously, into the physician-patient relationship. Indeed, many investigators are physicians, and many subjects are patients—although many also are not. Physicians, in any case, are thought to have important obligations to their patients including, significantly, "*primum non nocere*." Seen in this light, a physician could have violated the patient-subject's rights if injury occurred without the expectation of a sufficient therapeutic benefit; compensation could conceivably then be in order simply as a form of reparation.

These obligations and rights do not obtain, however, if the investigator is instead conceived of as one party who wishes to contract for the services of another (or the use of that person's body). But if the relationship is to be understood in the latter way, it becomes essential to take into account differences in power between subjects and research institutions. Research subjects may be sick or poor and are not organized into unions or lobby groups. Subjects tend to be engaged in their "work" for relatively short periods of time. They are simply not situated to form a cohesive constituency to demand protection on a collective basis, the way other groups of workers have during the past century. Research facilities are usually large, imposing, and staffed by professionals of high social status. Indeed, research subjects at the National Institutes of Health or military hospitals face the power and authority of the government itself. Because of the inherent inequality of such relationships, the various parties to the research enterprise are not necessarily free and equal agents involved in a situation equivalent to ordinary negotiations for mutual benefit.

The Relationship of Subjects to the Beneficiaries of Research. The relation of research subject to investigator and to research institution is not, however, the only one requiring attention. Also of importance is the relationship between subjects and the beneficiaries of

⁸Tuskegee Syphilis Study Ad Hoc Advisory Panel, Final Report, U.S. Department of Health, Education, and Welfare, Washington (1973).

¹⁰Jay Katz, with assistance of A.M. Capron and E.S. Glass, *Experimentation with Human Beings*, Russell Sage Foundation, New York (1972) at 1007-1010.

¹¹*Id.* at 9-85; Hyman v. Jewish Chronic Disease Hospital 15 N.Y. 2d 317, 208 N.E. 2d 338 (1965).

¹²John A. Robertson, *The Law of Institutional Review Boards*, 26 U.C.L.A. Rev. 484 (1978).

¹³See, e.g., pp. 53-58 *infra*.

⁸B. Davidson, *So He Took the Cobra Venom and Shot It Into His Arm*, *Collier's*, 52-55 (Nov. 1, 1952).

research. Once again, the significance of this relationship may be understood in several very different ways. It has been suggested, for example, that the use of human subjects in research be viewed as an instance of "gift exchange," characterized by three norms: to give, to receive and to repay.¹⁴ On this view, the subject gives by participating in research and, especially, by accepting the risk of injury; and a social disequilibrium results if injury occurs unless that gift is repaid in the form of compensation by the government, acting as agent of the beneficiaries in society. A contrasting view, however, would regard compensation as a means of limiting the size of the gift bestowed by the research subject; but this might violate an obligation of society to receive the gifts that the volunteer subject wishes to bestow. That an obligation to provide at least emergency medical care for injured subjects if felt is evident from the fact that such care is generally provided.¹⁵ A feeling of gratitude toward those who have bestowed gifts may be part of the explanation for this ad hoc compensation.

Risk (and Risk-Spreading) as a Social Problem

The manifestation of risk in the form of injury, disability and death is a part not only of research but also of life itself. At times we seem to face risk head on and even welcome the challenge it represents; at other times it threatens to overwhelm us with its seemingly uncontrollable manifestations. The means used to prevent and to spread risk have developed piece by piece and are not wholly consistent; they are evolving today under increasingly close scrutiny.

At one time in history, injuries could be clearly divided into two groups, those caused by a human agency and those attributed to "fate." For the former, redress could be sought through the law (criminal as well as tort law), provided that the person responsible could be identified, as was usually the case. For the latter, the expected response was uncomplaining acceptance of this personal working out of the grand scheme of things—or, perhaps, a search for the personal fault that might explain an "act of God." The world then may not have been a better place to live, but it was surely simpler.

Neither the old paradigms of injury nor the responses they engendered seem to work well today. In particular, tort

litigation is in many ways ill suited to assigning responsibility for a large portion of modern injuries. The individual nature of tort cases—often employing a jury—works well when a determination of personal wrongdoing is needed, both to assess the amount the defendant must pay to make the plaintiff whole and also to declare the community's standard of conduct as a warning to individuals in the future. But many injuries arise today which do not seem to have been caused directly by a single individual numerous separate actions, some by institutions rather than individuals, often widely separated in time and space from the injury, must coincide for an injury to occur. The instrumentalities of harm are like the boy in the rhyme who "shot an arrow in the air, it fell to earth [he] knew not where." The chain of causation and responsibility may become so tangled as to preclude anything other than an arbitrary assignment of liability on the parties seen as best able to bear the costs. Although the growth of nonfault liability in several areas (most notably, for injuries caused by consumer products) has removed the additional burden of trying the issue of negligence, the complex problems of causation still remain.

The collapse of the second part of the ancient paradigm of risk—the uncomplaining acceptance of a divinely ordained fate—is well illustrated in the recent litigation over risks of cancer allegedly imposed by use of DES. It is well nigh impossible for an individual plaintiff in a DES case to prove that her vaginal cancer resulted biologically from her mother's having been given DES while the plaintiff was *in utero*. Instead, causation is established as a statistical matter, by showing that it is more probable than not that the injury came from the administration of DES.

To women with other forms of cancer, the compensation of the DES daughters, rather than seeming a great triumph, may appear instead a failure of science and society to establish the cause of their own grievous harm and to provide compensation. It does not matter that for many (perhaps even for most), there is no single "cause," in the legal sense of the word as employed in the DES litigation, but rather a coincidence of factors from genes to workplace environment, from health care to personal habits. What matters is that redress is available to some, while others are told that it is just fate. Yet, as a commentator recently pointed out, it is nonsensical to rule that cancer is a

matter of fate only insofar as its cause is unknown.¹⁶

Any attempt to spread some risks has the danger of seeming unfair for failing to spread all risks. Risks in the biomedical sphere have posed special problems of late for the existing means of cost-allocation. Although partiality is, thus, always a danger, there may be reasons for special attention to providing compensation for research injuries. While one must take care not to oversentimentalize the investigator-subject relationship, one need not reject legitimate opportunities to support its positive, moral attributes. From the perspective, a compensation program based on human need rather than fault, and enlisting subjects rather than as adversaries in a courtroom battle, takes on an additional social meaning, a meaning specially suited to the nature of the investigator-subject relationship and their joint venture into the unknown. In this respect, a program for nonfault compensation diverges sharply from the existing medical malpractice framework, with its insidious effects on the doctor-patient relationship.

The Commission notes that policymakers in the United States are not alone in considering this problem. In Sweden, insurance coverage has been available since 1975 to provide compensation to subjects injured as a result of participation in biomedical research.¹⁷ Similarly, accident insurance has been available at the University of Leiden (The Netherlands) since 1976 for medical research projects determined by the Committee on Medical Ethics to warrant such coverage.¹⁸ In March 1978, a Royal Commission (the "Pearson Commission") reported to the British Parliament its recommendation that "any volunteer for medical research or clinical trials who suffers severe damage as a result should have a cause of action, on the basis of strict liability, against the authority to whom he has consented to make himself available."¹⁹ Finally, in 1980, a World Health Organization working group to develop international guidelines for human experimentation concluded that "natural justice demands that every subject

¹⁶ Michael Kinsley, *Fate and Lawsuits*, 182 *The New Republic* 20 (June 14, 1980).

¹⁷ Harry Boström, *On the Compensation for Injured Research Subjects in Sweden* (1980); see Appendix K to this Report.

¹⁸ E. L. Noach, *Materials Concerning Compensation of Subjects Injured in Research at the University of Leiden, The Netherlands* (1980); see Appendix L to this Report.

¹⁹ Royal Commission on Civil Liability and Compensation for Personal Injury, Report, Her Majesty's Stationery Office, London (1978), Vol. 1 at 286.

¹⁴ M. Mauss, *The Gift: Forms and Functions of Exchanges in Archaic Societies*, I. Cunnison (trans.), The Free Press, Glencoe, Ill. (1954).

¹⁵ See Chapter 3 *infra*.

participating in medical research should have automatic entitlement to reasonable and expeditious compensation for any injury sustained as a result of participation."²⁰ Proposed guidelines reflecting that conclusion are under consideration by the World Health Organization and the Council for International Organizations of Medical Sciences.

Research Injuries and the Larger Social Context

Concerns about compensating injured research subjects reflect an ambivalence in individual and social views regarding research and risk. On the one hand, there is a general understanding and acceptance in this society that research is a social good which provides us with beneficial knowledge and techniques. On the other hand, investigations by Executive and Congressional bodies and the advent of public regulations for protection of human subjects manifest the increasingly widespread concern about the motives of researchers, the consequences of research, and the use of human beings as experimental objects.

Compensation of injured research subjects is but one of several interrelated social responses to these tensions. In recent decades, much emphasis has been placed on the informed consent of research subjects and on the regulation, and limitation, of risks incurred in research. Compensation provides a third element, complementing these first two when injuries occur in even well-designed, carefully conducted research on informed and consenting subjects. (These themes are explored more fully in the next chapter.)

But just as compensation is only one facet of the social, ethical, and legal concerns about the conduct of research with human subjects, so the concern with the protection of human subjects, in turn, has been generated and responded to in relationship to broader societal concerns. Human experimentation has both reflected these broader concerns and helped to foster them. This linkage is particularly evident with respect to three closely related aspects of contemporary American society. First, one finds today an enhanced concern with victims—real, imagined, or potential—of all kinds.²¹

Second, there is a new awareness of the inequality of some groups' bargaining power.²² Third, populist doubt and suspicion about "big" and "powerful" institutions such as government, medicine, and science has been renewed and extended to the authority and power vested in "experts" of all kinds.²³

These social trends, coupled with a new assertiveness by members of groups who have suffered from unequal and unfair treatment in the past and who now insist that their rights be recognized, have forced Americans to reexamine, and to act upon, their standards of personal, institutional, and governmental responsibilities. The social movements of recent years have clearly had an impact on thinking about the rights of research subjects; they cause one to rethink the treatment of, and responsibilities toward, members of this class of persons.

Correlatively, abuses suffered by a few research subjects have themselves contributed to this wider social questioning. The confluence of concerns with victims, unequal bargaining power, and powerful institutions is strikingly illustrated by apprehensions about the ways researchers and research agencies, including the Federal government, can mislead, exploit, or injure subjects in the name of patient welfare, scientific progress, or public good. To the earlier reports of projects at Willowbrook and Tuskegee have recently been added revelations of the experiments with psychotropic drugs sponsored by the CIA and the Defense Department's biological warfare testing accidents at the Dugway Proving Ground.²⁴ All have been lightning rods for attracting attention to problems in governing research and in testing human subjects with fairness and due concern.

The research injuries with which this Report is concerned are not primarily those that result from unethical practices on the part of investigators. Most of the examples receiving current

attention are actually old experiments, recently come to light or the subject of contemporary reexamination.²⁵ The focus of this Report is on harms resulting from risks of relatively low frequency and severity, visited on subjects of well-planned, carefully conducted, ethical research. It must be recognized, however, that social attitudes toward the compensation of those harmed in ethical research will be colored by public perception of the plight of those injured through abuse. Risk and injury are common to both kinds of research, and these will likely be the chief subject of moral concern. The centrality of risk in the conduct of research is testified to by the development of a new lexicon—necessary risk, acceptable risk, risk acceptance, danger-of-danger, risk-of-risk, uncertainty-of-uncertainty—and in the emergence of a new occupational category of institutional "risk managers."

The Commission's study of compensation for research injuries represents an attempt to explore how much inequality and risk are required by the research enterprise, and to examine the justice of the existing distribution of risks (to subjects) and benefits (to the wider society). In the course of this inquiry, three sets of issues have been identified; they set the framework for this Report.

The Basis for Public Policy. Existing data reviewed in Chapter Four suggest that the number of research injuries, and particularly of uncared-for injuries, is not large. Further, the creation of a compensation system would entail both economic costs and administrative burdens. Thus, the creation of a compensation program is potentially susceptible to attack on narrow cost-benefit grounds, particularly when viewed against other social programs and priorities. The ultimate persuasiveness of this attack cannot, however, be determined on the basis of existing data.

On the other hand, commentators often criticize the inability of our governmental system to respond to problems in advance of a crisis or a catastrophe. Scientific research entails

Compensation (S. 1483) Before the Senate Committee on Labor and Human Resources, 97th Cong., 1st Sess. (Oct. 27, 1981); Joe Hudson and Burt Galaway (eds), Considering the Victim, Charles C. Thomas, Springfield, Mass. (1975).

²² See Swazey & Glantz, *supra* note 6 at 10; 15 U.S.C. § 57a(h), 1975 Magnuson-Moss FTC Improvement Act (expense reimbursement to permit public participation in rulemaking).

²³ Loren R. Graham, *Concerns about Science and Attempts to Regulate Inquiry* 107 *Daedalus* 1 (1978).

²⁴ *Biomedical and Behavioral Research: Human-Use Experimentation Programs of the Department of Defense and Central Intelligence Agency: Hearings on S. 2515 Before the Subcommittee on Health of the Senate Committee on Labor and Public Welfare and the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee, 94th Congress, 1st Session (1975).*

²⁰ John F. Dunne, *Proposed International Ethical Guidelines for Human Experimentation*, XIVth CIOMS Round Table Conference, Session 1 (Medical Ethics and Medical Education), Mexico City (1980).

²¹ See, e.g., Marshall S. Shapo, *A Nation of Guniea Pigs: The Unknown Risks of Chemical Technology*, Free Press, New York (1979); *Proposed Amendments to Title 28 of the U.S. Code: Hearings on Radiation*

²⁵ See, e.g., Jones, *supra* note 7; Robert Gomer, John W. Powell and Bert V.A. Roling, *Japan's Biological Weapons: 1930-1945*, 37 *Bull. of the Atomic Scientists* 43 (1981). This article is based in part on documents released under the Freedom of Information Act which reveal that in World War II the Japanese had used prisoners of war as subjects of research at biological warfare experimental stations. The records of these experiments had been turned over to representatives of the United States in exchange for immunity from war crimes prosecution.

risks, and the laws of probability decree that such risks will, someday, result in harms. Here the government has the opportunity to anticipate, rather than react to, headlines-in-the-making—headlines which may breed lasting public mistrust of science. Further, how the government responds to the problem of victims of research injuries will both reflect and help to determine the kind of society we wish to be, and to become. Thus, the question looms: Is policy to be determined solely by cost-benefit calculations, or is there room in the policymaking process for an additional dimension of social values and responsibility?

Social Responsibility and Individual Consent. As manifested in judicial opinions, ethical codes and Federal regulations, this country has determined both that informed consent is a prerequisite to participation in biomedical and behavioral research and that research posing unjustifiable or otherwise unacceptable risks may not go forward. But what of risks which cannot, or ought not, be avoided? If competent individuals knowingly consent to run the risk of participation in research without the expectation of compensation in the event of injury, ought not that altruistic gift be respected? Or is such a gift more than society should request or even accept? Does there come a time when to rely on "informed consent" is to exploit the goodness—or the weakness—of those who deserve society's respect and gratitude instead?

Administrative Practicability and the Plight of the Helpless. A compensation program which excludes therapeutic research (or more generally, sick patients) is markedly simpler and less costly to administer than a more comprehensive program. Yet it is precisely in cases of therapeutic research involving sick patients that the subjects may be most in need and that the quality of consent given is most likely to diverge from the ideal. Three options present themselves:

- To exclude such classes of research or research subjects from coverage entirely;
- To Experiment with novel methods of determining causation, extent of injury, and other factors in a fashion designed to reconcile need, "deservingness," and administrative feasibility; or
- To abandon the requirement linking the injury to the research and instead provide medical care and financial assistance solely on the basis of human need.

Is our society prepared to accept the notion of social responsibility embodied in this last option—a notion consistent

with broadened social responsibility not merely for research injuries, but for all the vicissitudes of modern life? If not, where should the line be drawn?

Fortunately, the Commission was not charged with resolving these large questions in the abstract, and it has not sought to do so. Rather, the Commission has grappled with these themes as they apply to the concrete and immediate issue of compensation for research injuries. In recognizing that some questions are, finally, unanswerable, the Commission also recognizes that in a dynamic society, the quest for perfect and eternal answers may invite paralysis.

Chapter 2: Historical Perspective

In the history of biomedical ethics, discussion of compensation for research-related injuries has taken place against a background of shifting emphasis on two other mechanisms for the protection of human subjects: informed consent and limitation of risks. In the period immediately following the Nuremberg trials, concern focused primarily on the need for voluntary, informed consent through which potential subjects could either agree or decline to accept the risks inherent in a particular research activity. It was thought that a research institution could discharge its obligations to research subjects primarily by assuring that they were fully and fairly informed of the risks involved. Later it became apparent that informed consent was not always sufficient protection; subjects had been recruited for projects that seemed (at least to outsiders) to have entailed unreasonable risks. Therefore, procedures were adopted by the Federal government requiring prior review of research protocols to control or limit the amount of risk to which subjects might be exposed.

This chapter describes the development of arguments for compensation against a backdrop of the formal implementation of other protective mechanisms for informed consent and risk limitation. The complexity of the relationships among these three themes (informed consent, limitation of risk, and compensation) and the shifts of emphasis over time best lend themselves to analysis through a division of the recent past into two periods: 1945–1966, and 1966 to the present.

Reliance on Codes and Consent (1945–1966)

Outside Encouragement for Self-Regulation. In the wake of the Nuremberg trials of Nazi war criminals after World War II, concern about voluntary informed consent was the

central focus of biomedical research ethics. Because of the horror that greeted revelations about the abusive and unethical experiments that had been performed on unconsenting prisoners by the Nazi physicians on trial, the first principal of the Nuremberg Code states that "[t]he voluntary consent of the human subject is absolutely essential."¹

Subsequent codes adopted by individual countries and medical associations were derivative of the Nuremberg judgment. They too placed primary emphasis on assuring that the consent of research subjects is truly voluntary and based upon a full understanding of the risks involved.² Disclosure of the risk was deemed of primary importance; limitation (if any) on the amount of risk that might be voluntarily assumed by subjects was secondary and generally took the form of exhortations to researchers to satisfy themselves that the risks of the research are justified by the anticipated benefits (to the subject or to general knowledge) and not to inflict death or disabling injury. These limitations derive from principles five and six of the Nuremberg judgment prohibiting experiments "where there is an *a priori* reason to believe that death or disabling injury will occur" and caution that risk should never exceed "the humanitarian importance of the problem to be solved by the experiment."

Hence, in the mid-1950s when the first suggestions for provision of compensation for injured research subjects appeared in print, there were no regulations or review procedures to limit the risk that might be presented in research. In fact, Irving Ladimer reported in 1955 that there had been two recent deaths associated with biomedical research: a laboratory technician, following an overdose of an experimental drug, and a prisoner, following an injection of hepatitis virus.³ Commenting on the general problem of research-related injuries, Ladimer noted that "commercial insurance coverage

¹ United States v. Brandt, 2 Trials of War Criminals Before the Nuremberg Military Tribunals [The Medical Case] 181 (Military Tribunal I, 1947).

² See, e.g., *Principles for Those in Research and Experimentation* adopted by the General Assembly of the World Medical Association in 1954; *Report on Human Experimentation*, Public Health Council of the Netherlands (1955); *Ethical and Religious Directives for Catholic Hospitals*, adopted by the Catholic Hospital Association of the United States and Canada (1955); *Responsibility in Investigations on Human Subjects*, Medical Research Council, Great Britain (1963). All are reprinted in Henry K. Beecher, *Research and the Individual*. Little Brown and Co., (1970) Appendix A.

³ Irving Ladimer, *Law and Medicine: A Symposium*, 3 J. Pub. L. 467, 473 (1955).

and provision of medical care for consequences directly related to the [research] project are methods observed by responsible organizations." ⁴ No references or examples were cited, however.

In an unpublished doctoral thesis, Ladimer subsequently examined the liability to which research investigators were exposed and concluded that "a doctrine of liability without fault may be imposed on the theory of a social cost of medical research, resembling the concepts supporting programs such as workmen's compensation." ⁵ He further observed that in fashioning a remedy for injured subjects, "public attitude as well as precedent law will be decisive." ⁶

The idea of providing compensation for injured research subjects was proposed more formally in a 1960 article in the *Duke Law Journal*, in which Donald P. Dietrich discussed the possible application of a nonfault compensation scheme to subjects of psychological research. ⁷ Although he acknowledged that measuring the harm and establishing the amount of damages would be more difficult in the case of psychological injuries, Dietrich claimed (citing a half dozen articles on tort liability for psychic injuries) that the difficulties of proof would not be insurmountable. ⁸

A problem that would come to have more significance in philosophic debates on the subject a decade later also emerged in Dietrich's article: the effect that a subject's knowing acceptance of the risk should have on the experimenter's responsibility to compensate for any injuries. Dietrich pointed out that although a subject may have known and consented to what the experimenter intended to do, still, he may not have fully realized the risks

involved. "Mere knowledge of the facts which create the risk of harm is not enough unless there is a true appreciation of the nature and extent of the risk. . . ." ⁹ Dietrich's skepticism regarding potential subjects' ability to appreciate risks foreshadowed adoption of other protective devices based, in part, on studies that provided empirical verification of his concern. ¹⁰

After analyzing the possible theories and probable outcome of a suit for damages that might be brought by someone injured as a result of participating in psychological research, Dietrich then described the broad outlines of a nonfault compensation scheme. Because his discussion so closely resembles subsequent discussions appearing over the next twenty years, it is worth repeating in its entirety: ¹¹

Within an analytical framework such as this, then, the first human experimentation case may be decided, and a hitherto unaccounted-for element of the true cost of such experimentation distributed. Such an extension of the law, however, will not resolve the dilemma of society's needing research while at the same time requiring due legal protection for both experimenter and subject.

The resolution of this dilemma can be premised upon the recognition that society is more than the ultimate beneficiary of research; through governmental action, society is the initiator of most research. This condition alone, it would seem, should justify the following:

(1) A policy of liability without fault should be evolved for harm resulting from psychological experimentation.

(2) Where the government undertakes or participates in the research program, it should also assume the burden of making injured subjects whole, through treatment and rehabilitation and by the payment of monetary compensation.

(3) The government should consider such an underwriting program as would be required to assume costs to subjects taking part in private research programs conducted under modern, controlled conditions.

Among the effects of such developments on the whole environment of psychological experimentation would

be compensation of the injured subject without regard to the doubtful questions of liability and proof of injury, thereby encouraging the participation of a sufficient number of subjects of varying levels of personality integration.

Further, there would also be legal protection for the experimenter who is part of an approved modern, controlled research program, thus encouraging research conducted on high planes. On the other hand, experimenters not of this class—those who are not associated with approved modern, controlled research programs—would be strictly liable for any harm which results from their inducing others to serve as subjects of their "research." Admittedly, the effect may be to discourage to some extent research which is not specifically socially sanctioned.

Finally, national research effort in this area would become more ordered in the sense and to the extent that the essentiality of each research program, as balanced against the program's total cost, would be the basis for go-ahead decisions by agencies having in view the entire research picture.

It is not surprising that Dietrich, writing at a time when there were few other formal controls in research, saw a compensation program not merely as a means of redressing injuries but also of social control and resource allocation.

Meanwhile, requirements for informed consent were added to Federal law as part of the 1962 Kefauver-Harris amendments to the Federal Food, Drug and Cosmetic Act. ¹² The legislation—passed following the birth of a number of severely deformed children to women who had taken the sedative thalidomide during pregnancy—was intended to increase Federal control of drug testing in general and to require that prescription drugs be proven effective, as well as safe, prior to marketing. ¹³ As part of the conditions imposed for testing new drugs, Congress required that sponsors of such investigations assure that they would (a) inform any human beings involved in the tests that the drugs were being used for investigational purposes, and (b) obtain the consent of the subjects or their representatives (unless it is infeasible to do so or, according to professional judgement, contrary to the best interest of a particular patient/subject). ¹⁴ One apparent result of the Kefauver-Harris amendments was an increase in the amount of research with human subjects

⁴ *Id.* at 509.

⁵ Irving Ladimer, *Legal and Ethical Implications of Medical Research on Human Beings*, unpublished dissertation submitted to the George Washington University School of Law, at 153 (1958) (on file in the Law School Library).

⁶ *Id.* at 154.

⁷ Donald P. Dietrich, *Legal Implications of Psychological Research with Human Subjects*, 1960 DUKE L. J. 265-274.

⁸ *Id.* at 273, citing: Smith, *Relation of Emotions to Injury and Disease: Legal Liability for Psychic Stimuli*, 30 Va. L. Rev. 193-252 (1944); McNiece, *Psychic Injury and Tort Liability in New York*, 24 St. John's L. Rev. 1 (1949); Smith, *Medical Evidence in Industrial Injury Cases with Special Reference to Neuropsychiatric Claims, in Workmen's Compensation Problems*, 167 U.S. Department of Labor Bull. 11, 49 (1953); Smith & Bradford, *Medicolegal Aspects of Craniocerebral Injuries*, J. Pub. L. 663 (1954); Worden, *Some Neglected Aspects of Injury, Mental Anguish and the Concept of Psychic Damage*, 3 J. Pub. L. 377 (1954); Report of the New York State Law Revision Commission, *Study Relating to Injuries Resulting from Fright or Shock*, Leg. Doc. No. 65(E) (1936).

⁹ Dietrich, *supra* note 7, at 272.

¹⁰ See, e.g., Chauncey Starr and Chris Whipple, *Risks of Risk Decisions*, 208 Science 1114 (1980); Vincent T. Covello and Joshua Menkes, *Issues in Risk Analysis*, paper presented at AAAS meeting, San Francisco (January 1980), to be published in AAAS Symposium Volume: Risk in the Technological Society.

¹¹ Dietrich, *supra* note 7, at 273-274, original citations omitted.

¹² 76 Stat. 780, 87th Cong., 2d Sess., Oct. 10, 1962. See 21 U.S.C. § 355.

¹³ 21 U.S.C. § 355(i).

¹⁴ *Id.*

conducted in this country and abroad to provide the data needed to support new drug applications.

Emphasis on informed consent culminated in the Declaration of Helsinki, adopted by the World Medical Association in 1964. The Declaration distinguished (as had the Medical Research Council of Great Britain, a year earlier) between "clinical research combined with patient care" and "nontherapeutic clinical research." For the former, the Declaration urged that informed consent be obtained "if at all possible, consistent with patient psychology." For nontherapeutic research, consent of the subject was urged in all cases with the exception that if the subject was legally incompetent, consent of a legal guardian should be procured. The Declaration also established the basic principle that the inherent risks of research should be "in proportion to" the anticipated benefits to the subject or to others.

Apparent Problems in a Mighty Enterprise. Between 1945 and 1965, the annual research expenditures of the National Institutes of Health had increased many hundredfold from \$701,800 to \$436,600,000.¹⁵ This was a reflection of vast public support of biomedical and behavioral research in the aftermath of World War II based upon an appreciation of the benefits to be derived from scientific progress.

Throughout this period, great attention was also paid to the ethical issues surrounding the conduct of research with human subjects. In 1960, the Law-Medicine Institute of Boston University received a large grant from the Public Health Service to investigate the legal and ethical aspects of research with human subjects.¹⁶ In 1963, the Institute published a major anthology on *Clinical Investigation in Medicine: Legal, Ethical and Moral Aspects*. Although major emphasis continued to be on problems of informed consent, suggestions for "group consideration" or prior review of research began to appear as well.¹⁷

Experience during the period 1955-65 moved the discussion from an academic to a public arena as it became apparent that some research subjects were truly being exposed to risk for the benefit of others. In some cases, the subjects assumed the risks unknowingly; in other cases, although the subjects may have consented, it was questionable whether

they should have been asked—or permitted—to do so. Although such cases were few, compared to the amount of clearly acceptable research being conducted, the publicity attending questionable cases heightened public awareness and concern.

One of the first incidents to alarm the general public took place at the Jewish Chronic Disease Hospital in Brooklyn, N.Y. The widely publicized case involved two physician-investigators who injected cultured cancer cells into debilitated, elderly patients under their care, without informing the patients or gaining their consent. The research was funded, in part, by the Public Health Service.¹⁸ In 1965, after a series of hearings and recommendations of the appropriate grievance committees, the New York Board on Medical Licensure and Discipline accepted a determination of the Medical Grievance Committee that the two principal investigators had been "guilty of fraud or deceit in the practice of medicine and of unprofessional conduct."¹⁹ Both physicians were placed on one year's probation, but the recommended suspension of their licenses to practice medicine was stayed.²⁰

In 1966, Dr. Henry K. Beecher of the Harvard Medical School published a landmark article in the *New England Journal of Medicine* describing a number of research projects he viewed as unethical largely because of the risks to which the subjects had been exposed.²¹ Some of the experiments he described involved withholding treatment from control groups without their knowledge or consent. Others, however, involved the use of medical or surgical procedures of considerable risk (cardiac catheterization, liver biopsy) for research purposes. In one case, reported Beecher, an investigator had transplanted a melanoma (cancerous tumor) from a dying patient to her mother, although the tumor was excised shortly thereafter, the mother died a little over a year later from diffuse melanoma that had spread from the small piece of transplanted tumor.²²

Beecher's article drew national attention both because it appeared in the prestigious *New England Journal* and because it was written by a highly respected physician. Moreover, the examples were drawn from reports

published in a leading (unnamed) biomedical journal.²³ Noting that Englishman M. H. Pappworth was then in the process of assembling over 500 papers based upon unethical experiments, Beecher concluded that "unethical or questionably ethical procedures are not uncommon."²⁴ In his introduction to the article, he had said.²⁵

I believe the type of activities to be mentioned will do great harm to medicine unless soon corrected. It will certainly be charged that any mention of these matters does a disservice to medicine, but not one so great, I believe, as a continuation of the practices to be cited.

An ethical approach to research with human beings required, in Beecher's view, that "the gain anticipated from an experiment must be commensurate with the risk involved. An experiment is ethical or not at its inception."²⁶ He concluded that assuring this ethical approach rests primarily upon two factors: informed consent of the subject, and "the presence of an intelligent, informed, conscientious, compassionate, responsible investigator."²⁷

A year later, Pappworth published *Human Guinea Pigs*, a detailed recitation of experiments reported in reputable journals in which subjects were exposed to a variety of risky procedures not intended to benefit them.²⁸ In chapter after chapter, he described the insertion of catheters and biopsy needles into important organs of the body (bladder, kidney, heart, liver) and resulting meningitis, shock, liver damage and cardiac arrest. The subjects of these procedures were newborns, infants and children (both healthy and diseased), pregnant women, prisoners, patients undergoing surgery, the mentally disabled, the aged, the critically ill, and the dying.

The published articles revealed little concern on the part of investigators for their subjects. One reported on a research project that involved leaving a catheter in the liver of subjects for periods ranging from two to nineteen days:

The authors somewhat surprisingly record that "There were no serious complications. Several unexpected findings were encountered!" They mention, however, that in three patients the needle accidentally pierced the bowel; in two instances it punctured a main artery; another patient had his gall

¹⁵ Data supplied by Dr. John Sherman, of NIH, reported by Henry K. Beecher in *Ethics and Clinical Research*, 274 *New Eng. J. Med.* 1354, 1355 (1966).

¹⁶ Irving Ladimer and Roger W. Newman (eds.), *Clinical Investigations in Medicine: Legal, Ethical and Moral Aspects*, Law-Medicine Research Institute, Boston University (1963) at iv.

¹⁷ *Id.* at 209-210.

¹⁸ Jay Katz, with the assistance of A.M. Capron and E.S. Glass, *Experimentation with Human Beings*, Russell Sage Foundation, New York (1972) at 19.

¹⁹ *Id.* at 63.

²⁰ *Id.*

²¹ Henry K. Beecher, *Ethics and Clinical Research*, 274 *New Eng. J. Med.* 1354 (1966).

²² *Id.* at 1359.

²³ *Id.* at 1355.

²⁴ *Id.*

²⁵ *Id.* at 1354.

²⁶ *Id.* at 1360.

²⁷ *Id.*

²⁸ M. H. Pappworth, *Human Guinea Pigs*, Beacon Press, Boston (1967).

bladder punctured; one patient had syncope (shock); and three had large haemorrhages.²⁹

Pappworth concluded that "the voluntary system of safeguarding patients' rights had failed and new legislative procedures are absolutely necessary."³⁰ He recommended prior review of all proposed research by Medical Research Committees and, in the case of research sanctioned by those committees, compulsory reporting of: the purpose of the research, the initial condition of the subjects, evidence of free and comprehending consent, outcome of the experiment (including an account of any injury or accident), "mention of all and every complication, even if considered minor," and confirmation that the coroner was notified in the case of any death resulting directly or indirectly from the experiment.³¹

Prior Review and Limitations on Risk (1966-Present)

In 1966, the Surgeon General of the United States directed that all research proposals submitted for financial support from the Public Health Service must undergo prior review by an investigator's institutional associates "to assure an independent determination of the protection of the rights and welfare of the individual or individuals involved, of the appropriateness of the methods used to secure informed consent, and of the risks and potential medical benefits of the investigation."³² Prior review of research by a medical committee composed of medical staff had been an established procedure in the United States at the Clinical Center of the National Institutes of Health since its opening in 1953.³³

In April, 1971, another controversial research project received major public attention when the British medical journal, *Lancet*, published a sharp criticism of experiments which involved injecting hepatitis virus into mentally retarded children at the Willowbrook State School in New York.³⁴ The investigators justified their research by reference to the circumstances of their subjects:

(1) They were bound to be exposed to the same strains under the natural conditions existing in the institutions; (2) they would be admitted to a special,

well-equipped and well-staffed unit where they would be isolated from exposure to other infectious diseases which were prevalent in the institution . . . (3) they were likely to have a subclinical infection followed by immunity to the particular hepatitis virus; and (4) only children with parents who gave informed consent would be included.³⁵

The Willowbrook studies had been extensively criticized by theologian Paul Ramsey, in 1970, for exposing institutionalized children to unknown and unjustified risks.³⁶ Others now quickly joined in the debate.³⁷

At the same time that attention was being focused on the need to limit the risks to which subjects might be exposed, some authors continued to press for a nonfault compensation program for injured research subjects, either as a mechanism for controlling risks or as a matter of societal obligation.³⁸

In a 1967 article in the *Journal of the American Medical Association*, Richard Bergan proposed that injuries arising from participation in clinical research be included in malpractice insurance coverage already held by sponsoring institutions.³⁹ He viewed such coverage as the "ideal solution" to the problem because the sponsoring organizations would be able to provide insurance for physicians working under their auspices at less cost than if the physicians were to purchase the insurance individually; moreover, paying for such coverage is an "appropriate cost for the sponsoring institution to pay."⁴⁰

²⁹ Saul Krugman, *Experiments at the Willowbrook State School*, 1 *Lancet* 966, 967 (1971).

³⁰ Paul Ramsey, *The Patient as Person*, Yale University Press, New Haven, Conn. (1970) at 47-55.

³¹ Proceedings of the Symposium on Ethical Issues in Human Experimentation: the Case of Willowbrook State Hospital (May 4, 1972). Published by the Urban Health Affairs Program, New York University Medical Center.

³² The call for compensation had begun again shortly before the dramatic events of 1966:

[S]ince the benefits of research redound to society, society should accept the responsibility for assuring that the investigator who proceeds with care and caution should not be inhibited in his research because of any inherent hazard. Likewise, the partner-subject—the "clinical material" for the investigator—should not be placed at disadvantage, if injury should result directly from his participation. The cost of protection should therefore be considered a proper charge to the business of doing research, to be assumed by the sponsor, in much the same way as other administrative costs are borne by government or industry in production and service operation.

Irving Ladimer, *Clinical Research Insurance* (editorial), 16 *J. Chron. Dis.*, 1229, 1233 (1963).

³⁹ Richard P. Bergan, *Insurance Coverage for Clinical Investigation*, 201 *J.A.M.A.* 305-306 (1967).

⁴⁰ *Id.*

Several months later, Delford L. Stickel, M.D., approached the matter from the perspective of a physician interested in organ transplantation but also concerned about normal volunteers in biomedical research. Writing in *Law and Contemporary Problems*, Stickel adopted and forcefully supported Bergan's suggestions, recommending that the insurance be of a nonfault variety and adding two observations: (1) that the premiums set for the insurance coverage "would provide useful checks on overly dangerous research" and (2) that regulations or legislation establishing a duty to provide such insurance might be necessary.⁴¹

The arguments in favor of a compensation mechanism as a means to control research were elaborated but ultimately doubted by Yale Law Professor Guido Calabresi.⁴² Writing in a special issue of *Daedalus* in 1969, devoted to "Ethical Aspects of Experimentation with Human Subjects," Calabresi examined issues of risk-taking and methods for protecting human lives through indirect controls such as those operating in accident law. His support for a system of compensation rested on the perceived need to impose better controls on the research enterprise. Calabresi argued that having to compensate for research injuries would stimulate better analysis of the possible risks and benefits of a given research proposal. He saw the indemnification of injured subjects as a secondary, although desirable, result.⁴³

In the end, however, Calabresi concluded that he did not believe a compensation fund would be the best method of controlling the research enterprise; instead, he recommended review committees at the research institution (with diversity of membership as subsequently required by HEW). His discussion of a compensation fund, he emphasized, was "primarily to indicate that very little work has gone into the search for complex control devices that would balance present against future lives and still put no one in the position of clearly deciding against individual lives."⁴⁴

Complex control devices in the form of local review committees were, even then, being developed by HEW (now HHS), and were soon to be

⁴¹ Delford L. Stickel, *Organ Transplantation in Medical and Legal Perspectives*, 32 *Law and Contemporary Problems* 579, 609 n. 32 (1967).

⁴² Guido Calabresi, *Reflections on Medical Experimentation in Humans*, in *Experimentation With Human Subjects* (ed. by Paul Freund), George Braziller, New York (1970).

⁴³ *Id.* at 395.

⁴⁴ *Id.* at 398-399.

²⁹ *Id.* at 70.

³⁰ *Id.* at 200.

³¹ *Id.* at 209-210.

³² Surgeon General, *Memo to Heads of Institutions Conducting Research with Public Health Service Grants* (February 8, 1966).

³³ Stuart M. Sessoms, *Guiding Principles in Medical Research Involving Humans*, *National Institutes of Health*, 32 *Hospitals* 44 (1958).

³⁴ Stephen Goldby, *Experiments at the Willowbrook State School*, 1 *Lancet* 749 (1971).

implemented. The development of DHEW policy for protection of human subjects and its conversion to Federal regulation is part of the final phase of this story.

Strengthening Regulations. The decade of the 1970s was one of extraordinary Federal activity in the review and regulation of research ethics, both in Congress and in the administrative agencies.

In response to rising concern about the need to protect human subjects, the Public Health Service in 1971 extended the 1966 Surgeon General's memorandum into a formal *Institutional Guide to DHEW Policy on Protection of Human Subjects* to explain HEW's grant administration policy. It contained an important modification of the Surgeon General's requirement that research supported by HEW grants and contracts undergo "peer review" at the investigator's institution.⁴⁵

The committee must be composed of sufficient members with varying backgrounds to assure complete and adequate review of projects. . . . No member of an institutional committee shall be involved in either the initial or continuing review of an activity in which he has a professional responsibility. . . . The committee should be able to determine acceptability of the proposal in terms of institutional commitments and regulations, applicable law, standards of professional conduct and practice, and community attitudes.

Similar review requirements had already been incorporated in FDA regulations governing investigational new drug studies.⁴⁶ The HEW policy explicitly required that the risks of any research project be justified either by the potential benefits to the subjects or by the importance of the knowledge to be gained, and cautioned review committees to "be alert to the possibility that investigators, program directors, or contractors may, quite unintentionally, introduce unnecessary or unacceptable hazards, or fail to provide adequate safeguards."⁴⁷ Committees were also advised to determine that proper precautions would be taken to deal with emergencies that might develop and, of course, to assure that the informed consent of subjects would be obtained by adequate and appropriate methods.⁴⁸

The Institutional Guide to DHEW Policy was issued in December of 1971. Several months later, Jay Katz's substantial casebook, *Experimentation*

with Human Beings, was published.⁴⁹ It presented the most complete collection of materials on this subject ever compiled, together with commentary and provocative questions about the proper allocation of authority and responsibility for protecting human subjects among those who conduct research, those who fund it, those who review it, those who run the research institutions, the Federal government, professional societies, and the subjects themselves or (in some cases) their parents or legal guardians.

Coincident with the renewed regulatory and scholarly interest, an instance of unethical experimentation again became front-page news through articles describing a Public Health Service study in which black males in Tuskegee, Alabama, suffering from syphilis had—by study design—gone untreated for forty years.⁵⁰ Although the study had been initiated in 1932, it had continued long after penicillin was demonstrated to be an effective treatment for the disease. Moreover, a review committee (composed of physicians and PHS staff) had reviewed the project in 1969 and decided that the study should be continued.⁵¹ In 1972, after the research program was revealed in the national press, the Assistant Secretary for Health and Scientific Affairs (HEW) established an ad hoc panel to examine the Tuskegee Syphilis Study in particular and HEW policies and procedures for the protection of human subjects in general.

The final report of the advisory panel contained disturbing conclusions regarding excessive risk to subjects and lack of consent, as well as recommendations for improvement. Specifically, the panel concluded that the Tuskegee Syphilis Study was "ethically unjustified at its inception in 1932" because no provisions were made for informing the subjects about their participation or for obtaining their consent, and that "its results are disproportionately meager compared with known risks to human subjects involved."⁵² The panel further concluded that the study should have been terminated and the participants treated "especially as of 1953 when penicillin became generally available"⁵³

and finally, that the Public Health Service should terminate the study immediately and arrange for the immediate treatment of surviving participants.⁵⁴

The panel praised the existing HEW review committee system but expressed concern about the dominance of biomedical professionals in the regulatory process, the vagueness of the guidelines, "critical loopholes" in the consent procedures, insufficient attention to vulnerable subject populations, neglect of the requirements for continuing review, and absence of effective enforcement procedures.⁵⁵ Moreover, the panel noted:⁵⁶

No policy for the compensation of research subjects harmed as a consequence of their participation in research has been formulated, despite the fact that no matter how careful investigators may be, unavoidable injury to a few is the price society must pay for the privilege of engaging in research which ultimately benefits the many. Remitting injured subjects to the uncertainties of the law court is not a solution.

The panel recommended (among other things) the development of a "no fault" clinical research insurance plan to assure compensation for subjects harmed as a result of their participation in research."⁵⁷

From February through July, 1973, the Subcommittee on Health of the Senate Committee on Labor and Public Welfare, chaired by Senator Edward Kennedy, held a series of hearings on human experimentation. Testimony was received regarding a number of incidents (including Willowbrook and Tuskegee) that had heightened public concern about research with human subjects. Bernard Barber reported on a sociological study of biomedical research institutions which showed that the ethical sensitivity of principal investigators was far from adequate and that prior review of experiments was far from universal. Dr. Katz repeated the criticisms and recommendations of the advisory panel's report on the Tuskegee Syphilis Study and raised questions of administration and authority highlighted in his casebook.⁵⁸ His colleague, Alexander M. Capron, raised similar concerns and specifically suggested an indemnification program for all research subjects "to cover all consequences of

⁴⁵ U.S. Department of Health, Education and Welfare, *The Institutional Guide to DHEW Policy on Protection of Human Subjects*, DHEW Publication No. (NIH) 72-102, U.S. Government Printing Office, Washington (1971) at 4.

⁴⁶ *Id.*, citing 21 CFR 130.

⁴⁷ *Id.*, at 5.

⁴⁸ *Id.*, at 5-7.

⁴⁹ Jay Katz, with assistance of A. M. Capron and E. S. Glass, *Experimentation with Human Beings*, Russell Sage Foundation, New York (1972).

⁵⁰ Fred Gray, *Statement before Subcommittee on Health, Committee on Labor and Public Welfare, U.S. Senate*, March 8, 1973, at 1034.

⁵¹ Tuskegee Syphilis Study Ad Hoc Advisory Panel, *Final Report*, U.S. Department of Health, Education, and Welfare, Washington (1973) at 10-11.

⁵² *Id.* at 7-8.

⁵³ *Id.* at 11.

⁵⁴ *Id.* at 18-19.

⁵⁵ *Id.* at 23.

⁵⁶ *Id.*

⁵⁷ *Id.* at 23-24.

⁵⁸ *Hearings before the Subcommittee on Health of the Committee on Labor and Public Welfare, United States Senate, Quality of Health Care—Human Experimentation*, Part 3, March 7-8, 1973 at 1049.

their participation, including those arising unforeseeably and without negligence."⁵⁹

As a result of the hearings, Congress included provisions on the protection of human subjects in the National Research Act, adopted in 1974. The Act not only directed the Secretary of HEW to require establishment of Institutional Review Boards (IRBs) at all grantee institutions, it also created the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. The Commission was charged with investigating and reporting to the President, the Congress, and the Secretary, HEW, on many aspects of research with human subjects.⁶⁰

At the same time that Congress was creating the National Commission, HEW was in the process of converting its grants administration policy to formal regulations governing the conduct of research with human subjects. Proposed regulations were published in 1973,⁶¹ and final rules were issued in 1974.⁶² For the most part, the regulations codified the policies set forth in the *Institutional Guide*. One important change, however, was in the applicability of the regulations. Under the old HEW policy, local committee review was required only for research involving risk to human subjects; whether or not the proposed research presented any risk was a matter determined by the principal investigator. Under the new regulations, all research involving human subjects had to undergo review by a local institutional review board (IRB), and it was the IRB that determined whether or not risk was involved, and what the consent requirements should be.

Throughout the early 1970s, a number of other Federal agencies adopted the HEW policies and procedures for the protection of human subjects. By 1977, a review conducted by the staff of the National Commission revealed that of the 20 separate Federal entities (other than HEW) that conduct or support research with human subjects, 19 had formal policies or regulations governing such research. Of those, 17 adopted the HEW standards and procedures to a substantial degree.⁶³

Continuing Reservations. Despite all the improvements in regulating the conduct of research, however, concern persisted. No matter how well a project is reviewed, no matter how carefully it is conducted, a chance always remains that someone might be injured. If that should occur, there was still no mechanism to provide compensation.

Beginning in 1970, the National Institutes of Health (NIH) submitted a series of compensation proposals to the Secretary, HEW.⁶⁴ Each of the three programs proposed would have provided compensation (without proof of negligence) for subjects injured as a result of participation in research activities supported in whole or in part by Federal funds. All three, however, failed to gain Departmental backing, reportedly because of one or more of the following reasons:

- (1) The social and fiscal implications of the proposals had not been assessed;
- (2) Alternatives to a Federally administered program had not been explored; and
- (3) The problem was not adequately defined.⁶⁵

The next step was taken by the HEW Medical Malpractice Commission which forwarded its report to Secretary Elliot Richardson in January 1973. Although it had not been charged with the responsibility of reviewing human research, the Malpractice Commission included in its report recommendation that "whenever a grant or other funding is provided by the Federal government for medical research involving human subjects, the grant should include a sum sufficient to provide either insurance or a self-insurance fund in order to provide compensation to any human subject who may be injured in the course of the research."⁶⁶ The Commission added that the same should apply to research that the Federal government itself conducts and to research conducted in the private sector.⁶⁷

In September 1974, prompted by a request by HEW Secretary Caspar Weinberger, the Acting Assistant Secretary for Health (Dr. Theodore Cooper) suggested seven possible approaches for further action on the compensation question. The option selected by the Secretary was the

creation of a Task Force (composed of HEW staff) to conduct "a detailed study of whether and how to compensate subjects injured in the course of research."⁶⁸ One of the reasons for selecting that option was that it had not yet been determined "whether a problem exists which is serious enough to justify the resources needed to develop a compensation mechanism."⁶⁹

The Task Force met 24 times over a period of 18 months, and reviewed: (1) a series of reports prepared by experts in law, ethics, and insurance; (2) results of a telephone survey of adverse effects reported (by principal investigators) to have occurred over a three-year period; (3) an analysis of current Federal compensation programs, and (4) responses from the insurance industry to inquiries posed by the Assistant Secretary for Health.⁷⁰

In January 1977, the Task Force published the following recommendations:

(1) Human subjects who suffer physical, psychological, or social injury in the course of research conducted or supported by the PHS should be compensated if (1) the injury is proximately caused by such research, and (2) the injury on balance exceeds that reasonably associated with such illness from which the subject may be suffering, as well as with treatment usually associated with such illness at the time the subject began participation in the research.

(2) The amount of compensation should be commensurate with the "excess" injury as defined above.

(3) Subjects participating in PHS-conducted (intramural) research should be included (and should be informed of such inclusion) in the definition of employees within the F.E.C.A., and if injured, should receive such compensation as provided by the Act.

(4) Subjects participating in PHS-sponsored (i.e. extramural not PHS-conducted) research should be supplied assurance of compensation (and should be informed of such assurance) by the institution conducting the research. Such compensation should be equal to that provided subjects under the F.E.C.A.

(5) A Notice of Intent to Issue Regulations should be published as a first step toward implementing recommendation four above and to explore the availability of compensatory assurance.

(6) If the provision of such assurance should prove to be infeasible these

⁵⁹ *Id.* at 849.

⁶⁰ Pub. L. No. 93-348, 88 Stat. 342 (1974). An early version of the bill contained a provision that the Commission "develop a mechanism for the compensation of individuals and their families for injuries or death proximately caused by the participation of such individuals in a biomedical or behavioral research program." (S. 2072, 92nd Cong., 1st Sess., June 26, 1973).

⁶¹ 38 Federal Register 27882 (Oct. 3, 1973).

⁶² 39 Federal Register 18914 (May 30, 1974).

⁶³ National Commission for the Protection of Human Subjects, Report and Recommendations:

Institutional Review Boards, U.S. Government Printing Office, Washington (1978) at 93 *et seq.*

⁶⁴ HEW Secretary's Task Force on the Compensation of Injured Research Subjects, Report, U.S. Department of Health, Education, and Welfare, Washington (1977) (hereinafter cited as Task Force Report) at III-2.

⁶⁵ *Id.*

⁶⁶ Report of the Secretary's Commission on Medical Malpractice, U.S. Department of Health, Education, and Welfare (1978) at 79.

⁶⁷ *Id.*

⁶⁸ Task Force Report, *supra* note 64, at III-2.

⁶⁹ *Id.* Appendix A, at 9.

⁷⁰ *Id.* at II-1.

subjects should be assured protection under the F.E.C.A. as would be the participants of PHS-conducted research detailed in recommendation three above.

(7) Research which is PHS-regulated, but not PHS-supported or PHS-conducted, should not be included in the above recommendations. However, we do recommend that the FDA consider legislation which would enable them to require that compensation mechanisms be made available to subjects injured in the course of PHS-regulated research.⁷¹

The Task Force Report was reviewed by the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, which transmitted a general endorsement of the recommendations to HEW Secretary Joseph A. Califano Jr.,⁷² in June 1977. The Commission subsequently recommended (in its report on Institutional Review Boards) that prospective subjects be told whether treatment or compensation would be available if harm occurs as well as whom to contact in such an event.⁷³ That recommendation was implemented by DHEW in an "Interim Final Regulation" which took effect January 2, 1979.⁷⁴ In issuing the regulation, the Acting Assistant Secretary for Health noted that: "[S]ince the amendment is being adopted prior to public comment, its scope will be limited to treatment and compensation for physical injury and only to those physical injuries arising from biomedical or behavioral research."⁷⁵

Nevertheless, the research establishment was uneasy.⁷⁶ At least one major university challenged the adoption of a new regulation without opportunity for public review and comment as required by the Administrative Procedures Act.⁷⁷ The Association of American Medical Colleges (AAMC), responding to what it called "great confusion and consternation within the Nation's universities, medical schools and teaching hospitals," convened an ad hoc study group to "examine the feasibility of acquiring appropriate insurance coverage and to develop positive

suggestions regarding the character of a compensation scheme."⁷⁸

The AAMC study group concluded that, although the Task Force had provided a good conceptual framework, it had not resolved the practical problems involved in the development of a compensation scheme. Therefore, the group recommended that HEW ask its Ethics Advisory Board to study the economic aspects of various possible systems in hopes that it could "resolve the issues in a fashion which takes cognizance of the dynamics of the private insurance system, the needs of academic institutions and the nature of the clinical research enterprise."⁷⁹ Finally, the AAMC asked about the ethical acceptability of a number of limitations it believed insurance companies would impose on any coverage for research-related injuries.

The AAMC letter, addressed to Joseph A. Califano, Jr., was received at HEW on June 28, 1979, just a few weeks before Califano was replaced as Secretary of HEW by Patricia R. Harris. In the first week of October, 1979, Secretary Harris sent a memorandum to the Chairman of the Ethics Advisory Board formally requesting that the Board consider whether or not there is an ethical obligation to compensate injured subjects. If so, the Board was then asked to consider whether it would be ethical to impose the limitations that the AAMC suggested might be necessary.⁸⁰

Before the Board could formally agree to consider the compensation question, word came that the Board would be terminated at the end of the 1980 fiscal year. Since it was still in the process of completing two other reports, the Board's Chairman and Vice Chairman decided that it would be infeasible to attempt a study of the compensation problem in the time remaining, and so advised the Department.⁸¹

Instead, the Ethics Advisory Board recommended that the President's Commission take up the subject. David Hamburg, Vice Chairman of the Ethics Advisory Board, conveyed this recommendation to the Commission at its first meeting in January 1980 as part of his report on the history and activities of the Board. He explained that the Board had found the compensation issue important, but would be unable to

undertake the study in the time remaining to it. Before adjourning its first meeting, the Commission voted to undertake a study of the problems surrounding compensation for research injuries.

The Study Undertaken by the President's Commission

The Commission undertook an investigation of the problems relating to the feasibility of compensating for research injuries that underlay the questions posed by Secretary Harris to the Ethics Advisory Board. Attempts were made to obtain data from various sources on the nature and incidence of research injuries experienced (or likely to be experienced) in the varied kinds of research conducted in the United States. In addition, a series of discussions were held with officials of the insurance industry to determine the likelihood that private insurance of appropriate coverage would be available to research institutions. Finally, position papers and scholarly reports were also solicited on a number of relevant topics.

In an effort to collect data on the nature and incidence of research-related injuries, the Commission requested detailed descriptions and analyses of the experience of two research institutions that have had compensation programs in effect for a period of years. Under contract with the Commission, such reports were prepared by administrators at the University of Washington at Seattle and the Quincy Research Center in Kansas City, Missouri. A similar report describing the insurance program covering biomedical research in Sweden was prepared for the Commission by the physician responsible for assigning a risk factor to each research project (from which premium rates are established). A discussion of their findings and conclusions appear in Chapter Four of this Report; the papers are reproduced in the Appendix. The Commission also sought information on the nature and frequency of adverse effects experienced by subjects in research supported, conducted or otherwise regulated by various Federal agencies. Officials of the National Institutes of Health (NIH) and the Food and Drug Administration (FDA) testified on this subject at the Commission's meeting in May 1980. Information was solicited by mail from approximately twenty other Federal agencies known to conduct or support research with human subjects.

Because the Swedish insurance program relies upon a procedure of assigning a risk factor to each research project, the Commission also requested

⁷¹ *Id.* at II-2.

⁷² Letter from Kenneth J. Ryan, Chairman, to Joseph A. Califano, Jr. (June 9, 1977).

⁷³ National Commission for the Protection of Human Subjects, *supra* note 63, Recommendation 4(f) (iv) and (v), at 21.

⁷⁴ 43 Federal Register 51559 (November 3, 1978).

⁷⁵ *Id.*

⁷⁶ William J. Curran, *Compensation for Injured Research Subjects: Regulation by Informed Consent*, 301 New Eng. J. Med., 648 (1979).

⁷⁷ Letter from Estelle A. Fishbein, General Counsel, to Robert Backus (January 17, 1979).

⁷⁸ Letter from John A. Cooper, M.D., President, AAMC, to Joseph A. Califano, Jr. (June 25, 1979).

⁷⁹ *Id.* at 6.

⁸⁰ Memorandum from Patricia Roberts Harris to the Chairman of the Ethics Advisory Board, (October 4, 1979).

⁸¹ Memorandum from the Staff Director, Ethics Advisory Board, to the Under Secretary HEW regarding reassignment of the Board's duties (December 21, 1979).

a review of existing literature on adverse effects of twenty selected invasive procedures used in biomedical research (e.g., liver biopsy, bone biopsy, urinary bladder catheterization, lumbar puncture, angiography). The purpose was to determine the extent to which the risk presented to human subjects could reliably be determined in advance and thus to assess the feasibility of setting insurance premiums according to the risk involved in the research projects conducted at a given institution. The finding of that study are also discussed in Chapter Four.

Members of the Commission staff held a series of discussions with senior officials of major insurance companies, brokers and trade associations to solicit their cooperation in determining the extent to which private insurance coverage might be available or, alternatively, the advisability of providing for self-insurance through collective insurance pools. The results of those discussions were presented by representatives of the insurance industry in testimony before the Commission and are reflected in Chapter Five and in Appendices P and Q to this Report.

The Commission requested further exploration of the ethical arguments for and against the proposition that the Federal government has an obligation to provide compensation for research-related injuries. Of particular concern was the extent of the government's obligation (if any) to persons whose participation in research involved testing a new therapy from which they expected to benefit. At public hearings, the Commission heard testimony from the Association of American Medical Colleges, the American Society of Clinical Oncology, the Association of American Cancer Institutes and others urging that the Commission not recommend that compensation be provided to patients who participate in research to test new therapeutic interventions from which the subjects expected to benefit.

A contrary position was urged by a representative of the DES Registry who, in several appearances before the Commission, described the difficulties of "DES daughters" in obtaining and paying for medical care necessary to identify early signs of cancer or other abnormal conditions associated with their mothers' ingestion of DES during pregnancy. Although most of the women who took DES in the 1940s and 1950s did so on the advice of their physicians, several hundred women participated in research designed to test the effectiveness of the drug after it was

already in general use for the prevention of miscarriage. Those who were research subjects believe they or their daughters should be compensated for the unanticipated effects of the drug. Other organizations also urged that injured subjects receive compensation.⁸² The Commission noted repeatedly that its task was not to resolve the merits of making payments for past injuries but rather to recommend policy for the future.

The Commission also requested reports on legal mechanisms for compensating for personal injury and the extent to which such remedies would be available in the case of research injuries. In addition, health policy analysis were asked to prepare a critical analysis of Federal programs that currently provide compensation or health benefits for certain classes of people (e.g., Federal employees, mine workers suffering from black lung disease, persons with end-stage kidney failure). The latter report examined the difficulties encountered in administering such programs and in containing their cost. Chapter Five contains a review of these materials.

Finally, a former Federal Insurance Administrator and others urged the Commission to consider carefully whether available data on nature and incidence of research injuries justify implementation of a program that might well be associated with high administrative expenses and substantial induced costs. The Commission's concern in this regard is reflected in Chapter Six.

In summary, the Commission received testimony from Federal officials, expert consultants, professional organizations, insurance industry officials and members of the general public at public hearings in January, May and September of 1980 and in January 1981. Commissioners deliberated during those meetings as well as in May and September 1981, while reviewing preliminary drafts of this document. Thus, major portions of six Commission meetings were devoted to reviewing the materials, discussing the issues, and developing the recommendations contained in this Report.

⁸² See e.g., Testimony of Phyllis Wetherill, on behalf of the DES Registry, transcript of the 4th meeting of the President's Commission [September 15, 1980] at 212; Letter from Bennett Stark, founder National Committee for Victims of Human Research to Morris B. Abram (January 17, 1980); see Appendix T to this Report.

PART II: DO DESERVING SUBJECTS NOT RECEIVE COMPENSATION?

Chapter 3: The Ethical Basis for Compensation

Any policy on the possible compensation of injured research subjects must take into account many practical factors: the cost of such a program, the program's vulnerability to abuse, technical difficulties in administration, and the political influence of those who would benefit and those whose budgets might be adversely affected. Behind these practical concerns, however, loom some basic ethical questions: Is there a moral responsibility to compensate research subjects for medical bills, lost wages, and other out-of-pocket costs that are a direct result of injuries sustained in research conducted or sponsored by the Federal government? Is the investigator's obligation limited to informing subjects of the risks? Or is the subject's consent insufficient to guarantee that no wrong is done? Is compensation for injury required as a matter of justice? If not, might it be morally important because of beneficial effects on society, or because it provides the opportunity to realize an ethical ideal other than justice?

Persons of good will differ in their beliefs concerning the moral importance of compensation of injured research subjects, and this division of opinion over the ethical issues explains some of the lack of consensus as to the need for and value of a compensation program. This chapter addresses the logic of the major distinctly ethical arguments voiced in favor of, and in opposition to, compensation for injured research subjects. The arguments are not definitive and thus will not overcome all doubts raised about research injury compensation. Rather, this exposition is intended to indicate the range of opinion reviewed by the Commission and to provide the reasoning behind the Commission's conclusions.

A Question of Justice

The basic case for a program of compensation for injured subjects can be stated briefly; Medical and scientific experimentation, even if carefully and cautiously conducted, carries certain inherent dangers. Experimentation has its victims, people who would not have suffered injury and disability were it not for society's desire for the fruits of research. Society does not have the privilege of asking whether this price should be paid; it is being paid. In the absence of a program of compensation of subjects, those who are injured bear

both the physical burdens and the associated financial costs. The question of justice is why it should be these persons, rather than others, who are to be expected to absorb the financial, as well as the unavoidable human costs of the societal research enterprise which benefits everyone.

The argument in favor of compensating injured subjects proceeds from a simple rule of thumb for determining the justice of the distribution of burdens and benefits in contexts like that of medical research; those who receive the benefits should be those who undertake the risks. In some medical research, the subjects are patients who volunteer precisely because the experiment offers the greatest chance of cure; prospective benefits outweigh prospective risks and distributive justice is not a major concern. When, however, as is often the case in research with human subjects, those who bear the risks are not the direct beneficiaries of the research, it is felt that the scales of justice are out of balance. Institutional Review Boards and other protective mechanisms have been designed to ensure that the balance is thrown off-center as little as possible, consistent with the goal of permitting promising research to continue. Compensation may be regarded as a means of restoring the balance after the fact, when the residuum of risk not eliminated by the protective devices has eventuated in injury. Like the protective devices, compensation is a further means of limiting the burdens borne by individual subjects in research.

The Argument from Fairness. The ethical norm underlying most of the literature favoring a program of compensation is that of fairness, a key element in the concept of justice. One formulation of a principle of fairness was provided to the Commission, following the philosophers Hart and Rawls:

If there is a "mutually beneficial scheme of social cooperation," then a "person who has accepted the benefits of the scheme is bound by a duty of fair play to do his part and not to take advantage of the free benefits by not cooperating."¹

Stated as much, this is a principle of distributive justice: it dictates as assignment of benefits and burdens that is held to be just. This principle is invoked, for example, by moral and political theorists to justify the

extraction of taxes from those who may never have signed an actual agreement to contribute to the state's budget. The idea is simply that if one benefits while others take their turns, then one too must take his or her turn. This notion of fairness appeals to an ideal of reciprocity in social relations, is discussed in Chapter One of this Report. In the research context, it is the government, representing the society, which must "take its turn." The research subject has contributed by exposing himself to risks, and the government must do its part.

Professor James Childress formulated for the HEW Task Force a related principle which called for compensation if:

- (1) The injured party accepts or is compelled to accept a position of risk. . . (2) The activity is for the benefit of society. . . (3) Society, through the government or its agencies, conducts, sponsors, or mandates the practice in question.²

If these features are present, then whether or not the injured party was a volunteer.

[T]he moral principle of fairness creates a societal obligation to this participant, who can claim as his right not merely consideration of damages but compensation at least for major injuries. The obligation is voluntarily incurred by the society, through its establishment, endorsement, or mandate of the practice in question, and its acceptance of the individual's participation, whether it drafts, encourages, or merely accepts him. This obligation is based on the relationship between the parties in question, not on the fact that society through biomedical research wrongfully injured the participant (which would have been a matter of reparative justice). It reflects the moral principle of fairness.³

[B]ecause society is both the beneficiary and the sponsor of research, compensatory justice ("that form of justice which seeks to redress injury even when no fault or blame is associated with the injury") may come into play for the redress of injuries suffered by persons in connection with biomedical or behavioral research conducted, supported, or regulated by the Federal Government.⁴

Another important precedent is the Veterans' Compensation for Service-Connected Disability or Death Program. The obligation here is toward those—

who have entered into a special relationship of service to the American society, and who

²James Childress, *Compensating Injured Research Subjects: I. The Moral Argument*, 6 Hastings Ctr. Rep. 21, 24 (December 1978).

³*Id.* (emphasis in the original; footnote omitted).

⁴HEW Secretary's Task Force on the Compensation of Injured Research Subjects, Report, U.S. Department of Health, Education, and Welfare, Washington (1977) (hereinafter cited as Task Force Report) at VI-4.

are, therefore, entitled to special compensation in the event of a service-connected disability. In short, the American society has recognized a special obligation to compensate veterans for injuries sustained in connection with their service since society is both sponsor and beneficiary of their services.⁵

Further, soldiers—

* * * could sustain compensable injury—even serious injury or death—without anyone being guilty of negligence or any other tort. [S]ociety, through its governmental agents, has intervened in the lives of the injured individuals, and therefore society may be said to have an obligation to repair (so far as possible) injury done to individuals, whether they are volunteers or draftees, in connection with their service to society.⁶

The Task Force cautioned that "the analogy * * * is by no means perfect," but reported being "impressed by the obligation on the part of society to provide compensation. * * *"⁷

The Task Force's desire to base its recommendation on an appeal to fairness has evident appropriateness and appeal. Though these principles of fairness do not command universal assent among contemporary moral or political theorists, they have received considerable support in leading theories of distributive justice. They provide a moral basis for government mechanisms necessary for the harmonious functioning of large and complex societies, which must proceed in the absence of an actual contract and which would be crippled if denied the means for dealing with the problems of "free riders" who would take advantage of others' contributions to the public good.

The point of the argument from fairness, then, is that the potential beneficiaries of medical research—which includes the entire citizenry—ought not have a "free ride" at the expense of injured research subjects. If the human costs of research are low—say, a matter of a little time and inconvenience—then the allocation of costs is not a serious ethical issue. When, however, higher costs are occasionally imposed, as in the case of injured subjects, the question "Who pays?" becomes important. Research subjects are already doing more than their share, merely by the fact of having volunteered. Those who are injured bear the greatest burden of all. According to this view, certainly, they are the least appropriate parties to have to bear the financial costs of injury. Let those costs be shouldered by the potential beneficiaries who have contributed

⁵*Id.* at VI-2-3.

⁶*Id.* at VI-3.

⁷*Id.*

¹Bernard Boxill, *Consent and Compensation*, (1980), Appendix C to this Report at 16 quoting John Rawls, *Legal Obligation and the Duty of Fair Play*, in Sidney Hook, ed., *Law and Philosophy*, New York University Press, New York (1964) at 9-10.

neither time nor health to the research effort. The society ought to meet this expense, through government action if necessary, in order to compensate the injured subjects.

The Gift of Security: Consenting Subjects as Free Agents. There is, however, another view which denies that a failure to compensate injured research subjects is necessarily an injustice. This view attempts to rebut the argument from fairness by stressing the possibility of informed consent to the risk of injury. Professor H. Tristram Engelhardt, who in his essay for the Task Force argued in favor of compensation, stated that:

[F]ree and informed consent would seem in most cases equivalent to waiver of any moral basis for a claim to recover for damages. Respect for freedom of the individual would include, so this argument would go, respect for that individual's freedom to choose to risk and suffer the consequences. When a human subject, who is sufficiently informed and who is free to choose, chooses in the absence of coercion to participate in an experiment, it would appear that the subject has given up any strict moral claim to compensation for damages incident to being a subject in an experiment.⁸

Similarly, Childress admits that

[t]o show that an injured party voluntarily assumed a risk is often a defense against that party's claim for reparative or compensatory justice.⁹

The moral principle underlying these statements is often given in its Latin formulation: *volenti non fit injuria*—there is no injury (for which another party is responsible) to one who consents. Its application in the research context appears straightforward: the subject is told of the risks; he consents to joining the experiment even though those risks are present, and he has not been promised any compensation. Why, then, would society be obligated to compensate in the case of injury?

The Task Force, after much debate, took a strong stand on this question:

Informed consent in the research setting functions as a recognition of and a protection for a person's integrity and autonomy, but does not imply a waiver of the right of the person to compensation in the event of injury * * * Even if a subject perfectly understands a research procedure and agrees to participate in that procedure, the subject's consent does not, in and of itself, include, explicitly or implicitly, a waiver of compensation. [V]olunteers may give

informed consent to participation in biomedical and behavioral research without thereby surrendering the right to be compensated should injury occur.¹⁰

But if, as the Task Force stated, one ought to respect the autonomy of the potential subject, it is at least initially difficult to understand why there is a moral requirement to compensate a subject who consents to participation without the expectation of compensation in case of injury. If 'respect for autonomy' requires the subject's consent to be secured before using him or her as a research subject, why would that same 'respect' not also require that the subject be permitted to agree to shoulder the risk of injury without the possibility of compensation?

The Task Force, it must be recalled, was speaking of a consent form (and process) that merely listed the risks and benefits of procedures, together with a statement of certain rights of the patient having nothing to do with compensation. Perhaps it could be said of that consent form, and of the process of obtaining consent which the form records, that the signing and consenting did not amount to an assumption of responsibility for risk. Shortly after the Task Force's report, however, institutions receiving Federal funds for research were told to include an explicit statement on their policy of providing or not providing medical care and other compensation.¹¹ Thus the consent form became something closer to an explicit assumption of risk. And the forms could be made even clearer on this score—for example, with the addition of a sentence such as: "In signing this form I knowingly and freely assume all risks attendant to the nonnegligent conduct of this experiment and do not expect, and will not seek to hold others liable for, compensation in case of injury not resulting from negligence." In this latter instance, if not at present, it is difficult to understand a contention that the subject's consent did not entail an assumption of risk.

Thus, there would seem to be an inconsistency in a position that would allow a subject of medical research to volunteer his or her time and comfort but not to assume the risk of possible injury. When the subject agrees to participate in an experiment, he or she voluntarily makes a gift to society of the time and inconvenience involved in participation, and agrees to bear any discomfort, which may be quite substantial. In some cases, subjects are paid for their time and trouble, but often they are not. One

does not think that unless they are paid a sum proportional to their contribution, they have been treated unjustly. Indeed, subjects who are not paid may be especially admired. Their participation in the research is simply accepted as a gift.

A subject is, moreover, in a position to give still another gift. This is the gift of security, the assumption of the risk of injury without guarantee of compensation. Some potential subjects might be willing to give only the gift of their time and trouble, but others are willing to give not only that gift but also the gift of security. Why should it be considered unjust to accept the second gift if it is perfectly ethical to accept the first?

Whereas the Task Force asked whether volunteers must be compensated, the "free agent" view asks whether the government should be considered unjust if it refuses to accept volunteers who are unwilling to make the additional gift of their security. The government, that view holds, is under no obligation to accept as research subjects those who will not or cannot waive all rights to compensation if injured. As long as the government's needs can be met by accepting as volunteers only those who can pledge to forswear compensation if injured, there is no injustice done to anyone by failing to compensate injured subjects.¹²

Fairness vs. Consent. These two perspectives on the question of whether failure to compensate injured subjects of medical research is unjust thus lead to quite different conclusions. The argument from fairness holds it to be unfair to impose the financial costs of injury upon those physically injured in the course of altruistic service to the community as research subjects. The second perspective stresses the freedom of citizens to volunteer their security as well as their convenience. As long as subjects make their choices freely, no injustice is done if only those subjects are accepted who assume responsibility for the cost of injuries.

Which of these two perspectives ought to be adopted in the case of research-related injuries? The Commission recognizes that each is worthy of serious consideration, and further recognizes that the divergence of views on the matter of compensation of subjects is but one instance of a

⁸H. Tristram Engelhardt, Jr., *A Study of the Federal Government's Ethical Obligations to Provide Compensation for Persons Injured in the Course of Their Participation in Research Supported by Funds Administered by the Secretary, HEW*, Task Force Report, *supra* note 4, Appendix A at 48.

⁹Childress, *supra* note 2 at 24.

¹⁰Task Force Report, *supra* note 4, at VI-5,6.

¹¹43 Federal Register 51559 (November 3, 1978), now codified at 45 CFR § 46.116(a)(6) (1981).

¹²This is not to argue that compensation would violate any right of prospective patients to take chances. The regulations governing use of human subjects are in many respects protective of subjects regardless of their willingness to accept risks. The argument here is, rather, that the government is not being unjust in being unprotective.

divergence in thinking about social justice generally.

The fairness argument, stated in isolation, seems particularly convincing. It is, intuitively, quite unfitting that persons already injured should be saddled with the attendant costs; and it is equally unfitting that potential subjects be asked to agree to assume those costs as a condition of being enrolled in research. This view of justice prevails in many other contexts. Soldiers and other Federal employees, for example, are not asked to waive rights to compensation if injured on the job, even though it might be possible to recruit persons for these positions even were such a waiver required. Indeed, even private employers are not permitted to ask employees to waive coverage under Workmen's Compensation programs. The question of what would constitute a just distribution of burdens and benefits is decided in these other contexts before it is asked whether a waiver could be obtained; what matters is less whether an employee would agree to be denied compensation than whether this should even be asked.

When one fails to compensate injured subjects, though fiscal resources are available, one does not display the virtue of charity. Indeed, since the need arises because these subjects have displayed their concern for others by becoming subjects, a failure to compensate is distinctly uncharitable. The core question, however, is whether failure to compensate is not only uncharitable but unjust. A definitive answer would, it seems, require the Commission to choose between the rival views of justice: one emphasizing the achievement of an equitable pattern of distribution of the benefits and costs of research, the other stressing the transactions of free agents, whatever the resulting distribution. On the former view, the government has a strict obligation to compensate injured subjects, and its present failure to do so constitutes an injustice. On the latter view, uncompensated, injured subjects suffer no injustice so long as they freely and knowingly assumed responsibility for these costs before joining the experiment in which they were injured. Failure to compensate would then at most constitute a deficit in charity or benevolence.

Several serious reservations about the consent that is obtained from subjects make the latter view less convincing to the Commission. First, the consent argument's appeal to the notion of a gift freely offered would be strongest if the research subject were offered at the

time he or she agreed to participate the alternatives of either having or not having compensation available should injury result.¹³ If subjects then reject the promise of compensation, they would appear to wish to donate both their time and their security. But in the absence of such an offer of future compensation, one cannot conclude that the consent of subjects who wish to aid research indicates their desire to make the additional gift of their security. Moreover, if injured subjects would accept compensation were it offered, then it would appear that they did not wish to make the gift of their security. This is not to say that consent could not be valid without an offer of compensation, but it does suggest that an element of capitalizing on subjects' desire to help science may sometimes occur.

Many subjects will have an altruistic desire to aid research by offering their time, together with a personal desire not to put their security at risk. If the research investigator and the government can afford to offer

¹³ A contrary-to-fact hypothetical might help to clarify this point. Suppose that a private insurance company were willing to sell insurance policies to individuals for individual research projects and found a means to do so which did not involve large transaction costs. The policies would compensate the subjects in case of injury, just as the program recommended by the Task Force would do. Imagine that a given subject is first asked to volunteer for a medium-risk study, and at the same time asked to buy his own insurance policy. The terms of the request, then, are that the subject donate his time and trouble, and that in addition he pay out the (say) additional \$1.50 that the insurance company charges for insuring him. The researcher accepts no volunteers who are unwilling to donate the \$1.50 along with the time and trouble. One may suppose further that the researcher has no problem in finding enough people of good will and adequate pocket money for the experiment.

The terms of the subject's agreement in this hypothetical would be perfectly and obviously just, in the view of those who construe consent as involving assumption of risk. Perhaps not everyone would be willing to volunteer for experiments if they had to buy an individual insurance policy as a condition for joining. But if they did, they will not have been treated unjustly. Again, if it is morally acceptable for them to volunteer their time and trouble, it must be morally acceptable for them to volunteer the extra \$1.50. And if they were insured by a private insurer, there would be no apparent need for any government compensation program, even though the subjects may be injured in an experiment designed to benefit society generally and conducted or sponsored by the government.

The contrariness-to-fact of this hypothetical deserves emphasis. The Commission has investigated the possibility of providing subjects with the chance to purchase individual insurance policies at the time of enrollment in research projects. The Commission's consultants have reported that such a scheme would be utterly impractical. Thus, if no compensation program is undertaken by research institutions or by the government, subjects will continue to be uninsured for lost wages, and, for those having inadequate health insurance, for medical bills resulting from research injuries.

compensation for injury, but refuse to do so knowing that they will still obtain volunteers, they thereby exploit the altruistic motivation of volunteers: when a subject gives the willing gift of his or her time, the unwilling gift of his or her security is extracted as well. If exploitation is a form of unfair taking advantage of another, then the government or researcher may act unfairly in asking for volunteers while refusing them the possibility of compensation for injury.

In particular cases, there may be no ground for concern over the moral sufficiency of consent—for example, when an intelligent, financially secure, educated adult agrees to undertake a small, accurately estimated risk of a minor harm of known character. But rules concerning compensation of subjects will not, as a practical matter, be able to distinguish these simple cases from the more difficult ones and the conditions of less-than-ideal consent are present often enough that the difficulties should be taken into account in formulating policy.

In many experiments, the risks are not well known. A treatment may be so new that the pattern of adverse reactions or side effects has not been established, nor will it be possible to determine whether a given subject is at especially high risk for these harms. Remote risks of serious harms are especially likely to attend experimental procedures. Consent in such cases is necessarily somewhat blind, and true appreciation of risk is doubtful, even for ideally competent subjects. Further, there is accumulating evidence that people do not perform well in calculating the expected utilities of events with small probabilities of occurrence.¹⁴ Events of different orders of magnitude of probability may be given the single rating of "unlikely." Assigning full responsibility to the subject for assumption of remote, but serious, risks of research thus takes on the air of exploitation of known weaknesses.

In the case of remote risks, when subjects agree to participate without compensation for injury, their gift of security is a small one because the substantial harm that might ensue is discounted for its low probability. For the unfortunate few subjects for whom the harm later materializes, however, an uncompensated injury dramatically increases the size of their gift to the research enterprise. While they agreed at the outset to bear the injury without

¹⁴ Amos Tversky and Daniel Kahneman. *The Framing of Decision and the Psychology of Choice*, 211 *Science* 453 (1981).

compensation should it occur, one may reasonably conclude that they did not expect it to occur and did not truly intend to make this larger gift.¹⁵ Viewing the exchange in this light helps to account for some lingering sense that even allowing for the subject's valid consent to participate without compensation for injury, it is unfair for them to have to bear such a substantial burden. It may also help explain the strong obligation felt by many people (including many researchers) to provide compensation in order to "repay" this gift (as noted in the discussion of the gift relationship in Chapter One), since the gift is not only large but probably more than the subjects initially intended to make.

To these difficulties may be added a host of standard complaints about the consent process. Patients who are subjects are sometimes, despite recitations of subjects' rights, in fear of displeasing their care-givers and hence in a dependent and unfree relationship. Patients are often agitated and distraught because of the very medical condition that qualifies them for an experiment. Moreover, a significant number of subjects, including children, the severely retarded, and the senile, are simply incompetent. The propriety of altruism-by-proxy which may be asked of these subjects is not established, even for the small risks permitted by the HHS regulations.

It can be presumed that under the current regulatory system, consent to treatment in most research involving human subjects meets the standards upon which society insists for valid transactions in other contexts, such as commerce. Indeed, the knowledge, competence, and independence of the contracting parties in society generally are seldom scrutinized as closely as are those qualities of potential subjects in biomedical research. Nevertheless, it is fitting to use a higher moral standard in the research context. The goals of human health and well-being that motivate research ought to be reflected as well in a higher moral standard than the *caveat emptor* of the marketplace.

¹⁵ Thus, injuries that arise because of unanticipated risks would seem to be more deserving of redress than those that arise from risks the subject knew about. One might wish, therefore, to experiment with a program in which eligibility depends on the type or risk manifested, but such a division would appear to be too complicated. Instead, it seems more sensible simply to regard all serious injuries to be, in some very real sense, "unanticipated" by those who suffer them. Like many other factors, the issue of unanticipated risks serves as a reminder of the ethical problems with placing too heavy reliance on the notion of "voluntary, informed consent" in the sense of a forced waiver of any claim for recompense for research injuries.

Additional Reasons for Compensation

In addition to arguments based upon justice, there are at least two other moral grounds for a program of compensation.

Appropriate Regard for Patient-Subjects' Well-Being. Justice is not the only standard of morality. There are acts, or failures to act, that are surely wrong even though they violate no one's rights and are not instances of injustice. Acts can be mean-spirited, selfish, cheap, irresponsible, though they comply with the rules of conduct required by justice.

Ordinary English does not provide a precise vocabulary in which to distinguish these sorts of wrongs, nor does moral theory itself speak with one voice—in part because the classifications are matters of substance as well as semantics. Still, it is worthwhile to make a rough distinction between considerations of justice and other, still important, moral considerations. As regards the present subject, the most important such consideration would be the distress of anyone injured in the course of research who was faced with large medical bills and loss of income due to research-related disability. Such instances of need suggest the simplest of all arguments for a program of compensation: the serious need of those few injured in research can be met without untoward expense or difficulty by a program administered through research institutions. If, as Henry Beecher wrote, medical experimentation must be "ethical in its inception,"¹⁶ then, one may add, it must also be ethical in its consequences. A program of compensation for research-related injuries would help to ensure that the consequences of research would be good ones rather than bad. In this view, not to adopt such a program would be a selfish and cheap or even irresponsible disregard of patient-subjects' well-being.

Of course, this argument is unduly simple. The claim advanced is not in itself sufficient to establish the rightness of enacting a compensation program, although it may lend support to a decision that rests on a stronger moral claim. But it depends on showing that a serious need of injured subjects can be met without imposing disproportionate burdens on others. One is, after all, not considered irresponsible for failing to do something heroic, only for failing to meet a great need without great cost to oneself.

Public Conceptions of Justice. Although the moral sensibilities of the

public on this issue are not known, there are certain indirect indications that lack of compensation of injured subjects is, or would be, seen as wrong. A television documentary on injury subjects, for example, stressed the lack of compensation as one of the wrongs perpetrated.¹⁷ And the government gave considerable publicity to its efforts to locate and compensate the victims in certain widely reported cases of research-related injury.¹⁸ Finally, many individual researchers provide the immediate medical care needed by injured subjects, presumably because they feel some sort of moral obligation, even though they are (as a matter of their "contract" with the subjects) under no legal obligation to provide such free treatment.

Thus, whether or not the moral argument in favor of an obligation to compensate is compelling, many members of the public subscribe to it. Even those who are not themselves convinced that failing to compensate injured subjects is a true injustice may not wish to see their government involved in an action that has even the appearance of an injustice.

If, then, research injuries come to public attention yet remain uncompensated, public support for research with human subjects might be reduced. Failure to redress injuries, particularly if they are large, could be taken as evidence that those who direct the research enterprise do not have as strong an interest in the well-being of their research subjects as they do for their scientific endeavors. The resulting erosion of confidence that scientists and the public share an identity of goals could result in a climate of opinion inimical to research and, indeed, to all risk-taking for public benefit. This result might satisfy those whose sole agenda is the protection of subjects from risks, but it would work to the detriment of society as a whole.

Research on human subjects, if done as part of a broad attack on disease, is of necessity risk-laden. The public, if it is to support this enterprise, must find the human costs tolerable. It will be more likely to do so if the costs are widely shared through a program of compensation of subjects who are injured in research. The moral importance of medical research—a value worthy of respect and protection—thus adds weight to a

¹⁷ *Mission: Mind Control*, produced by Paul Altmeyer, American Broadcasting Company, January 30, 1979.

¹⁸ See, e.g., James H. Jones, *Bad Blood*, Free Press, New York (1981) at 217-19.

¹⁶ Henry K. Beecher, *Ethics and Clinical Research*, 274 New Eng. J. Med. 1354, 1360 (1966).

conclusion in favor of compensation for research injuries.

Obligations to Subjects in Therapeutic Research

A crucial issue is whether compensation is owed to all subjects whose medical condition worsens in some respect in the course of research. The ethical arguments already developed are premised upon some notion of sacrifice, of giving a benefit to the whole. This situation is met most clearly by subjects in "nontherapeutic research" who undergo procedures unconnected with their own condition (indeed, they are often "normal volunteers").

At first sight, "therapeutic research"—that is, an experiment designed to gain generalizable knowledge about a medical intervention by employing it under controlled conditions with a group of patient-subjects—would appear to be disqualified ethically because participating subjects may be seeking benefit for themselves as patients rather than being solely vessels through which knowledge can flow to others. This view would treat therapeutic research as an example of ordinary (albeit innovative) therapy for purposes of compensation; patients who become subjects are seen as taking no greater risk than they would otherwise face in dealing with their illness.

The distinction between therapeutic research and innovative therapy is a narrow one. In innovative therapy, a physician is simply trying something new to benefit the patient often because existing remedies have failed. In therapeutic research, a physician-investigator follows a research protocol in order to produce generalizable knowledge through testing out a medical intervention that, it is hoped, may be of benefit. This goal creates at least a potential conflict of interest on the part of the physician-investigator, over and above any hazards inherent in the particular study design. Each patient who is also a research subject is exposed to the possibility that the procedures most conducive to his recovery will be altered so that the research program can best be carried out (for example, that random assignment will remove the possibility of access to certain procedures).¹⁹ The

patient could avoid this jeopardy by seeking the innovative therapy outside of the research context, where this is available. Where the patient instead decides to become the subject of therapeutic research, he or she makes a gift (however slight) of some of his or her security to the larger society.

Moreover, some therapeutic research will not offer a patient his or her best chance for recovery. It is, furthermore, quite common for therapeutic experiments to involve procedures, especially tests, that are performed only for scientific reasons. In all of these cases, the medical intervention being studied may be intended to be "therapeutic" for the patient-subject, but compensation for injuries would rest on the same footing as for nontherapeutic research: the patient is making a contribution to society.

Conclusions

A program of compensating for research injuries will help to equalize the burdens of progress in this field that would otherwise fall very unevenly on people. Competing conceptions of justice lead to contrary conclusions about whether justice requires that such a program be adopted. Fairness argues for compensation, but the alternative argument from the consent of free agents denies this. Although, for both philosophical and practical reasons, it is not persuaded by the latter argument, the Commission does not hold that compensation is a basic right (such as the right to a fair trial), to be provided regardless of cost, practicality, or other policy considerations. The arguments for compensation of injured subjects on fairness grounds simply do not establish so strict an obligation.

Several additional considerations add weight to the arguments for compensation beyond the notion of fairness, both in ethical theory and in the public perception of the government's stance. First, the moral claims of charity and generosity ought not to be ignored—although the obligations they create have inherent limits, for one is not judged wrong in failing to be heroic. Second, the frailties

the study, did not take positions of added risk: as far as could be ascertained, each arm was as likely as were the others to turn out to be the best one. (Where the arms of the randomized trial are not of equal expected therapeutic value, of course, the arguments in favor of compensating might apply.) Hence there would be no sacrifice imposed on the subjects by the study, nor would there be an act of altruism involved in enrolling, unless there were added dangers from any incidental procedures, added to the patients' treatment solely for research reasons.

of the consent process, especially with regard to small risks of serious harm, weigh heavily as a reason for added "protection" in the form of after-the-fact recompense at least for any serious harms experienced by subjects.²⁰

The Commission concludes that compensation of injured subjects is appropriate to the research enterprise. A program to assure compensation is thus a desirable policy goal for a just and compassionate government, both as the sponsor of most biomedical and behavioral research and as the means through which society acts on matters of common interest, such as the search for new biomedical discoveries. Whether a program should be adopted depends on the need for it (Chapter Four) and the alternative means (Chapter Five), and upon whether the program's transaction costs. Vulnerability to abuse, or difficulty of administration would be disproportionate to the ethical problems at which the program would be aimed (Chapter Six). Moreover, a full evaluation of the ethical arguments for and against compensation for research injuries must take these practical considerations into account. Such practicalities are in themselves ethical matters because they turn on questions of the fair allocation of resources, the potential impact of a program on the rights of other parties, and horizontal equity with persons suffering from other misfortunes.

²⁰ A further benefit of a general program of compensation would be a partial amelioration of certain harms visited by unethical research practices. The overwhelming majority of research subjects are recruited under honorable conditions. Research scientists, while having a research agenda in addition to any therapeutic relationship with a potential subject, have generally been as solicitous of patient welfare as they would be for their own. The current review process is in place, however, because there have been exceptions. Only a few cases have come to light, but there does not exist a means of monitoring the actual consent process closely enough to deter a scientist determined to break the rules. Further, studies of the incidence of injury have relied heavily on reporting by those who would have caused the injuries. Thus there is some cause for concern over injury due to participation in research under fraudulent conditions, as when potential benefits are exaggerated or risks are undisclosed.

There are existing legal remedies for harms visited upon subjects through deception and fraud, and it would be convenient for the Commission to be able to formulate its recommendations without having to consider these cases. It is reasonable, however, to ask whether the existing legal protection is adequate, and, if not, to suggest policies which might help to protect subjects. A general program of compensation of subjects injured in research would provide a partial remedy for the problem of injuries to subjects recruited through deception, and the Commission counts this as a point in favor of a compensation program.

¹⁹ The considerations set forth here do not require compensation of the subjects who experience poorer outcomes in randomized trials in cases in which all arms had equal chances of therapeutic success. This will be true even if most or all of the enrollees in one of the arms do much less well than those in the other arms, and even if those who do less well would have done better had they received standard therapy outside of the experiment. The reason is that the subjects, at the time of entry into

Chapter 4: The Nature and Extent of Research-Related Injuries

In pursuit of an answer to the underlying question at issue—should there be a compensation program for research injuries?—the preceding chapter established that some subjects may "deserve" such compensation if injured. In this chapter the Commission turns to the next part of the overall question and examines how many subjects are injured and how severely. Given the extent of Federal involvement in the research enterprise, surprisingly little is known about either the magnitude of the problem of injury to subjects or the nature of the injuries. The Commission sponsored two studies of the incidence of injuries at research institutions with existing compensation programs. These studies do not provide definitive answers at the national level, but are suggestive of the nature and scope of the problem. Taken together with data from other sources, they provide a basis for several modest, but important, conclusions:

(1) the incidence of serious injury and the absolute numbers of people seriously injured are small;

(2) most injuries are trivial in nature and require no medical intervention;

(3) of those injuries that require intervention, most are only temporarily disabling;

(4) most serious injuries and fatalities associated with research are more likely to result from underlying disease than from the research *per se*;

(5) patient-subjects in therapeutic research are more likely than normal subjects in nontherapeutic research to suffer injury; and

(6) the existence of compensation programs does not stimulate excessive or unmerited claims of injury.

Before examining the data on research-related injury, it is important to note that there is no agreed-upon use of the term "research injury." No attempt is made in this chapter to specify the term definitively. Rather, in reviewing previous studies, the definitions used in each will be noted in order to avoid spurious comparisons. Many quite disparate definitions have been employed for various purposes. In different contexts, "injury" has been used to denote (or, in some instances, has merely not been clearly distinguished from) "adverse effect," "clinical event," "significant medical event," "complication," and "unanticipated consequence."¹

¹In Phase 1 drug trials, for example, it may be appropriate and necessary to note all "events," including consequences of the drugs and intercurrent illness, but such "events" are not the

Many studies employ some scale of seriousness to distinguish among the consequences of research. Such distinctions tend to be made along a dimension of disability (*i.e.*, trivial, temporarily disabling, permanently disabling or fatal) or to be operationalized in terms of the amount of medical care needed as measured either by the extent of the intervention (no treatment, physician intervention, referral, hospitalizations) or by the "cost" of that intervention (which may or may not include lost earnings as well as medical care costs).²

The lack of a uniform definition of injury makes it difficult to compare reports on the consequences of research. Keeping this potentially serious limitation in mind, the Commission analyzed data from many sources in order to try to determine whether injuries of any significance (either in terms of frequency or seriousness) are occurring in research with human beings in such a way that a general compensation program for such research would appear to be needed. Correlatively, are the injuries that occur of such an extent that compensation could be paid without overburdening the research enterprise?

It would seem that the most relevant data to answer these questions would come from institutions with compensation programs already in place. Since no published information was available from these programs, the Commission solicited reports from the University of Washington in Seattle and the Quincy Research Center in Kansas City, Missouri. Data from these reports were compared with existing data from other sources, including a previously published longitudinal study of a drug testing facility in Michigan, and broad-based data from multiple institutions.

Longitudinal Institutional Studies

The University of Washington in Seattle and the Quincy Research Center in Kansas City, Missouri, reported their data regarding numbers of subjects covered and the kinds of research in

same as research-related injuries. Furthermore, some of the terms used to connote injury actually preceded injury in time. That is, a "complication" may, if it is not handled correctly, become an injury and therefore be only an indirect consequence of the research. Although it is important for informed consent and IRB clearance to indicate what are considered to be possible (hence anticipated) consequences of the research, and it is important for scientific purposes to take account of unanticipated consequences of research, these are not the same as research-related injuries. For discussions of injury it is the seriousness of the consequence, not its predictability, which is important.

²Office of Technology Assessment, U.S. Congress, *Compensation for Vaccine-Related Injuries* (1980).

which they were involved, the nature and incidence of injury, the number of claims made (and paid) for medical care or compensation, and the cost of the insurance program. Data from the two programs are not fully comparable because the University of Washington is a general research facility while Quincy is a drug testing facility and because of different definitions of injury. Nonetheless the programs are large enough to generate data that are suggestive of the extent and nature of research-related injury and these data seem to be corroborated by other reports.

General Research Program: University of Washington, Seattle. Diana McCann and John Pettit, of the University of Washington at Seattle, analyzed records for the years 1972-1981 during which an estimated 356,000 subjects on more than 5300 protocols for biomedical research were covered by the university's compensation program.³ During that period, investigators were required to submit detailed reports to the Human Subjects Review Office on the subjects involved in their research and any adverse effect experienced by those subjects that were possibly related to their participation in the research.⁴

McCann and Pettit reported that for the year prior to the establishment of the insurance program, survey data indicate adverse effects in 4.6% of the studies (5 out of 110) involving 0.07% of the subjects (10 out of 14,942). None of the subjects were partially or permanently disabled and no deaths were reported.

This exceptionally low rate of injury could be accurate or may be partly an artifact of the retrospective survey. Since the insurance program began, the university has had two means of reporting adverse effects internally. An "Adverse Effect Report" is used when there is a likelihood of a claim against the university, while a "Status Report" is required on an annual basis for all adverse effects. The former has been used and are summarized for nine years; the latter have been in effect for only four years. Although the reports provide details about the nature of the adverse effects, they are often vague with respect to the numbers of subjects who experienced particular adverse effects,

³Diana McCann and John R. Pettit, *A Report on Adverse Effects Insurance for Human Subjects* (1980); see Appendix H to this Report. The data were updated by Ms. McCann in February 1982.

⁴It is noteworthy that even where a compensation program exists at a single institution, the precise number of research subjects is not known. It should also be noted that subjects participating in behavioral research have been excluded from the compensation program since the second year of the program.

making it very difficult to calculate incidence rates. Fortunately, for purposes of this Report, most of these imprecisions appear in reports of effects that were merely transient and trivial.

A further difficulty in interpreting the data reported by McCann and Pettit arises from the ambiguous use of the phrase "adverse effect." Whether an adverse effect means both "anticipated" and "unanticipated" consequences or just unanticipated consequences has not been resolved by the institution. At present, current policy allows individual investigators to report whichever they prefer. In the adverse effects and status reports, therefore, the term is apparently used in both ways.

The Commission staff reviewed the descriptive information accompanying the data for each of the status reports; the incidents listed there as "adverse effects" were more numerous than those reported separately on "adverse effects" forms. Omitting "trivial" injuries (such as headache, nausea, dizziness, soreness and other transitory symptoms not requiring medical intervention) the staff calculated that in the first eight years 144 subjects (or 0.04% of the estimated total of 356,000) experienced temporary disability; none were permanently disabled and two patient-subjects died. Most of those who experienced injury were patient-subjects with existing disease.

Reports on 34 "adverse effects" of research (involving 42 subjects) were filed with the university's Human Subjects Office in the first nine and one-half years of the compensation program, but only 18 claims for compensation were submitted. The small size of this figure is probably due to a combination of factors. First, although subjects are told that medical care is available in case of injury, they are not specifically informed of the existence of the formal compensation program; second, claims are normally initiated by investigators; and finally, there are informal mechanisms for handling some injuries. About the final point, McCann and Pettit report:

It is known that some medical care and other professional services are provided to subjects who experience both anticipated and unanticipated adverse effects for which no claim is made against the adverse effects compensation program. . . . How such care is financed or accounted for is not reported to a central office, therefore this information is not available. The following means are likely: time donated by the health professional; costs absorbed by a grant or contract, as appropriate, e.g., the Clinical Research Center; and reciprocal services provided within the health professions.⁵

⁵ McCann and Pettit, *supra* note 3, at 27.

It has taken some time for the program to become well established at the university, and the rate of claims has picked up in the last several years.

In all cases in which an injury is found to have been related to the research procedure, some payment has been made. Most have been very modest (from \$2 to \$249 for expenses); until recently, the largest payment made was \$1,550. A claim for an injury that resulted from contamination of the equipment used in an experiment has now been settled for \$10,000. Six of the 42 injuries were reported as "not related" to the research project; only in one case did the subject file a claim, which is the only claim of the 18 in which payment has not been made.

Nontherapeutic and Therapeutic Drug Testing: Quincy Research Center. A second report was prepared by John Arnold, M.D., Director of the Quincy Research Center in Kansas City, Missouri, a drug testing facility whose subjects have been covered by a workers' compensation program since 1975.⁶ Because much of the research at Quincy is performed to support applications for new drug licenses, careful reports are kept of the number of subjects involved in each protocol, the duration of their participation in each research project and all "clinical events" (including intercurrent illnesses such as colds, flu, appendicitis, drunkenness, toothache, eye surgery, etc.).

Data reported by Dr. Arnold are from 151 Phase 1 (nontherapeutic) projects involving 2596 normal volunteers, and 78 Phase 2-4 (therapeutic) projects involving 2478 patient volunteers.⁷ Simple frequency counts of undifferentiated "clinical events" as well as "significant clinical events with sequelae" are reported for both study types and subject categories. Both the total number of clinical events and the number of serious events are greater in Phase 2-4 studies with patient-subjects than in Phase 1 studies with normal volunteers. Patient-subjects are more likely than normal subjects to withdraw from protocols because of significant clinical events and, although the

⁶ John D. Arnold, *Incidence of Injury During Clinical Pharmacology Research and Indemnification of Injured Research Subjects at the Quincy Research Center* (1980); see Appendix I to this Report.

⁷ Phase 1 studies are used to determine toxic dosage and pharmacological actions of drugs such as metabolism, absorption and elimination. Phase 2 trials are conducted on a limited number of patients to evaluate specific disease treatment or prevention. Phase 3 and 4 studies involve extensive clinical trials to assess safety, effectiveness and optimal dosage levels for treating specific diseases. The phases proceed sequentially.

incidence rates are very low, patients are more likely to be hospitalized (1.43% vs. 0.2%) and to die (0.24% vs. 0).

It appears that most of the clinically significant side effects occurred because of preexisting disease in patient-subjects rather than as a direct consequence of the experimental drugs or participation in research. None of the six deaths and only seven of the 36 hospitalizations could conceivably have been research-related, whereas three of the five hospitalizations for normal volunteers could have been as a consequence of the research. From these data Dr. Arnold concluded that the conduct of Phase 2 through 4 protocols is "inherently beset by greater incidences of primary disease states in outpatient participants" for three reasons. First, the testing of drugs and devices for "efficacy" requires preexisting disease states in selected participants; second, testing under these protocols involves research participation of greater than average duration; and third, the subjects tend to be of more advanced age.

A second conclusion from the data from the Quincy Center derives from the fact that normal volunteers are more likely than patient volunteers to be referred for medical care as a result of significant clinical events. In addition, protocol termination and alteration of protocol designs are more likely in Phase 2 studies than in Phase 3-4 studies.

The available data on significant clinical events with participant and protocol sequelae support the conclusion that the incidence of drug- and participation-related events is higher in Phase 1 protocols employing normal participants by reason of heretofore undiscovered drug effects that are toxic to a greater or lesser extent to human subjects. By employing normal adult male subjects for the conduct of Phase 1 protocols, these events were more easily and immediately resolved via therapeutic intervention and additional physician consultation and resulted in a minimization of the amount of actual risk to participants and additional sequelae such as early termination from protocol and/or hospitalization. Thus, Phase 2 data indicate that normal male participants were able to tolerate the ultimate hazards of early Phase 1 drug testing without serious sequelae, as evidenced by findings of no deaths and few hospitalizations but increases in participant referrals for additional medical care and physician consultations. We believe the same drug-related complications would have been fatal or very serious in ill outpatients.⁸

A third suggestion from Dr. Arnold's data is that the number of clinical events is directly proportional to the length of exposure. The average number

⁸ Arnold, *supra* note 6 at 12.

⁹ *Id.* at 30.

of days on protocols was almost twice as great for patients than for normal subjects (26 vs. 14 days) and on the average, patients had 35% more clinical events per participant.¹⁰ Obviously, existing illness is a confounding variable in trying to ascertain the relationship between risk exposure and injury; the illness itself can worsen over time thereby leading to its own effects and rendering the patient-subject more susceptible to injury. When injury occurs, it may be difficult to differentiate whether it is due to the preexisting illness or to the intervention.

Nontherapeutic Drug Testing: Michigan State Prison. A previously published study of research injuries was conducted by Dr. Chris Zarafonitis and other members of the Protocol Review Protection Committee for the State of Michigan Department of Corrections.¹¹ They examined clinically significant adverse effects in a Phase 1 drug testing program involving normal prison volunteers during a twelve-year period from 1964-1976. Records were reviewed for 805 protocols involving 29,162 participants over 614,534 subject days.

The authors reported 58 adverse drug reactions and six additional "complications" temporally related to the drug study, forming a total of 64 subjects (.2%) who experienced "significant medical events" (i.e., "the associated appearance of objective clinical signs or laboratory abnormalities; and sufficient discomfort, hazard, or potential hazard to require physical intervention, e.g., to stop test drug, initiate appropriate therapy, and follow-up to recovery or other outcome"). None of the adverse reactions and only one of the complications were permanently disabling; one subject, on placebo, died of cerebrovascular hemorrhage while asleep. Thus, a clinically significant medical event occurred once every 9602 days of subject exposure or about once every 26.3 years of individual subject participation.

Although the data from the three institutional studies are quite consistent, it is important to compare these with data from a broader base in order to determine how representative these particular institutions are of the research universe.

Broadly Based Sources of Data

Since American society has been providing extensive governmental support for research for many years, a logical source of data to answer questions about the overall incidence of injuries would be the Federal agencies that conduct, support or regulate research. Unfortunately, very little retrospective data is available from Federal sources.

An alternative method would be to follow a prospective approach. Rather than count up the number of injuries that have occurred in a particular period in the past, one could estimate the number that can be expected to occur in the future. To do this, one would have to know the total number of human subjects participating in research, the portion involved in various types of research, and the probability and severity (collectively termed "risk") of injury associated with each type of research. Again, the facts needed to carry out this approach appear to be lacking.

Government-Reported Incidence of Harm. The Commission has found that data on research-related injuries and on research subjects generally are extremely limited in terms of both the amount of information available and its generalizability.¹² Despite the very major role of the government in research, there is no comprehensive Federal mechanism for collecting data on injuries. In response to direct inquiries, officials from FDA and NIH testified that neither agency compiles such information. In addition, of the more than twenty other Federal agencies that conduct or support research with human subjects, only one (the National Bureau of Standards) was able to provide the Commission with information on either the nature or the incidence of injuries experienced by subjects in research conducted under its auspices.¹³ Neither the government as a whole nor the individual agencies have data on the number or kind of injuries sustained by subjects of Federally conducted, supported, or regulated research.

The only Federal attempt to collect and analyze data on research injuries was a special study conducted in 1976 by Philippe Cardon and his associates

for the HEW Secretary's Task Force on the Compensation of Injured Research Subjects.¹⁴ In a telephone survey, investigators were asked to report the number of subjects involved in therapeutic and in nontherapeutic studies, the nature and incidence of injuries "that could be attributed to the conduct of the experimental regimen," and whether those injuries were experienced by subjects of therapeutic or nontherapeutic research. Injuries were classified as: trivial, temporarily disabling, permanently disabling, and fatal.

Investigators reported on a total of 132,615 subjects. Overall, 3.0% of the subjects experienced trivial adverse effects, 0.7% experienced temporarily disabling injuries, less than 0.1% were permanently disabled and 0.03% died. (All of the fatalities occurred in patient-subjects in therapeutic research.) Of the more than 39,000 subjects participating in therapeutic research studies, 10.8% experienced adverse effects or injuries most of which were trivial in nature. Only 2.4% of subjects were temporarily disabled, less than 0.1% were permanently disabled and approximately 0.1% died. Most of the 43 fatalities were not clearly related to the research. In fact, 37 (86%) of the reported deaths were in cancer chemotherapy trials. In the other categories as well, many of the "injured" were cancer patients who experienced familiar side effects of standard treatment. The incidence of injury for subjects participating in nontherapeutic research was even lower. Of 93,399 subjects, only 8.8% experienced injuries, most of which were trivial. Thirty-seven people (0.1%) were temporarily disabled, one person was permanently disabled and there were no fatalities. The authors correctly point out: "the data are a gross summation of the many interactions and perceptions of patients and subjects, principal investigators and probably others involved in the conduct of their research, the authors of the questionnaire and the telephone interviewers. Other approaches and assumptions might give different results."¹⁵

Furthermore, it is likely that in a retrospective telephone interview there will be some underreporting of injuries because of incomplete records, problems of recall, and unwillingness to disclose

¹⁰ McCann and Pettit also reported longer average risk duration for patients than for normal volunteers although it was found to be highly variable (3 to 20 times greater) depending on the particular mix of research projects in any one year.

¹¹ Chris J. D. Zarafonitis, Philip A. Riley, Park W. Willis, Lawrence H. Power, Judson Werbelow, Leo Farhat, Wendell Beckwith and Bernard H. Marks, *Clinically Significant Adverse Effects in a Phase 1 Testing Program*, 24 Clin. Pharm. & Ther. 127 (1978).

¹² See the Commission's Biennial Report on Protecting Human Subjects, Government Printing Office, Washington (1981), for findings and recommendations on data on research participation and injuries.

¹³ The agency reported two injuries since 1975: one subject who fell while testing emergency egress from mobile homes and one who allegedly injured his back during research to establish portability guidelines for the FTC.

¹⁴ Philippe V. Cardon, F. William Dommel, Jr. and Robert R. Trumble, *Injuries to Research Subjects: A Survey of Investigators*, 295 New Eng. J. Med. 650 (1976) (report prepared for the HEW Secretary's Task Force on the Compensation of Injured Research Subjects).

¹⁵ *Id.* at 653.

such information. How large a bias this introduces into the data is not known. These data are not, however, inconsistent with those reported by McCann and Pettit for the University of Washington.

Prospective Approach. An alternative method for determining the incidence and seriousness of research injuries would be to look forward rather than backward. Each research project entails certain steps or procedures. Some of those carry known risks. If one added to those risks an appropriate factor for the risks of any new and untested procedures—and for the risk, if any, of the particular and perhaps novel use of the known procedures in combination—it should be theoretically possible to project a risk for each type of research. When multiplied by the number of subjects in each research activity, the result would be an estimate of the injuries expected. Again, unfortunately, neither basic data on numbers of subjects nor the more sophisticated numbers needed for risk estimates are available.

Number of subjects. Very little information is available about the numbers of people serving as research subjects at any given time who are at risk of injury. Neither the funding agencies nor the recipient institutions are required to collect such information. Thus, although it is known, for example, that the Public Health Service (PHS) supports approximately 80% of the Federally funded biomedical research that is conducted throughout the country, the number of subjects involved in such studies is not known. This is also true of other Federal agencies supporting research.

In the 1977 HEW Task Force Report it was estimated that approximately 600,000 subjects are involved annually in PHS-supported clinical trials (*i.e.*, controlled studies of new therapies).¹⁶ Such trials are only a part of the research supported by the Public Health Service; a large amount of research involves studies of basic physiology, normal growth and development, and a variety of other inquiries utilizing normal volunteers.

Other partial estimates include the Food and Drug Administration's figure of 375,000 subjects per year participating in research designed to test new drugs

and medical devices; this figure is expected to increase as a result of the recent promulgation of regulations governing the testing of medical devices.¹⁷

It seems unlikely that a firm estimate of the number of subjects at risk for injury at a given time could be prepared from figures currently available; any such conclusions would be based on too many levels of approximations, extrapolations and assumptions to be reliable. Thus, without either the numerator or the denominator with which to determine the incidence of research-related injuries, neither the absolute magnitude of the problem nor the size of the universe from which it emanates can be known with certainty.

Subject characteristics. Although the PHS and FDA have not provided direct assessments of the characteristics of subjects and of the projects in which they are involved, some data were collected by the University of Michigan's Survey Research Center in the study of IRBs it performed for the National Commission for the Protection of Human Subjects in 1975.¹⁸ These data provide the best available description of the characteristics of subjects participating in biomedical and behavioral research. Principal investigators were asked to estimate the age, sex, racial and income distributions of their experimental subjects. Projects were then weighted, based on the number of subjects, to produce overall estimates of demographic characteristics of research subjects.

TABLE 1. DEMOGRAPHIC CHARACTERISTICS OF BIOMEDICAL AND BEHAVIORAL RESEARCH SUBJECTS

	Percent
Sex:	
Female	51.0
Male	49.0
Race:	
White	71.2
Black	20.7
Other	7.1
Income:	
Higher	11.7
Middle	51.3
Lower	31.5
Age:	
Newborn	5.8
3 months-6 years	9.2
7-12 years	5.3
13-18 years	7.6

¹⁷Information provided by personal communication with John C. Petricciani, M.D., Director, Bioresearch Monitoring Program, FDA (1980).

¹⁸Robert A. Cooke and Arnold S. Tannenbaum, *A Survey of Institutional Review Boards and Research Involving Human Subjects*.

TABLE 1. DEMOGRAPHIC CHARACTERISTICS OF BIOMEDICAL AND BEHAVIORAL RESEARCH SUBJECTS—Continued

	Percent
19-40 years	42.0
41-64 years	20.8
65+ years	7.4

Additional figures on subjects' characteristics are divided according to percent of projects rather than percent of subjects. Figure 1 shows the subjects participating in therapeutic and nontherapeutic research and their source (by percent of project). Note that both patients and nonpatients are involved in therapeutic as well as nontherapeutic research. This apparent inconsistency is easily explained. First, research in preventive medicine is usually conducted on normal volunteers yet is considered therapeutic (*e.g.*, vaccines, controlled diet to prevent heart disease, fluoride in toothpaste to prevent cavities). On the other hand, some studies are undertaken to understand a disease process; although the subjects must necessarily be patients suffering from the disease, since the research provides them with no treatment, these studies are considered nontherapeutic.

Note.—Appendix to Report and Recommendations: Institutional Review Boards, National Commission for the Protection of Human Subjects, U.S. Government Printing Office, Washington (1978).

These data do not indicate the numbers of subjects involved in each kind of project. Although one might assume that the number of subjects in therapeutic and nontherapeutic research, for example, are equal,¹⁹ the actual data on this question are fragmentary and contradictory. Cardon found in his review of 132,615 subjects in 538 projects supported by NIH and ADAMHA that the subjects in nontherapeutic research outnumbered those in therapeutic research by more than two to one.²⁰ Arnold in his examination of more than 5000 subjects participating in pharmacology research found they were evenly divided between therapeutic and nontherapeutic.²¹ Generalizations to the universe of research subjects cannot be made from either study.

¹⁹Cooke and Tannenbaum, *supra* note 18, assume that since the proportions of therapeutic and nontherapeutic protocols are approximately equal so are the numbers of subjects in each kind of study.

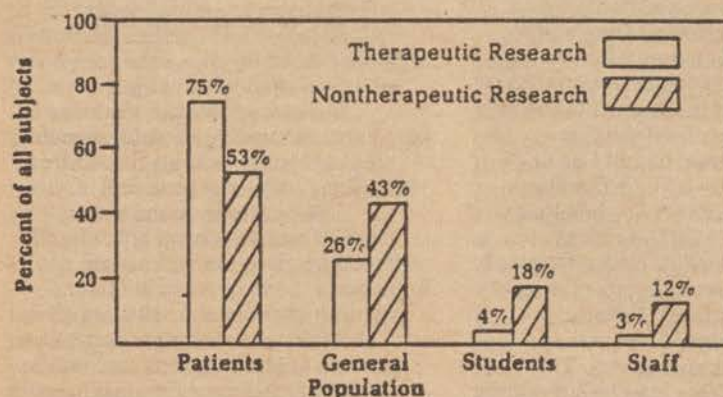
²⁰Cardon, *et al.* *supra* note 14.

²¹Arnold, *supra* note 8.

¹⁶HEW Secretary's Task Force on the Compensation of Injured Research Subjects, Report, U.S. Department of Health, Education and Welfare, Washington (1977) at VIII-2.

**Figure 1. Subjects Participating In Research
(By Percent of Projects)***

Source: Survey Research Center, 1977, Table XV.4



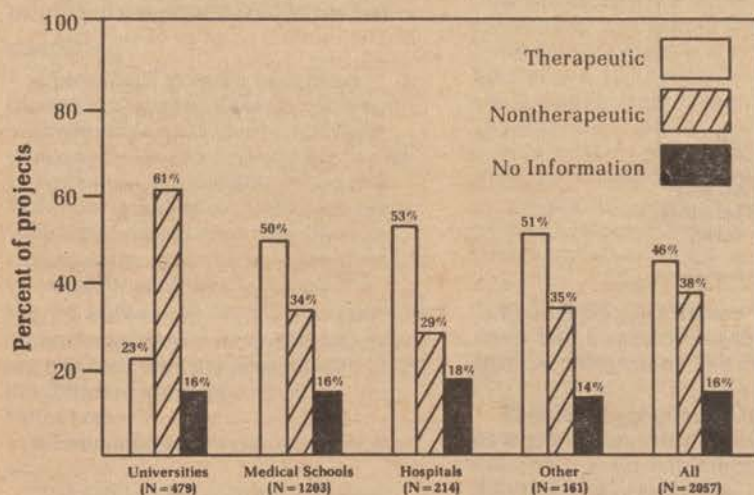
*Totals may add up to more than 100% since respondents could check more than one kind of subject.

Although the proportion of subjects participating in therapeutic and nontherapeutic research is not known, the relative proportions of types of studies are known, as shown in Figure 2. The Survey Research Center found in its survey of IRBs that 46 percent of the projects reviewed by IRBs were therapeutic research, designed (or

likely) to provide some therapeutic, diagnostic or prophylactic benefit for the subjects.²² The remaining studies were nontherapeutic in that they were not likely to provide a health benefit to the participants, but rather were expected to benefit society at large (in the form of new knowledge) or to benefit other persons suffering from, or at risk of, certain disorders.

**Figure 2. Distribution of Therapeutic/Nontherapeutic Projects
(By Type of Institution)**

Source: Survey Research Center, 1977, Table XV.4



NOTE: Therapeutic research is that designed (or highly likely) to provide participating subjects with a diagnostic, preventive or therapeutic benefit.

Nontherapeutic research, while providing no anticipated benefit to subjects, is expected to provide benefits to society generally or to future patients.

²² Cooke and Tannenbaum, *supra* note 18.

That same study found that 65 percent of projects involved biomedical interventions such as clinical evaluations of bodily tissues or fluids, administration of drugs or other agents and use of diagnostic and/or therapeutic devices. Only 7 percent of the studies involved "behavioral interventions" which were defined to include educational intervention, modification of an organization or service delivery system, social psychological therapy and behavior modification. The remaining 28 percent of the projects were other kinds of behavioral studies principally involving interviews and questionnaires, psychological and educational testing and behavioral observation.

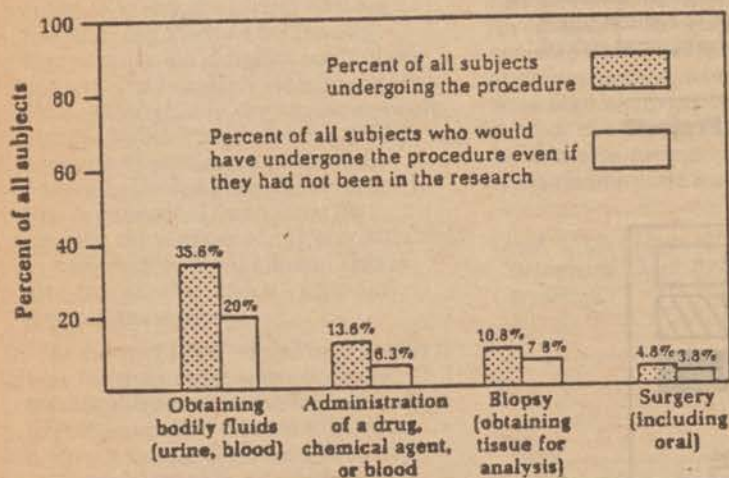
Risks of research. Clearly, not all research carries potential risks of physical injury. In fact, subsequent analysis of the Survey Research Center's data revealed that the four most prevalent research procedures are non-invasive: use of data from existing

records (53.8% of subjects), obtaining a medical history (50.1%), self-administered questionnaires (45.3%), and interviews (37%).²³

Figure 3 shows the percent of all research subject exposed to the four invasive procedures most frequently used in research. It is important to note that the majority of subjects would have undergone each of these procedures as a routine part of their treatment or diagnosis even if they had not been participants in research. Furthermore, although the procedures are labelled "invasive," many carry no risk of physical injury. Cooke's examination of research procedures suggests that most subjects participating in Federally sponsored or regulated research are exposed to no discernible risk. The remainder of subjects may be submitting to procedures involving some risk of physical harm, but in most cases apparently would have undergone those procedures anyway for diagnostic or therapeutic purposes.

Figure 3. Percent of All Subjects Exposed to Four Invasive Procedures Most Frequently Used In Research

Source: Robert A. Cooke, Survey Research Center, 1980, Tables 1-5



In a study prepared for the Commission, Drs. Mary Harvey and Robert Levine evaluated the literature on risk of injury associated with twenty invasive procedures used in human experimentation and also evaluated the reliability of the risk estimates themselves.²⁴ Risk of injury was defined as "the probability of injury occurring when a specific procedure is performed repeatedly under similar circumstances

* * * [I]njury occurs as a result of one or more complications associated with the performance of an invasive medical or surgical procedure."

Most published reports of research projects in which these procedures were used either did not discuss complications and injuries at all, or did so only in descriptive terms. Reports

²³ Robert A. Cooke, *Some Notes on the Subjects of Biomedical and Behavioral Research* (1980); see Appendix D to this Report.

²⁴ Mary Harvey and Robert J. Levine, *Risk of Injury Associated with Twenty Invasive Procedures Used in Human Experimentation and Assessment of Reliability of Risk Estimates* (1980) see Appendix E to this Report.

that did exist were incomplete and inconsistent thereby making it impossible to establish meaningful estimates of research risks. An attempt to extrapolate from the clinical literature to the research literature revealed further difficulties. Not surprisingly, retrospective reports of injury tended to be lower than prospective reports for the same procedures because of underreporting, low response rates, and insufficient data in existing medical records. Prospective studies tended to give a wide range of estimates.

Finally, the circumstances under which procedures are performed affect the amount of risk involved. The skill of the investigators, familiarity with the procedures, equipment availability, institutional policies and the existing disease state of the patients are just some of the variables which influence the occurrence not only of the initial complications, but also their subsequent resolution.

For example, it has been suggested that at least some procedures requiring sophisticated technology are best performed in hospitals that do many such procedures each year.²⁵ Conversely, at least one study has raised the question "whether access to the latest obstetrical savvy and gear may lead to overmuch intervention, possibly boosting the risk as well as the cost of having a baby."²⁶ Thus although some procedures are inherently more dangerous than others, how much more depends on circumstances. Hence, injury can only be predicted in terms of estimated ranges of probable events.

Conclusions

It is evident from the preceding discussion that full data do not exist with which to answer the questions posed initially. One has neither broad-based retrospective data on overall incidence of injury nor adequate data with which to calculate the extent of expected injury in the research universe because none of the components is known with precision. Federal agencies do not know how many subjects there are nor how they are distributed across the different kinds of research endeavors.

What studies there are do show that

most research involves minimal or no risk of physical harm. Yet it is also apparent that risk is a composite of many factors, such that for those procedures which do entail risk its magnitude cannot be specified.

Although the evidence consistently suggests that the incidence of serious injury is small, nonetheless, it is clear that at least some subjects sustain injuries as a result of their participation in Federally funded or regulated research. For them, as for those who invite them to undertake risks on behalf of society, the question of compensation is real and of immediate importance. Furthermore, the studies of the Quincy and University of Washington programs demonstrated that compensation was paid at those institutions without overburdening the research enterprise. Finally, it is likely that only when there are functioning compensation programs—even on a limited, pilot basis—will the lack of data be remedied.

Chapter 5: Existing Remedies and Their Limitations

Although injuries in the course of IRB-approved biomedical or behavioral research appear to be neither frequent nor severe, they do occur. When subjects are injured, what remedies are currently available to them? Do existing judicial or administrative remedies assure adequate compensation?

The Commission has found that to a certain degree, some of the claims by injured subjects can be and are being met outside any formal legal structure. Many investigators and research institutions apparently provide emergency and short-term medical care to subjects injured in research.¹ Such care is provided, often without charge to the subjects (or their health care insurers), as a matter of professional and institutional responsibility. For subjects with minor, short-lived injuries (who constitute a large proportion of injured subjects), the provision of free, on-the-spot medical care dispenses with any need for formal "compensation" for research injuries.

This informal means of resolution is, however, neither universal nor comprehensive. On occasion, research injuries could have severe consequences

²⁵ Harold S. Luft, John P. Bunker and Alain C. Enthoven, *Should Operations be Regionalized?*, 301 New Eng. J. Med. 1364 (1979).

²⁶ *Small Hospitals Found Better for Normal Births*, 232 Medical World News 25 (December 7, 1981).

¹ Testimony of Edward Holmes, M.D., on behalf of the Association of American Medical Colleges, transcript of 4th meeting of the President's Commission (September 15, 1980) at 169-74.

for the subject's physical well-being and ability to earn a livelihood or perform family responsibilities; further, they could require continuing medical care or supervision over an extended period. In such circumstances, the injured subject may not be able to count on the largess of the research institution. Moreover, the research institution and investigator may find that the financial demands exceed the capacity of their research budgets or the discretionary funds available to them.

This chapter examines several issues which arise when serious injuries do occur: What factors currently govern the ability of injured research subjects to secure medical care and financial redress for injuries sustained as a result of participation in research? To what degree are these factors, particularly as reflected in the legal rights of injured subjects, in accordance with the ethical claims of the subject and the moral obligations and responsibilities of the investigator and the wider society? What changes are necessary to give legal effect to the underlying ethical claims?²

²These issues are addressed, at least in part, by a growing legal literature on compensation of injured research subjects. Many of the seminal early treatments are discussed in Chapter Two of this Report, including articles by Ladimer, Dietrich, Bergen, Stickel, and Calabresi. Other articles noteworthy include: Bernard R. Adams and Marilyn Shea-Stonum, *Toward a Theory of Control of Medical Experimentation with Human Subjects: The Role of Compensation*, 25 Case W. Res. L. Rev. 604 (1975); Nancy E. Cahill, *Compensation of Subjects Injured in Experimental Medicine Programs: The Ethical and Legal Considerations*, 1 J. Legal Med. 110 (1979); Ciba Foundation Study Group, *Medical Research: Civil Liability and Compensation for Personal Injury: A Discussion Paper*, The Ciba Foundation, London (1980); Patricia J. Cooper, *Compensation for Human Research Subjects: Reform Ahead of Its Time?*, 2 J. Legal Med. 1 (1980); Bernard M. Dickens, *Contractual Aspects of Human Medical Experimentation*, 25 U. of Toronto L. J. 406 (Fall 1975); J. B. Harmon, *Compensation of Research Subjects for Adverse Effects*, in U.S. Department of Health, Education and Welfare, *Issues in Research with Human Subjects*, DHEW Publication No. 80-1858, U.S. Government Printing Office, Washington (1980); Seymour Perry, *Compensation of Research Subjects for Adverse Effects*, in *Issues in Research with Human Subjects*; John A. Robertson, *Compensating Injured Research Subjects: II. The Law*, 6 Hastings Ctr. Rep. 29 (1976); Arthur Jay Silverstein, *Compensating Those Injured Through Experimentation*, 33 Fed. Bar J. 322 (1974).

See also the discussions of compensation for research injuries in Charles Fried, *Medical Experimentation: Personal Integrity and Social Policy*, American Elsevier Publishing Co., Inc., New York (1974) at 13-43, 165-72; George J. Annas, Leonard H. Glantz and Barbara F. Katz, *Compensation for Harm: An additional Protection for Human Subjects*, in *Informed Consent to Human Experimentation: The Subject's Dilemma*, Ballinger Publishing Co., Cambridge, Mass. (1977) at 257-277.

Two additional bodies of legal literature address questions similar to those arising in the research context. For pioneering discussions of nonfault

Negligence

Customarily, redress for personal injuries is provided in the legal system by the law of torts. For a subject to receive compensation through the courts for a research-related injury, the subject would have to establish legal liability for the injury on the part of one or more named defendants—typically, the investigator or the research institution. At present, such legal liability must be predicated on a showing of negligence.³

insurance for adverse effects resulting from standard medical practice, see Clark C. Havighurst and Laurence R. Tancredi, "Medical Adversity Insurance"—A No-Fault Approach to Medical Malpractice and Quality Assurance, 51 Milbank Memorial Fund Q. 125 (1973); Robert E. Keeton, *Compensation for Medical Accidents*, 121 U. Pa. L. Rev. 590 (1973).

Articles discussing compensation for injuries associated with vaccine or immunization programs include Marc A. Franklin and Joseph E. Mais, Jr., *Tort Law and Mass Immunization Programs: Lessons from the Polio and Flu Episodes*, 65 Calif. L. Rev. 754 (1977); Irving Ladimer, *Legal and Regulatory Perspectives in Mass Immunization Programs*, 643 Insurance Law Journal 459 (1976); Leslie C. Ohta, *Immunization Injuries: Proposed Compensatory Mechanisms—An Analysis*, 11 Conn. L. Rev. 147 (1978); Bonnie L. Siber, *Apportioning Liability in Mass Innoculations: A Comparison of Two Views and a Look at the Future*, 6 N.Y.U. Rev. of Law and Social Change 231 (1977). For comprehensive recent discussions of compensation issues in broader contexts, see Eli P. Bernzweig, *By Accident not Design: The Case for Comprehensive Injury Reparations*, Praeger Publishers, New York (1981); Jeffrey O'Connell, *Ending Insult to Injury: No-Fault Insurance for Products and Services*, Univ. of Illinois Press, Urbana, Ill. (1975).

³Cases based solely on "mal-research" have not been reported. Virtually all decisions resulting in the award of damages to injured research subjects appear to be based, in whole or part, upon proof that injuries resulted from participation in research to which the plaintiff (or individuals authorized to act on his or her behalf) did not grant legally effective informed consent. Such cases might be litigated on the basis of negligence or, in some jurisdictions, on the legal theories of trespass or battery. Alexander M. Capron, *Informed Consent in Catastrophic Disease Research and Treatment*, 123 U. Pa. L. Rev. 340, 403-423 (1974).

Thus far, there has been only a single reported appellate decision in a North American jurisdiction sustaining a damage award for a research injury. *Halushka v. University of Saskatchewan*, 52 W.W.R. 608 (Sask. Ct. App. 1965) (upholding jury verdict of \$22,500 based on lack of adequate informed consent). In a second case, decided as this Report was in preparation, a New York jury awarded \$2.9 million in damages to an individual blinded by retrolental fibroplasia. The jury found that following his premature birth, the plaintiff had been enrolled in a randomized clinical trial of oxygen therapy without the consent of his parents. The jury awarded damages on the basis of both malpractice and lack of informed consent. *Burton v. New York Hospital*. An appeal is now pending.

Informed consent issues have also been raised in ongoing litigation growing out of research on DES conducted at the University of Chicago in the early 1950s. *Mink v. University of Chicago*, 460 F. Supp. 713 (N.D. Ill. 1978). The first human use of an artificial heart, while perhaps not constituting "research with human subjects" in the technical sense of that term, also resulted in litigation over the adequacy of informed consent; in that case,

That is, unless the plaintiff-subject can prove the defendant was "at fault," he or she cannot legally recover for the injuries.

Requirements for, and Obstacles to, Recovery. The traditional formula for the elements necessary to state a cause of action for negligence includes:

(a) A duty or obligation, recognized by the law, that a person conform to a certain standard of conduct ("due care") for the protection of others against unreasonable risks.

(b) A failure to conform to the standard required.

(c) A reasonably close causal connection between the conduct and the resulting injury ("proximate cause").

(d) Actual loss or damage resulting to the interests of another.⁴

The standard of "due care" in human research conducted by a professionally qualified investigator would be that established by his or her peers. Thus, in order to prevail in a lawsuit against an investigator (or the research institution for which the investigator works and which is legally responsible for the investigator's acts), a subject must prove that the investigator departed from those standards (*i.e.*, was "negligent") and as a result caused the subject's injury. Needless to say, it is often difficult to establish a "standard" of care for interventions that are (or contain components that are) by definition innovations from existing standards. (The accepted norms for researchers, including consultation with peers and proper institutional approval of protocols, would provide some standards for judging the due care of a researcher on procedural matters.) In addition, the injured subject would probably be barred from recovery if negligent conduct on his own part contributed to the injury or if he "assumed the risk" of injury in consenting to participate in the research.

The obstacles in the way of recovery posed for any plaintiff by the requirements of tort law loom especially large in the research context. Some—though not all—of these special difficulties arise because it is often hard

plaintiff's challenge was rejected by the courts. *Karp v. Cooley*, 493 F.2d 408 (5th Cir. 1974). Thus, when subjects are enrolled in research protocols without proper consent, and their participation results in injury, the injured subjects may seek relief in the courts on the basis of lack of informed consent. The remainder of this chapter places primary emphasis on means of redress available to injured subjects who would not be in a position to complain that their informed consent was totally absent.

⁴William L. Prosser, *Handbook of the Law of Torts*, (4th ed.) West Publishing Co., St. Paul, Minn. (1971) at § 30, p. 143.

to prove negligence in the setting of advanced scientific research. Of course, research scientists, like biomedical and behavioral scientists in standard practice (and like all other human beings), are not immune from simple carelessness. The lack of due care in such instances may be palpable and easy to prove. The very ethos of scientific investigation, however, requires that research be conducted precisely, and the available data on incidence of research injuries (and the virtual absence of court decisions awarding damages for negligently conducted research) suggest that errors careless enough to result in serious injury are very rare in biomedical and behavioral research.

Considerably more subtle questions may be posed in particular cases regarding the decision to move from animal experimentation to research with human subjects, the design of the research protocol, and technical aspects of the actual conduct of the protocol. Scientific judgments must be made at many points along the way. When are such judgments negligent? Under traditional tort principles, the burden is on the injured subject to prove, by expert testimony, the "standard of care" owed by the investigator (and any reviewing bodies) to the research subjects. Marshalling such expert evidence may be an exceedingly difficult undertaking for the research subject. In addition to the highly technical nature of the issues involved, the subject may encounter difficulties in finding other investigators willing to testify on his behalf—a phenomenon parallel to the so-called "conspiracy of silence" in medical malpractice litigation.⁵

The difficulties of establishing negligence in the research setting are further complicated by the legal requirement of "foreseeability." As stated by the late Dean William Prosser:

Negligence . . . is conduct which falls below the standard established by law for the protection of others against unreasonable risk. It necessarily involves a foreseeable risk. . . . If the defendant could not reasonably foresee any injury as the result of his act, or if his conduct was reasonable in the light of what he could anticipate, there is no negligence, and no liability.⁶

⁵ See, e.g., Melvin M. Belli, *An Ancient Therapy Still Applied: The Silent Medical Treatment*, 1 Villanova L. Rev. 250 (1956); Richard M. Markus, *Conspiracy of Silence*, 14 Clev.-Mar. L. Rev. 520 (1965); Note, *Overcoming the Conspiracy of Silence: Statutory and Common Law Innovations*, 45 Minn. L. Rev. 1019 (1961).

⁶ Prosser, *supra* note 4, at § 43, p. 250.

The application of this legal requirement of foreseeability to particular factual situations is often controversial, and legal scholars disagree even as to the guiding principles. Given the very nature of scientific research as a venture into the unknown, the foreseeability doctrine introduces an unpredictable and confounding factor into any litigation concerning the conduct of research. Research is often carried out precisely because the range of consequences of a particular intervention and the probability of each outcome are unknown. The research is conducted in order to find out more about them. In these circumstances, what are the "foreseeable" risks, and what are the steps reasonably required to protect against them? Can that be known prior to carrying out the research? The intrinsic difficulty of such questions suggests the magnitude of the burden placed on an injured subject who, in order to prevail, must establish the appropriate standard of care and prove it to have been breached in his or her particular case.

A further set of obstacles to recovery, legally characterized as "defenses," focuses on the conduct of the injured subject in agreeing to participate in the research and in complying with the requirements of the research protocol. A subject whose unreasonable behavior contributes to his or her injury may be barred from recovery entirely on grounds of contributory negligence or be limited to a reduced damage award under the newer doctrine of comparative negligence. An injured subject may also be required to overcome the claim that he or she assumed the risk of injury in agreeing to participate in the research.

The "assumption of risk" label has been loosely used by courts and commentators to describe a variety of circumstances in which an individual confronts a known danger, is injured, and is then denied recovery by the courts. As noted by Prosser, the doctrine "has been a subject of much controversy and has been surrounded by much confusion. . . ." ⁷ Expressing a view consistent with much recent scholarship, Professors John Fleming and Stephen Sugarman argue that in many situations in which the law imposes the entire loss on the victim rather than permitting recovery, the result is "perhaps best explained, not on the ground of 'assumption of risk' but rather because the defendant was not negligent. Often in these cases the injurer has offered to provide a benefit to the victim which can practically only come with a risk

attached; and the well-warned victim has quite reasonably chosen to confront the risk" ⁸

Applying this analysis to the situation of the injured research subject, Professors Fleming and Sugarman find it "unnecessary to use the doctrine 'assumption of risk' to explain why well-warned research subjects whose misfortune it is to suffer from a carefully run experiment will fail to recover damages in a suit based on negligence." ⁹ In such circumstances, there has simply been no negligence, and hence no basis for a recovery.

A closely related question is whether a subject waives his legal rights to recovery in granting informed consent to participation in research, particularly since, in compliance with 45 C.F.R. § 46.116(a)(6), subjects participating in research involving more than minimal risk must be provided "an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs * * *". The answer to this question is clear. Federal regulations explicitly preclude "any exculpatory language through which the subject * * * is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution or its agents from liability for negligence."¹⁰ Even in the absence of such explicit regulatory language, the courts disfavor exculpatory clauses in medical contexts,¹¹ and there are substantial policy arguments supporting this position.¹²

Other difficulties encountered by injured research subjects seeking relief in the courts are common to all tort litigation. Foremost among these is the problem of causation. Proof of causation

⁸ John G. Fleming and Stephen D. Sugarman, *Perspectives on Compensating Accident Victims* (1980); see Appendix F to this Report.

⁹ *Id.* at 23.

¹⁰ 45 C.F.R. § 46.116 (1981).

¹¹ See, e.g., *Tunkl v. Regents of the University of California*, 32 Cal. Rptr. 33, 383 P. 2d 441 (1963).

¹² See, e.g., Comment, *Legal Implications of Psychological Research with Human Subjects*, 1960 Duke L. J. 265, 272. "Although the subject may have known what the experimenter intended to do and may have been willing to have this done to him, still, the subject may not have fully realized the risks involved. Mere knowledge of the facts which create the risk of harm is not enough unless there is a true appreciation of the nature and extent of the risks; only then is the subject's assent given under circumstances which make it legally effective. The important point here, however, is that, in ascertaining whether the subject truly appreciated the risk of harm involved, it is inevitable that considerations of policy, depending on the result desired, will consciously or unconsciously influence the court's decision." See also *Annas et al.*, *supra* note 2, at 257-58, and Fleming and Sugarman, *supra* note 8, at 22-24.

⁷ *Id.* at § 68, p. 439.

may be particularly difficult in the research setting, requiring sophisticated analysis of often subtle statistical variations in risks and outcomes. In negligence and other tort litigation, the burden is on the injured party both to come forward with evidence suggesting causation and ultimately to persuade the trier of fact that his or her injury was "proximately caused" by the defendant's breach of a standard of care.¹³

A plaintiff claiming negligence must also surmount hurdles posed in some situations and in some jurisdictions by doctrines of charitable immunity (when the research is conducted by a charitable institution) and sovereign immunity (when the research is conducted or, perhaps, supported by a governmental agency), and by statutes of limitations which, in some jurisdictions, effectively preclude recoveries for certain latent injuries. With the exception of the latent injury problem (which is discussed in the Appendix to this Report¹⁴), these doctrines are not peculiar to the research context and do not require detailed discussion here.

Critique of Negligence as a Remedial Mechanism. Quite apart from the considerable difficulties of prevailing in a negligence action, a more fundamental question remains: as a matter of moral responsibility and public policy, ought proof of negligence to be required as a prerequisite to recovery for research injuries? This question lies near the heart of the Commission's discussion of ethical issues in Chapter Three; a few points are reiterated here to contrast the ethical arguments with the current state of the law.

First, and most obvious, the negligence system is structured to preclude recovery for injuries not resulting from negligent conduct. It is widely recognized that "despite the exercise of the highest degree of care and skill by the medical investigator concerned, death or a personal injury which was quite unforeseen and indeed quite unforeseeable might be suffered" ¹⁵ by research subject. In many settings, the obstacles to recovery may be—indeed, probably are—quite appropriate. There ought, after all, to be good reasons for the legal system to shift the costs of an activity from A to B. The difficulties in the way of such a shifting of costs simply reflect the protections

established by society against the misapplication of this legal power. But if research subjects *should*, on ethical grounds, be compensated for their injuries, despite the lack of negligence by an investigator, the rules of negligence law will be patently inappropriate.

Second, as pointed out in a recent article critical of the tort system's handling of the DES litigation, "[t]he doctrines of tort law were devised for straightforward moral situations—somebody's misbehavior causes harm to somebody else—and for narratives that observe the three unities of classical drama: time, place, and action."¹⁶ The focus of traditional (negligence) tort doctrine on the immediate parties to an accident—the victim and the allegedly negligent defendant—fits the moral equation of research injuries only imperfectly. The immediate parties—subject and investigator—encompass only one aspect of the wider society's interest in biomedical and behavioral research. Much research is conducted with the encouragement or, indeed, financial support of the government itself. The fruits of research accrue to the society at large, in a form economists term "positive externalities." Thus, society as a whole has a direct stake in the conduct of scientific research. Even on the theories supportive of a "fault" component in tort litigation, the presence of strong societal externalities suggests a modification in the usual calculus of fault, so that society will share in the financial burdens, as well as the benefits, of research activity. Thus, the traditional emphasis of negligence law on the "moral drama" of the defendant's behavior fails to capture (in economists' terms, to "internalize") the societal interest in the conduct of research. Other approaches, not founded on negligence, could do so more successfully.

A final point, different in character although carrying similar implications, derives from the nature of the relationship between investigator and subject in the conduct of research. Ideally, the relationship is a collaborative one in which the subject knowingly accepts certain risks of physical injury on behalf of society and participates, together with the investigator, in the ongoing research.¹⁷

The bond between investigator and subject may, however, be rent asunder by the adversary system characteristic of tort litigation, most particularly when judgment in favor of a subject is dependent on proof of an investigator's wrongdoing. While the negligence system is often applauded for creating incentives for acting with care, the knowledge that an injury could result in a courtroom battle may also create incentives less worthy of support: a certain distance, lack of candor, and perhaps even reluctance to provide necessary immediate care when the provision of such care might alert a possibly litigious subject that something had gone amiss. Such incentives may be physically harmful to the subject; they are certainly destructive of the collaborative ideal held out for the relationship between investigator and subject. It is often argued that the existing system of recoveries for medical malpractice has poisoned relationships between doctors and patients.¹⁸ The Commission believes that the malpractice system should not serve as the model for remedying injuries that arise in ethically conducted biomedical and behavioral research.

Strict Liability

Britain's Royal Commission on Civil Liability and Compensation for Personal Injury (the "Pearson Commission") recently recommended the doctrine of strict liability in tort as an alternative to the negligence system for providing compensation to subjects injured in research.¹⁹ In the Commission's words, "any volunteer for medical research or clinical trials who suffers severe damage as a result should have a cause of action, on the basis of strict liability, against the authority to whom he has consented to make himself available."²⁰ Strict liability has also been characterized by some commentators as an "appealing solution" to the problem of research injuries.²¹

An inquiry into whether strict liability provides an answer for subjects injured in research has two components. First, is strict liability a remedy *now* available to injured research subjects? Second, if it is not, ought it to be?

Roots in History and Policy. The doctrine of strict liability, which permits recovery without proof of negligence, has ancient roots in Anglo-American

¹³ See pp. 139-139 *infra*.

¹⁴ See pp. 140-141 *infra*; see also Appendix S to this Report.

¹⁵ Royal Commission on Civil Liability and Compensation for Personal Injury, Report, Her Majesty's Stationery Office, London (1978), Vol. 1 at § 1339 (hereafter cited as Royal Commission).

¹⁶ Michael Kinsley, *Fate and Lawsuits*, 182 *The New Republic* 20, 21 (June 14, 1980).

¹⁷ See, e.g., Talcott Parsons, *Research with Human Subjects and the Professional Complex*, 98 *Daedalus* 325-360 (1969); Renée C. Fox, *Experiment Perilous*, The Free Press, Glencoe, Ill. (1959).

¹⁸ See, e.g., David Mechanic, *Some Social Aspects of the Medical Malpractice Dilemma*, 6 *Duke L. J.*, 1179 (1975).

¹⁹ Royal Commission, *supra* note 15, at § 1341.

²⁰ *Id.*

²¹ Note, *Medical Experiment Insurance*, 70 *Colum. L. Rev.* 965, 968 (1970).

law. Indeed, in the early common law development of the law of torts, the focus was on causation; no inquiry was made into "fault" as that term is now employed. As the doctrine of negligence developed, largely replacing the earlier concepts, several pockets of strict liability remained. In more recent times, strict liability has reemerged as an increasingly prevalent theory of tort liability. Today, its principal applications are to activities viewed as "ultrahazardous" or "abnormally dangerous" and to defective products (including, but not limited to, those products posing extraordinary danger). A variant of strict liability theory applies to pharmaceuticals and certain medical devices which are viewed as "unavoidably dangerous."²²

Even if there is no negligence, however, public policy demands that responsibility be fixed wherever it will most effectively reduce the hazards to life and health inherent in defective products that reach the market. It is evident that the manufacturer can anticipate some hazards and guard against the recurrence of others, as the public cannot.

Dean Prosser summarized the views of many contemporary scholars, stating that the courts, in applying strict liability to abnormally dangerous conditions or activities, have in effect recognized a new doctrine.

that the defendant's enterprise, while it will be tolerated by the law, must pay its way. There is "a strong and growing tendency, where there is blame on neither side, to ask, in view of the exigencies of social justice, who can best bear the loss and hence to shift the loss by creating liability where there has been no fault."²³

Applicability to Research Injuries: Whether strict liability doctrine applies to research with human subjects is, at present, an open question. No court has explicitly ruled on the issue in the context of contemporary, scientifically designed and peer-reviewed research. The factors which govern the applicability of strict liability to new areas provide an unequivocal guidance.²⁴ Three factors have been recognized as favoring application of the doctrine. Research activity is clearly valuable to the community.²⁵ Risks of injury cannot be entirely eliminated by the exercise of reasonable care.²⁶ In

some sense, research is not a matter of "common usage," although this conclusion might be disputed.²⁷ On the other hand, research is typically not conducted in inappropriate settings.²⁸

Probably the critical factors in determining the applicability of strict liability doctrine to research are whether research involves "a high degree of risk of some harm"²⁹ and whether the "gravity" of the harm which may result is likely to be "great."³⁰ While the popular imagination might be tempted to answer these questions affirmatively, the evidence marshalled by the Commission strongly suggests that research conducted with IRB approval does not involve high risks of serious injury and, on empirical grounds, probably should not be viewed as an "abnormally dangerous activity."³¹

In addition to these factors specified by the *Second Restatement of Torts*, courts considering the applicability of strict liability to research with human subjects would be guided by existing legal precedents. An initially plausible argument can be constructed, on the basis of several early English and American cases, that physicians experiment "at their peril." Closer examination of these cases, however, indicates that they do not concern research in its modern sense and should not be viewed as governing precedents for the application of strict liability to contemporary research.

The earliest such case, *Slater v. Baker and Stapleton, C.B.*,³² was decided by an English court in 1767, prior to the advent of the legal doctrine of negligence. The decision upheld a judgment against an eminent surgeon who employed a novel means of treating a broken leg, with unfortunate results. The court noted that "many men very skillful in their profession have frequently acted out of the common way for the sake of trying experiments" and held that such behavior opened the way to liability in the event of injury:

[T]his was the first experiment made with this new instrument; and if it was, it was a rash action, and he who acts rashly acts ignorantly. * * *

Slater was followed, a century later, by an American case, *Carpenter v. Blake*.³⁴ There the court said:

[W]hen the case is one as to which a system of treatment has been followed for a long time, there should be no departure from it, unless the surgeon who does it is prepared to take the risk of establishing, by his success, the propriety and safety of his experiment.³⁵

Taken together, the *Slater* and *Carpenter* cases appeared to establish the proposition that physicians depart from established modes of treatment at their peril, and that injuries resulting from experimental treatment would be actionable without further proof of negligence.

Yet for several reasons it would probably be mistaken to apply this proposition to contemporary research. First, the conduct at issue in *Slater* and *Carpenter* was not scientifically designed research in the modern sense, but the "trying out" of an "innovative therapy" or "nonvalidated medical procedure," for which different norms may be appropriate. Second, contemporary requirements that Federally supported research pass scientific and IRB muster suggest that the gap between "human experimentation" and professional norms of practice is narrower today than was true of the conduct condemned in the early legal cases. Third, and most important, the law itself has changed over the past century, pointing toward a more nuanced evaluation of the facts and circumstances surrounding the decision to employ innovative or experimental treatments.

The beginnings of this change were already discernible in the nineteenth century. In an 1895 case, *Jackson v. Burnham*,³⁶ the court, while repeating the rule that "if a physician sees fit to experiment * * * he should do so at his peril,"³⁷ construed the rule to require only that the physician "must be able, in the case of deleterious results, to satisfy the jury that he had reason for the faith that was in him, and justify his experiment by some reasonable theory."³⁸ By 1935, when the Michigan Supreme Court decided *Fortner v. Koch*,³⁹ the courts recognized explicitly that "if the general practice of medicine and surgery is to progress, there must be a certain amount of experimentation carried on."⁴⁰ The legal requirements were, essentially, those of consent and reasonableness: "such experiments must be done with the knowledge and consent of the patient or those

²² *Escola v. Coca Cola Bottling Co.*, 24 Cal. 2d 453, 150 P.2d 436, 440-41 (1944).

²³ Prosser, *supra* note 4, at § 75, p. 494 original citations omitted.

²⁴ American Law Institute, *Restatement (Second) of Torts*, § 519 ff (1970).

²⁵ *Id.* at § 520(f).

²⁶ *Id.* at § 520(c).

²⁷ *Id.* at § 520(d).

²⁸ *Id.* at § 520(e).

²⁹ *Id.* at § 520(a).

³⁰ *Id.* at § 520(b).

³¹ See Chapter 4, *infra*.

³² 95 Eng. Rep. 860 (1767).

³³ *Id.* at 862-63.

³⁴ *Carpenter v. Blake*, 60 Barb. 488 (N.Y. Sup. Ct. 1871), *rev'd on other grounds*, 50 N.Y. 696 (1882).

³⁵ 60 Barb. at 524.

³⁶ 20 Colo. 532, 39 P. 577 (Colo. 1895).

³⁷ *Id.*, 39 P. at 580.

³⁸ *Id.*, at 580.

³⁹ 272 Mich. 273, 261 N.W. 762 (Mich. 1935).

⁴⁰ *Id.* at 765.

responsible for him, and must not vary too radically from the accepted method of procedure."⁴¹

The transition in legal standards, from "the physician experiments at his peril" standard of *Slater and Carpenter*, to the reasonableness criterion of *Fortner v. Koch*, paralleled a more general tendency in tort law during the nineteenth and early twentieth centuries; the emergence and solidification of negligence as the touchstone of tort liability. This development was particularly evident in the field of medical malpractice litigation, which has steadfastly adhered to a standard of liability based upon professional negligence,⁴² and which today provides perhaps the closest analogue to research "malpractice."

Thus, the proposition that research with human subjects is an "abnormally dangerous activity" subject to strict liability standards finds no clear support in the empirical evidence or in legal precedent. While the possibility cannot be excluded that an innovative court might seek to apply strict liability to research injuries should a sympathetic case come before it (particularly in light of the steadily expanding scope of strict liability in recent decades), on the current state of the law the Commission concludes that injured subjects contemplating legal action would find little encouragement in the doctrine of strict liability.⁴³

⁴¹ *Id.*

⁴² One possible exception may be *Helling v. Carey*, 83 Wash. 2d 514, 519 P.2d 981 (1974), in which the Washington Supreme Court found the defendant ophthalmologist negligent as a matter of law for failing to conduct a pressure test for glaucoma on a young patient, despite undisputed testimony that such testing was not heretofore required by the "standards of the profession." The court concluded that, in the circumstances presented, medical professionals should be held to a higher standard. Another justice concurred in this result but argued that the court was in fact imposing a standard of liability which "approached that of strict liability" (Concurring opinion of Utter, J.). Justice Utter urged that the court should explicitly recognize the applicability of strict liability doctrine to medical malpractice, in part in the belief that awarding compensation on the basis of strict liability rather than negligence would avoid unfairly "imposing a stigma of moral blame upon doctors who . . . used all the precautions commonly prescribed by their profession in diagnosis and treatment." *Id.* at 984. See also *Gates v. Jensen*, 595 P.2d 919 (Washington, 1979).

⁴³ A second branch of strict liability doctrine, that applicable to defective products, requires brief mention here. Under the doctrine of products liability, as formulated in § 402A of the Second Restatement of the Law of Torts, one who sells a "product in a defective condition unreasonably dangerous to the user or customer" may be strictly liable for physical harms caused thereby, without regard to whether the seller "has exercised all possible care in the preparation and sale of his product." The applicability of this doctrine to products which may be employed in research, particularly pharmaceuticals and certain medical

Outside the main body of strict liability law which arose and expanded in scope primarily as a matter of judge-made law, instances have arisen in which the doctrine's scope has been expanded, or limited, by legislative action. Indeed, the very uncertainties about the doctrine's applicability to biomedical research also arose with respect to legal liability associated with accidents at nuclear power installations, and this uncertainty (and the possibility that courts in different states might resolve the issues differently) played a major role in prompting Congressional action on the Price-Anderson legislation, which in practical effect imposed a nationwide strict liability policy for major nuclear accidents.⁴⁴ The Pearson

devices, is a matter of controversy. Comment k to § 402A of the Second Restatement recognizes a category of "unavoidably dangerous products," including drugs, "which, in the present state of human knowledge, are quite incapable of being made safe for their intended and ordinary use." Such products are not viewed as defective, and hence are outside the scope of § 402A products liability, if they are "properly prepared, and accompanied by proper directions and warning." Nonetheless, particularly through their interpretation of the warning requirement, the courts have imposed rather expansive liability on drug manufacturers, often basing their decisions on policy grounds arguably applicable to biomedical research as well. In one much discussed case, concerning liability for a polio case arguably induced by a vaccine, the Fifth Circuit Court of Appeals analyzed the issue this way:

"Until Americans have a comprehensive scheme of social insurance, courts must resolve by a balancing process the head-on collision between the need for adequate recovery and viable enterprises This balancing task should be approached with a realization that the basic consideration involves a determination of the most just allocation of the risk of loss between the members of the marketing chain." Statistically predictable as are these rare cases of vaccine-induced polio, a strong argument can be advanced that the loss ought not lie where it falls (on the victim), but should be borne by the manufacturer as a foreseeable cost of doing business, and passed on to the public in the form of price increases to his customers.

Reyes v. Wyeth Laboratories, Inc., 498 F.2d 1264, 1294 (5th Cir. 1974) (quoting *Helene Curtis Industries v. Pruitt*, 385 F.2d 841, 862 (5th Cir. 1967)). The Court thereby imposed liability for failure to warn of a less-than-one-in-one-million risk of contracting polio from a live virus vaccine. A similar analysis might be employed in a research setting, suggesting that standards of liability might differ as between research employing drugs or medical devices and other modes of research. See also *Fleming and Sugarman*, *supra* note 8, at 29.

⁴⁴ Pub. L. No. 85-256, 71 Stat. 576, as amended, 42 U.S.C. § 2110. In fact, the technique employed in the Price-Anderson Act to accomplish this result was not a straightforward declaration of a "strict liability" standard, but a complex waiver of certain defenses (including the absence of negligence) which might be available under state law. The reason for this rather roundabout approach was a Congressional hesitancy to "Federalize" the standard of tort liability, an area traditionally reserved to the states. See generally, Legislative Drafting Research Fund, Columbia University, *Issues of Financial Protection in Nuclear Activities* (1973), at 2-7 to 2-9.

Commission, which favored strict liability as a basis for compensating subjects injured in research in the United Kingdom, similarly recommended that strict liability be imposed by legislative enactment. Thus, the proper question becomes whether existing strict liability doctrine should be extended to encompass research with human subjects.

Critique of Strict Liability. The question of extending strict liability to cover research with human subjects poses substantial policy issues, whose resolution depends in part on the alternatives to which strict liability is being compared. To be sure, the availability of a cause of action for strict liability would enhance the position of injured research subjects unable to prevail on negligence theories, a result many would consider more just than the existing system. On the other hand, a strict liability system would perpetuate many characteristics of courtroom tort litigation which have been widely criticized, not least by those in the medical profession. Litigation based on strict liability principles would retain the adversary character of all tort litigation, pitting the interests of the injured subject against those of the investigator (even if not directly calling the conduct or competence of the investigator into question). Financial recoveries would likely be sought, in the first instance, against the investigator or the research institution, although the principles justifying recovery point to the beneficiaries of research (*i.e.*, the entire society) as the more appropriate source of redress. Like any courtroom litigation, the process would likely be long, costly, and uncertain. The injured subject's ability to recover would depend, in substantial part, on his or her ability to secure skilled legal counsel—often a problem in cases not involving large potential awards. In the event of ultimate victory, a significant proportion of the award would be diverted to legal fees. Administrative burdens and costs (in time and money) to the defendant investigator or research institution would also be high.

In addition to all of these oft-criticized features of courtroom litigation in general, the application of strict liability doctrine to research injuries would not resolve several of the dilemmas that are especially acute in the research setting. Strict liability, like negligence, requires the subject to prove that his or her injury was caused by participation in the research. This often complex and scientifically demanding task typically must be performed to the satisfaction of a lay jury; there is no provision for fact-

finding by a scientific board. Similarly complex determinations may be required by the doctrine of foreseeability, which remains applicable to strict liability cases in many jurisdictions. Further, the doctrine of assumption of risk, as it applies to strict liability cases, is, if anything, still more confused than it is in the negligence setting. Assumption of risk is most likely to provide a defense against strict liability when the subject has unreasonably, or voluntarily with full knowledge and appreciation, encountered a recognized danger,⁴⁵ however, the doctrine's precise contours are likely to vary considerably among jurisdictions, injecting a further element of uncertainty into the litigation.

Thus, while in many respects an improvement over the currently applicable negligence approach, the adoption of strict liability as a legal remedy for research injuries is in no sense a panacea.

Nonfault Approaches

A number of administrative or insurance compensation mechanisms are already in place in the United States. While only a few small-scale, nongovernmental programs are specifically directed toward compensating subjects injured in research, several more broadly based social welfare programs provide incidental benefits to such persons.⁴⁶

Government Compensation Programs. A multitude of Federal, state, and local government programs provide compensation of various types to the injured, medical care to the ill, and financial assistance to the needy. None of these programs is universal in coverage or comprehensive in scope. Nor do initiatives for comprehensive national health care or guaranteed minimum incomes currently appear in prospect. Thus, injured research subjects are eligible for government assistance only insofar as they qualify under categories other than their status as research subjects.

For some injured subjects, assistance available under existing governmental programs may be perfectly adequate. For Federal civilian employees participating in research "while in the performance of [their] duty,"⁴⁷ compensation is available in the event of injury through the Federal Employees' Compensation Act (F.E.C.A.). For elderly retirees injured in research, Social Security and Medicare may

relieve much of the financial burden. For others, the only recourse may be to Federal and state welfare systems, for which they may or may not be eligible. As regards injured research subjects, the "social safety net" is highly permeable; many injured subjects may simply fall through.

As part of its study of compensation for research injuries, the Commission examined the structure and operation of a number of currently functioning governmental compensation programs. One of the Commission's objectives was to determine the degree to which existing programs meet the needs of injured research subjects. In this regard, the Commission corresponded with over twenty Federal agencies and departments, and members of the Commission staff met with representatives of the Departments of Labor and of Health and Human Services, the Food and Drug Administration, the Social Security Administration, and the Veterans Administration, to discuss the availability of retrospective data and the feasibility of collecting prospective data reflecting the incidence of claims by injured research subjects and the benefits provided to them. None of the agencies contacted maintained records in a form amenable to such analysis, and considerations of time and cost ruled out prospective studies by the Commission. Thus, deficiencies in data limited this portion of the Commission's study to the qualitative conclusions indicated above.

Insurance Mechanisms. It is clear that existing insurance-in-force does provide some protection for subjects injured in research. The primary source of protection is general health insurance that may be carried by individual research subjects. Although such individual health insurance is neither universal nor comprehensive, it does provide a source of benefits to insured individuals for health costs associated with research injuries.⁴⁸ Such insurance

does not, however, cover lost wages or other non-health-care related costs associated with serious injuries.

While general health care coverage for persons participating in research offers at least a partial answer for medical costs associated with research injuries, industry representatives were deeply skeptical of the practicability of marketing to potential research subjects policies specifically designed to cover the risks associated with participation in particular research projects. This skepticism was founded, in part, on the extraordinary difficulties and expense involved in efforts to secure private insurance to cover risks in a much-discussed bone marrow transplant case.⁴⁹ More generally, the transaction costs and administrative burdens of writing coverage for individual participants in research were considered to pose insuperable problems in marketing such insurance.

Insurance industry representatives were considerably more favorably disposed to a system which would provide blanket coverage for all research subjects at a particular institution during a given period of time. A substantial consensus emerged that such blanket policies could be written and premiums set on the basis of the overall research mix and past claims experience of a given institution, although specific, high-risk protocols might require individualized underwriting examination. An institution-wide approach would entail substantially lower transaction and administrative costs. (For example, the private insurance company that provided coverage for research injuries at the University of Washington as an "add-on" to the university's liability policy initially set the premium at 50¢ per subject.)⁵⁰ Furthermore, rate-setting on an institution-wide basis was felt to provide sufficient grounding for underwriting decisions, with an initial break-in period during which insurers would be allowed some recovery of

⁴⁵ While there have been occasional suggestions that injuries resulting from voluntary participation in research activity might be excluded from coverage under terms of existing health insurance policies, See John Robertson, *Compensating Injured Research Subjects: II. The Law*, 6 Hastings Ctr. Rep. 29 (1976), it appears that such statements result from a confusion between the use of insurance proceeds to support the research itself, which is typically precluded by insurance contracts, and the use of insurance proceeds to pay for standard medical care necessitated by an injury associated with participation in research. The Commission has been unable to document instances of insurance company exclusions of the latter type, and the Commission's insurance expert, George Bernstein, testified that on the basis of his extensive inquiries within the insurance industry, no such exclusions currently exist or are contemplated. Transcript of

the 6th meeting of the President's Commission (January 9, 1981) at 187-88.

⁴⁹ Letter from Albert L. Broseghini, Ph. D. (Director, Research Administration, The Children's Hospital Medical Center, Boston, Mass.) to Senator Edward M. Kennedy (December 2, 1974), reprinted in the HEW Secretary's Task Force on the Compensation of Injured Research Subjects, Report, U.S. Department of Health, Education, and Welfare, Washington (1977) (hereinafter cited as Task Force Report) Appendix B at 123.

⁵⁰ The University of Washington has for several years been a self-insurer. The total amount paid in claims to injured subjects in the nearly 10 years it has had a formal compensation program averages less than 5¢ per subject. This amount does not include the value of free medical services provided to subjects. See Chapter 7 *infra*.

⁴⁶ Prosser, *supra* note 4, 15 § 79, pp. 522-24.

⁴⁷ Existing programs are discussed briefly *infra* at pp. 114-122 and are described more fully in papers prepared for the Commission. See Chapter 7 *infra*.

⁴⁸ F.E.C.A., 5 U.S.C. § 8102(a).

their costs in the event of excessive loss experience.

Alternatively, insurance might be written separately for each research protocol. Theoretically, this would lead to individualized assessment of each project, thereby providing a means for the "market" in research to adjust the amount of research in light of an economic quantification of risk. The Commission is skeptical that such "fine tuning" has an adequate basis in scientific fact,⁵¹ or that the additional costs and administrative burdens involved would be outweighed by any ability of the "market" to reduce the amount of truly risky research beyond the existing system of IRB review. Further, industry representatives were dubious that such an approach would be administratively feasible.

The series of discussions between Commission staff and industry representatives culminated in testimony before the Commission by insurance industry representatives in September of 1980. In that testimony, the representatives stated "that we would like to participate with you in seeing that a reasonable compensation program for human subjects is developed."⁵² Stressing that the program should not be "unlimited and open-ended," and that the development of a new insurance mechanism must proceed with moderation, the insurers reiterated their support for "the development of pilot programs and

assessment of experience under those programs" as "the best route to develop an actual program for the compensation of human subjects."

PART III: WHAT SHOULD BE DONE?

In this study, the President's Commission has, in effect, explored the widely held hypothesis that a program of compensating for research injuries is needed because subjects who deserve compensation are not receiving it. This appears to be at least partially true; providing compensation to injured subjects (even when research projects are conducted with due care) is ethically desirable—indeed, some would claim that a moral obligation to compensate exists. Yet, though it emerged in Chapter Five that any subjects who are injured may find it difficult to obtain recompense under existing tort or administrative remedies, the Commission found (in Chapter Four) that the frequency with which this occurs is not firmly established. Thus, more data are needed to provide a sound basis for policy on this subject. Furthermore, the strength of the ethical requirement to provide compensation for research-related injuries depends in the view of some people, as discussed in Chapter Three, upon the practicability of doing so. Thus, it is imperative to obtain reliable information on the extent of the need for compensation as well as the horizontal inequities, transaction costs, vulnerability to abuse, and difficulties of administration that providing compensation might entail. In other words, it must be determined, first whether the incidence of injuries to research subjects is great enough to warrant institution of a formal compensation program, and, second, whether the costs of compensating those injured in research can be prevented from escalating uncontrollably and consuming an inordinate portion of the overall research budget. In this Part, the Commission explores, first, the manner in which data could be developed (Chapter Six), and, second, the basic features of any compensation program (Chapter Seven).

Chapter 6: Conduct An Experiment

The paucity of reliable data was described in Chapter Four. No definitive national data on the incidence or severity of injuries in Federally conducted or supported research exist. The costs of acquiring comprehensive data through a methodologically valid retrospective survey would be very high—in the Commission's view, too high to be justified. Further, the results of any such survey would be criticized

because retrospective data cannot disclose the extent of those costs that are "induced" by the existence of a compensation program. Consequently, such data might understate both the number of potential claims and the associated costs that would arise were the existence of a compensation program made known to subjects.

Some witnesses urged the Commission to conclude that no further exploration of compensation programs should occur in the absence of proof of a crying need. But an absence of data on injuries should not be equated with data on an absence of injuries. Other groups and individuals possessing great familiarity with biomedical research suggested that the inadequacies of the data be remedied. The Association of American Medical Colleges, for example, argued for "instituting such a compensation system on a pilot basis, limited by time, by number of institutions or geography, to permit the gathering of relevant data on the basis of real experience."¹

Although wishing to avoid the term "pilot" program which might be misunderstood as a commitment to moving to a full-scale program, the Commission agrees with the trust of the AAMC's argument. It has concluded that the problem of research injuries should not be shelved once again, to be passed on from commission to commission for further review, with each inquiry being stymied by the lack of data. Therefore, the Commission urges that steps be taken to acquire data prospectively on the nature and incidence of research-related injuries through a test of one or more approaches to compensating for research injuries.²

As a baseline for comparison, data are needed on the incidence of research injuries nationally. To this end, the President's Commission, in its first *Biennial Report*, recommended that the regulations governing all research conducted or supported by Federal agencies be amended to require annual reporting of the number of research subjects as well as data about their injuries.³ Although this is a procedural

⁵¹ Such a "market control" approach has been discussed by Guido Calabresi, *Reflections on Medical Experimentation in Humans*, in *Experimentation with Human Subjects* (ed. by Paul Freund), George Braziller, New York (1970), and Clark C. Havighurst, *Mechanisms for Compensating Persons Injured in Human Experimentation*, Task Force Report, supra note 49, Appendix A, at 81-108, among others. Professor Harry Boström of the University of Uppsala in Sweden testified to the Commission that an analogous system is currently in effect in Sweden. Boström, *On the Compensation for Injured Research Subjects in Sweden* (1980); see Appendix K to this Report. However, the volume of research in Sweden is such that a single individual (Professor Boström) is able to review all insured protocols and to determine insurance premiums on the basis of comparative evaluation of risks associated with them. The vastly greater scope of research conducted in the United States would, in the view of the Commission (and of representatives of the insurance industry), render such a "ratings bureau" approach to American research totally impractical. Further, on the basis of a careful analysis of risk literature conducted for the Commission, a minutely graded ranking of risks would be impossible or grossly misleading. See Mary Harvey and Robert J. Levine, *Risk of Injury Associated with Twenty Invasive Procedures Used in Human Experimentation and Assessment of Reliability of Risk Estimates* (1980), Appendix E to this Report.

⁵² Testimony of Dennis R. Connolly, Senior Counsel to the American Insurance Council, transcript of 4th meeting of the President's Commission (September 15, 1980) at 1.

¹ Letter from John F. Sherman, Vice President, Association of American Medical Colleges, to Chairman Morris B. Abram (May 7, 1980).

² The Commission took on a request to provide advice about the development of a means for compensating research subjects for injuries that occur in the future. It lacks the authority for the investigation that would be needed to determine whether retrospective compensation should be made to subjects who may have been injured in past research projects. A number of such subjects are pursuing claims in the courts already, as described in Chapter 5.

³ President's Commission for the Study of Ethical Problems in Medicine and Biomedical and

suggestion and was made in the context of a review of the Federal rules on research, it is at its heart a matter of ethical concern. (The Commission was disappointed to find that most research sponsors have not regularly compiled data on the occurrence of injuries in the research projects they support.)

The proposed solution thus addresses both ethical and practical problems and should not be difficult to implement. Principal investigators receiving government funds are already required by Federal grant and contract rules to submit annual progress reports as well as final reports on their research. Although data about the numbers of research subjects, injuries and consequences may well be included in the narratives of such reports, they are not easily retrievable. The Commission was informed that with few exceptions, such data are not routinely collected and collated by any one office within the various departments. An expeditious and inexpensive way to collect data on the universe of research subjects and research-related injuries would be to develop a form to be completed annually by all principal investigators as part of their progress and final reports on each project. Completed forms should be sent to the office within the Department of Health and Human Services that has "lead" responsibility in the field. The data would then be collated so that information about the number of subjects and incidence of injury would be readily available. Indeed, the Veterans Administration has already implemented just such a requirement for all research it sponsors.

Although this system should provide basic information about risks and injuries in research, it will not reveal the costs and benefits of having a compensation program. Therefore, the Commission recommends that a modest social policy experiment be conducted to determine the need for, and feasibility of, comprehensive or partial programs to compensate injured subjects.

During the past two decades the Federal government has conducted a series of experiments in which new social policies have been implemented under reasonably controlled conditions and evaluated in order to see how specific aspects of the policies work in practice. Such experimentation has been used to test the effects of instituting a negative income tax,

housing allowances, and various types of health insurance plans.⁴ The use of social policy experimentation has been encouraged by a broad range of scholars and policy analysts as a "rational" approach to policy innovation.⁵ The great advantage of such experimentation is that it allows innovative programs to be tested and proven useful or deleterious before a decision is made about instituting them on a comprehensive basis. The government can then modify or abandon those programs before public expectations are created or constituencies formed that force the government to remain committed to ineffective programs. Given the importance of empirical data in evaluating the need for, and feasibility of, as compensation program, a limited experimental trial seems particularly appropriate.

The Commission recommends that the compensation experiment be designed and administered by the Department of Health and Human Services with appropriate consultation with other governmental bodies which sponsor or conduct research. The relevant office within the Department would develop (or contract to have developed) the detailed plans for the experiment, including its administration and evaluation.⁶

Specific Aims of the Experiment

The experiment with formats for compensation should be designed to answer the following questions:

- (1) How great is the need for a program to compensate for research injuries?
- (a) How many research subjects are exposed to risk of injury?
- (b) How many research injuries occur?
- (c) How serious are the injuries?
- (d) For what proportion of these injuries is medical assistance currently

⁴U.S. Office of Economic Opportunity, Preliminary Results of the New Jersey Graduated Work Incentive Experiment Conducted by the Office of Economic Opportunity (February 18, 1970); see also Alice Rivlin, *Systematic Thinking for Social Action*, Brookings Institution, Washington (1971) at 94-108.

⁵Henry W. Riecken and Robert F. Boruch, eds., *Social Experimentation: A Method for Planning and Evaluating Social Intervention*, Academic Press, New York (1974) at 1-39; Rivlin, *supra* note 4; Campbell, *Reforms as Experiments*, 24 *Am. Psych.* 419 (1969).

⁶The office within HHS that is most familiar with research involving human subjects is the Office for Protection from Research Risks at NIH. That office does not, however, have extensive experience with design or evaluation of social experiments. Thus, the Department may wish to turn to the Office of the Assistant Secretary for Planning and Evaluation and perhaps to other bodies with expertise in this field in assigning responsibility for the design and conduct of the research compensation experiments recommended here.

provided by formal or informal procedures (*i.e.*, how effective are such procedures in meeting existing medical needs)?

(e) For what proportion of these injuries are payments currently made for loss of wages and other expenses (*i.e.*, how effective are existing means in meeting economic needs)?

(f) To what extent does failure to provide adequate compensation create serious problems for injured subjects or for the research enterprise?

(2) What effects result from introduction of a compensation program?

(a) Does the institution of a formal compensation program undermine current, informal methods of providing for the immediate medical needs of injured subjects?

(b) Would the availability of compensation bring more research injuries to light (*i.e.*, encourage the reporting of injuries which would otherwise not be known to persons other than those immediately involved)?

(c) Does the availability of compensation lead to large numbers of specious claims?

(d) Does the availability of compensation make it easier for researchers to recruit subjects?

(e) Does the assurance that injured subjects will be compensated produce an environment that is more conducive to research, and how does it affect the nature and amount of research?

(3) What costs and benefits are entailed in a compensation program?

(a) How many subjects would be anticipated to be eligible to receive funds under a compensation program?

(b) Can those administering a compensation program distinguish specious from valid claims? What are the administrative costs of making such determinations?

(c) How difficult is it in practice to discern a causal connection between research interventions and subsequent adverse effects? What approaches to the determination of causation seem most effective and just?

(d) What are the costs, both in claims paid and in administrative expenses, of a compensation program?

(e) How would the costs be affected by the inclusion of Federally supported as well as Federally conducted research?

(f) How would the costs be affected by covering those injuries caused by procedures undertaken solely as an aid to the research design and not for a patient-subject's welfare, when in the absence of such "nonbeneficial procedures" therapeutic research would

be excluded from the compensation program? Can such injuries be reliably identified?

(g) What approaches to compensation provide the most favorable balance of benefits against administrative burdens and costs?

Research Plan

Although the actual design of the experiment is left to the office within HHS that conducts it, the remainder of this chapter is intended to indicate the type of research the Commission views as desirable and to provide general guidance concerning the scope and nature of such research. Particular features of possible compensation programs are discussed in Chapter Seven.

The Commission proposes that the three sets of questions listed above be answered by experimental compensation programs established at a small number of institutions and by ongoing collection and analysis of data from these institutions and matching institutions without compensation programs. Questions concerning the costs and problems of administering a compensation program would be answered by establishing and monitoring experimental compensation programs at institutions willing to participate in the experiment. Uniform data should be collected on the number of subjects participating in research, number of injuries, seriousness of injuries, and so forth. Additionally, all injuries resulting in claims for compensation should be documented, including the amount of money paid out in compensation, administrative costs, number of claims honored and denied, and the details of each incident. During the experiment, the Commission recommends that compensation be restricted to nontherapeutic experiments and perhaps to injuries caused by procedures undertaken as an aid to the research and not with the intent of providing possible therapeutic benefit to patient-subjects.

In addition to providing information about the general feasibility of a compensation plan, the experiment should provide a basis for determining whether any type of compensation program should be recommended or adopted on a more permanent basis.

The effects of introducing a compensation program on existing mechanisms for dealing with injuries resulting from research could be partially assessed through the use of historical controls at the compensating institutions; however, sufficient data do not appear to exist. Consequently, a number of institutions without

compensating programs should be selected as "matched controls" and monitored according to the data-gathering protocol established for institutions at which the experimental compensation programs are being tested. For such a comparison to be meaningful, of course, there must be no systematic differences between the two groups of institutions (other than presence or absence of a formal compensation program). The noncompensating institutions that are monitored will serve a dual purpose. Besides being the "control" group for the compensating institutions, they will provide data against which to check the annual reports submitted by principal investigators (*i.e.*, how many injuries occur, how serious they are, etc.).

Methodological Issues

The Commission encourages those designing the research to give careful consideration to the following methodological issues:

Sample Selection. As with all survey research, the validity of the conclusions that can be drawn from this study will depend at least in part, on the representativeness of the sample being studied. Obtaining a representative sample may be particularly difficult, however, given the wide variety of institutions in which research is conducted. Institutional settings for research range from the Clinical Center at the NIH, to universities, medical schools and hospitals, to small independent research facilities. One approach that might be used is known as "quota sampling." Institutions involved in Federally conducted or supported research would be grouped in appropriate categories. A sample containing a certain number (quota) of institutions from each category would then be drawn. Within each category of institutions in the sample, half would initiate an experimental compensation program; the other half would be monitored in a similar manner but would not have a compensation program. Under ideal circumstances, the selection of institutions from each category in the sample would be random, as would be the assignment of institutions within each category to have or not have a compensation program.

The Commission believes this basic approach can and should be applied to Federally conducted and Federally supported research. However, the Commission believes that the NIH Clinical Center, because of its centrality in Federal biomedical and behavioral research and its traditional leadership role in the scientific community, should not be randomly assigned but should

participate in the experiment as a compensating institution. If a successful compensation program cannot be established at the NIH Clinical Center, the Commission is skeptical that any such program should be imposed by the Federal government on other research institutions.

With respect to Federally supported research conducted at non-Federal research institutions, the major issue in considering sample selection is whether participation should be mandatory (*i.e.*, tied to federal funding) or voluntary. Scientifically, mandatory participation is preferable since it reduces the likelihood of biased sampling that would occur if the "self-selected" institutions that volunteered to participate differed as a group from those that do not. The Commission sees several advantages in voluntary participation, however, and on balance believes that, if possible, participation should be on a voluntary basis. The assistance of groups such as the AAMC which support a limited, experimental evaluation of research injury compensation should be sought in persuading institutions to participate in the experiment.

Two approaches might be used to reconcile the desirability of participation on a voluntary basis with the need for random selection and random assignment to compensating or noncompensating categories. One approach would be to select the sample and assign the chosen institutions to compensating or noncompensating status on a random basis, but to allow institutions to "opt out" of the experiment if they were unwilling to participate in their assigned role. An alternative approach would be to solicit institutions to volunteer to participate in the experiment on the understanding that they would then be assigned randomly either to the experimental (compensating) or control group. Under either approach it would be possible for the government to offer institutions incentives in order to assure that a sufficient number of institutions would be willing to participate. For institutions that agreed to participate in the experimental compensation program, the government might, for example, offer to cover the costs of compensating for injuries that occurred on non-Federally funded as well as Federally funded research (provided, of course, that the former as well as the latter passed through IRB review).

Sample Size. In determining the number of institutions that will compose the sample for this study, the implementing agency will need to balance the need for reliable data with

the need to minimize the costs of conducting the experiment. The following considerations are relevant to this decision:

(1) The degree of variation among research institutions imposes certain requirements. If institutions are divided into categories for quota sampling, at least two institutions from each category should be included in the sample (one to initiate a compensation program, the other not). Thus, the number of categories determined to be necessary to reflect institutional diversity will have a direct bearing on the sample size.

(2) Given that institutions are the unit of analysis, a sufficient number of institutions must be studied to obtain adequate statistical sensitivity (*i.e.*, an adequate ability to detect differences) when comparing compensating and noncompensating institutions. Otherwise, substantial real-world differences between compensating and noncompensating institutions would fail to show up as "statistically significant effects" in the experimental data.

Duration of Study. Three considerations argue for conducting the study over a period of several years. First, the incidence of research injuries is expected to be quite low. Unless the study continues long enough to allow a fairly large "sample" of injuries to occur, there is a danger that the particular experience with injuries observed in a limited period may, by chance, be unrepresentative of research injuries in general. Second, because research injuries may not become known immediately, a study of short duration may underestimate the rate of injuries. Finally, because initial reactions to a novel program may be unrepresentative of later reactions, a valid evaluation of a compensation program may not be possible until it operates long enough to become established and known.

Costs

Until the parameters of the recommended experimental evaluation of compensation approaches are more fully delineated—a task which the Commission believes can only be carried out by those with final responsibility for designing the experiment—it is impossible to estimate the costs of the experiment. Rough yardsticks are provided by the experience of the University of Washington, where commercial premium costs were less than \$1.00 per covered subject (and actual payments were less than 5¢ per subject), and by the Quincy Research Center, where costs were less than those associated with workers' compensation premiums for professional employees. In addition

to premium costs, of course, the experiment will incur certain administrative costs and the costs of design and evaluation.

The Commission notes that under existing Public Health Service policy, reasonable insurance costs incurred by contractors and grantees are already allowable expenses. Thus, the implementation of a compensation experiment would not create a new category of expense insofar as insurance premium costs are concerned. By statute, funds are available to HHS for research and development experiments on programs. The Commission believes that such funds might usefully be applied to the compensation experiment, and that a satisfactory experiment could be conducted for a very small fraction of 1% of current Federal expenditures on biomedical research grants and contracts.

Standards for Evaluating the Desirability of Instituting a Compensation Program

The ethical desirability of compensating victims of research injuries is strong, but the decision whether to adopt a compensation system must in the Commission's view be made by balancing the seriousness of the problem against the costs and practical difficulties of the solution. A finding of substantial need would argue strongly in favor of a compensation program even if significant costs and practical difficulties might be entailed. If the need for a compensation program is shown to be small, however, the cost and difficulty of administering make a permanent program seem much less necessary or desirable.

A finding that relatively few serious injuries occur to subjects in research should not in itself be taken to indicate that no compensation program is needed. Few serious injuries resulting from properly conducted research have been reported or documented. The examples of research injuries most frequently recited (*i.e.*, the Tuskegee syphilis experiment, the CIA-sponsored psychoactive drug research, and so forth) occurred prior to the existence of the review processes required by current Federal regulations. Nonetheless, it is undeniable that human research involves some risks. In the long run, it may well be more protective of the field of biomedical and behavioral research for it to be prepared to meet any human disaster which may result from its activities. The alternative—a knowing decision to do nothing to provide a fair and simple avenue of relief in the event of serious injury—carries serious danger for public confidence in science and scientific research. Moreover, any

program adopted in the wake of such an event would almost certainly be less well-designed than one adopted in light of the results of a well-conducted social policy experiment.⁷

Chapter 7: Consider Various Features of Nonfault Insurance Programs

What features might be tried out as part of the social policy experiment proposed by the Commission? One alternative, rejected by the Commission, would be to create a remedy through the judicial system. It does not seem wise to remit injured subjects "to the uncertainties of the law court"¹ or to require them to hurdle the formidable barriers to recovery that exist even in strict tort liability.

The Commission also examined various governmental health and compensation programs and private insurance plans to determine whether they might serve as models for further study and experimental evaluation regarding compensation for research injuries. While the existing programs also appear to be inadequate, they point to the possibility of a nonjudicial, nonfault system of compensating for research injuries. The factors favoring this approach are nicely summed up in a report prepared by the Ciba Foundation study group established in response to the Pearson Commission's recommendation favoring strict liability:

Compared with litigation a no-fault compensation scheme would have the advantage of administrative simplicity. Claims can generally be handled quickly and, since the claimant would not be seeking redress from the researcher, his employer or the funding agency, it would be proper for the researcher to assist the claimant in the preparation of his claim. The researcher and the participant in the research would, therefore, not be adversaries as would be inevitable in any scheme based upon litigation. It is in the public interest that all participants in medical research should appreciate that their well-being, and the public interests, are overriding considerations in the mind of the investigator.²

This chapter first reviews the governmental and private insurance models and presents the reasons for their rejection. The rest of the chapter discusses the varying features that might

⁷For a fuller discussion of the issue of compensating for injuries arising from certain causes in therapeutic research, see pp. 132-135. The terms are defined and their practical interrelationships are shown in Appendix S.

¹Tuskegee Syphilis Study Ad Hoc Advisory Panel, Final Report, U.S. Department of Health, Education and Welfare, Washington (1973) at 23.

²Ciba Foundation Study Group, Medical Research: Civil Liability and Compensation for Personal Injury, Ciba Foundation, London (1980) at 9.

be considered for nonfault insurance programs to compensate for research injuries.

Existing Governmental Programs as Models

The Commission began its study of existing Federal models by reviewing the materials prepared for the HEW Secretary's Task Force on the Compensation of Injured Research Subjects in 1975. Those materials included detailed descriptions of four major Federal compensation programs: the Federal Employees' Compensation Act (F.E.C.A.), the Black Lung Benefits Act, the National Flood Insurance Act, and the Veterans Administration service-connected disability program. The report prepared for the Task Force on these programs appeared in an appendix to the Task Force's final report and is reprinted, for convenience, in the appendix volume accompanying this Report.³

The Commission then undertook to update these materials and to explore certain programs and issues in greater depth. Some of this work was carried out by a health policy analyst who reviewed in some detail the suitability of F.E.C.A. and the Veterans Administration program as models for compensation for research injuries, brought prior work on the black lung program up to date, and provided information on Social Security disability programs, Medicare, and state workers' compensation programs.⁴

Members of the Commission staff also canvassed the literature and reviewed administrative and legislative proposals regarding compensation for injuries associated with vaccine and immunization programs, radiation from nuclear weapons testing, toxic substances in the environment, and medical accidents, as well as proposals for modifications in product liability law. These injuries took advantage of ongoing studies concerning compensation programs in other Federal agencies and in interagency working groups. Particular attention was paid to the lessons of the swine flu vaccine program, including the continuing litigation associated with it, and to contemporaneous studies by the Congressional Office of Technology Assessment of compensation for vaccine-related injuries.

³ Frederick G.G. Barber, *Report on Federal Models*, HEW Secretary's Task Force on the Compensation of Injured Research Subjects, Report, U.S. Department of Health, Education, and Welfare, Washington (1977) (hereinafter cited as Task Force Report) Appendix A at 167-198.

⁴ Stanley B. Jones, *Existing Federal Programs as Models for Compensation of Human Subjects* (1980); see Appendix M to this Report.

F.E.C.A. and Other Workers' Compensation Programs. F.E.C.A. is the workers' compensation plan applicable to approximately three million civilian Federal employees, and to certain other persons as well.⁵ The plan is generally similar in structure to most state workers' compensation plans, although benefits are paid directly by the government and tend to be more comprehensive in scope and more generous in amounts (particularly for highly paid employees) than state plans. The program is administered by the Office of Workers' Compensation Programs within the Department of Labor.⁶

F.E.C.A. provides benefits to covered employees both for injuries resulting from accidents and for diseases proximately caused by their employment. Benefits are provided through an administrative mechanism without regard to fault (except for willful misconduct or intoxication by the injured employee) and include compensation for loss of wages, dollar awards for bodily impairment or disfigurement, medical care for an injury or disease, rehabilitation services, and compensation to survivors in the event of an employee's death. Compensation levels are established on the basis of a percentage of an employee's pay level. Awards are subject to administrative review but are not subject to challenge in the courts.

F.E.C.A. has been extended, by statute, to apply to a number of "non-typical" types of Federal employees and, indeed, non-employees. Among the persons currently covered by F.E.C.A. are Peace Corps and VISTA volunteers, members of the Civil Air Patrol and National Teacher Corps, Job Corps enrollees, certain student-trainees, and non-Federal law enforcement officers injured in the course of enforcing Federal law.⁷ Methods have been devised to accommodate the special compensation requirements of such individuals.

F.E.C.A. is not the only Federal legislation providing workers' compensation benefits. The Federal Longshoremen's and Harbor Workers' Compensation Act (the "Longshoremen's Act") governs workers' compensation for privately

employed persons engaged in maritime employment.⁸ The Longshoremen's Act has been extended, by statute, to provide coverage for several additional classes of workers, including persons employed at military, air, and naval bases outside the United States; employees of "nonappropriated fund instrumentalities" (e.g., military base post exchanges); employees working on the outer continental shelf under United States jurisdiction; and, until recently, employees in the District of Columbia.⁹

Benefits under the Longshoremen's Act are generally similar to, but somewhat less generous than, those available under F.E.C.A. Unlike the situation under F.E.C.A., awards under the Longshoremen's Act are paid by private employers and may be appealed in the Federal courts. This administrative mechanism is thus subject to several of the criticisms leveled against common law tort remedies which entail resort to the courts. The Longshoremen's Act does, however, provide a Federally recognized alternative to F.E.C.A. with benefit levels closer to those provided under state workers' compensation laws.

In addition to these Federal programs, all fifty states have their own workers' compensation acts requiring employers to provide benefits to workers who suffer work-related injuries and diseases. To be eligible for benefits, normally an employee must experience a "personal injury by accident arising out of and in the course of employment."¹⁰ Beyond this common framework, eligibility criteria and benefit levels vary widely among the states. Many state plans are criticized as inadequate, particularly with respect to coverage of work-related illnesses and diseases. A Federally mandated National Commission on State Workmen's Compensation Laws made numerous recommendations for improvements in its 1972 report;¹¹ many of these recommendations have yet to be implemented.

What, then, are the lessons of Federal and state workers' compensation programs, and to what degree do existing programs, particularly F.E.C.A.,

⁸ 33 U.S.C. Ch. 18, §§ 901 *et seq.* Other workers' compensation plans embodied in Federal legislation include the Jones Act, covering merchant seamen, and the Federal Employers' Liability Act, covering railroad employees.

⁹ See 42 U.S.C. Ch. 11, §§ 1651-1654; 5 U.S.C. §§ 8171-8173; 43 U.S.C. §§ 1335-1343; D.C. Code §§ 501-504, repealed by District of Columbia Workers' Compensation Act of 1979, D.C. Law 3-77.

¹⁰ *Report of the National Commission on State Workmen's Compensation Laws*, U.S. Government Printing Office, Washington (1972) at 32.

¹¹ *Id.*

⁵ 5 U.S.C. Ch., 81 §§ 8101 *et seq.* See generally Comptroller General's Report to the Congress, *Compensation for Federal Employee Injuries: It's Time to Rethink the Rules*, HRD-79-78 (August 22, 1979) (hereinafter cited as Comptroller General's Report on Compensation).

⁶ Comptroller General's Report on Compensation, *supra* note 5.

⁷ See 5 U.S.C. §§ 8101(1), 8141-8143, 8143a, 8144, 8191.

provide useful models for a compensation system for research injuries? The problem of injured research subjects seeking compensation is similar in several respects to the position of the injured industrial worker, suggesting the plausibility of the workers' compensation approach as a model for research injuries. The history and rationale for workers' compensation laws underline some of those similarities, as well as a few significant differences.

Workers' compensation programs were established in the early part of this century in response to growing dissatisfaction with the tort system as a vehicle for resolving claims arising from work-related injuries. The new approach abandoned several requirements under the tort system viewed as unfair or unduly burdensome to injured workers, and permitted workers to recover if their injuries arose in the course of their employment, without proof of fault by the employer. In this respect, workers' compensation laws recognized industrial accidents as an inevitable hazard of modern industry. The new approach also recognized that the human costs of injury, like the costs of repairing machinery, were part of the costs of the enterprise and should be borne by those who benefit from the enterprise, not by the injured workers. This philosophy found expression in a slogan of the time: "the price of the product should bear the blood of the workingman." Scholars of the period believe the adoption of workers' compensation laws contributed to industrial harmony and social peace.¹²

At present injured research subjects enjoy no benefits comparable to workers' compensation, although there are notable structural similarities with the situation of ordinary American workers. Injured subjects, like workers a century ago, face special obstacles in securing relief through the tort system. Because of the special character of the research enterprise as a venture into the unknown, research injuries are an inevitable hazard of the enterprise. Further, the human costs of injury incurred in research are truly costs of the research enterprise to society—costs necessarily incurred to obtain the benefits of scientific progress.

It may be argued that research subjects *volunteer* to participate in research, while workers effectively have little choice about incurring workplace

hazards to earn their livelihoods. To the extent that subjects participate in research purely out of altruistic motives, this observation may be correct. To that extent, the analogy between workers' compensation and compensation for research injuries is imperfect. Yet, on the ethical plane, that difference adds weight to the injured subject's claim against society, since the volunteer has acted altruistically. And to the degree that some subjects participate in nontherapeutic research as a convenient means of casual employment-for-pay (a not uncommon practice among university and medical school students), parity of treatment suggest that subjects should be entitled to workers' compensation benefits much as are other employees-for-pay.

The workers' compensation analogy does tend to break down with respect to one class of subjects: patients who participate as subjects in therapeutic research with the expectation of securing personal health benefits. Such subjects may seem more akin to patients receiving standard medical care (who are not entitled to compensation on a nonfault basis) than to workers eligible for workers' compensation. Further, such patient-subjects pose many of the administrative difficulties which workers' compensation programs have been least successful in answering: determining causation of diseases that are not arguably work-related; measuring the degree of "excess injury," or the exacerbation of preexisting health conditions; and calculating the benefits owed to persons not currently in the work force. For these reasons, the Commission believes that the uncritical application of workers' compensation models to therapeutic research involving already sick patient-subjects is fraught with potential hazards. However, with respect to nontherapeutic research (especially that involving healthy subjects), the Commission concludes that workers' compensation, and F.E.C.A. in particular, offers a potential model for compensating injured research subjects.

Veterans Benefits. A second approach carefully examined by the Commission is the compensation system administered by the Veterans Administration for service-connected disability or death. Under this program, benefits are provided to veterans for disabilities incurred in, or aggravated by, a period of military service though not necessarily "caused" by the service. Benefits include health care and rehabilitation, typically provided in VA facilities, and financial compensation for lost earning capacity due to the

disability. These benefit programs make no distinction between men and women who volunteered for service and those who were conscripted.

In marked contrast to workers' compensation approaches, VA service-connected disability benefits are payable without regard to the beneficiary's employment status. Rather, benefits are determined according to an "average man" concept. Disabilities are rated and compensated according to a comprehensive schedule of injuries and diseases, under which varying percentage ratings are assigned, depending on the degree of severity of any given disability. These percentage ratings represent, as nearly as possible, the "average impairment in earning capacity" resulting from a particular disability in civilian occupations. In applying the "average man concept," there is an assumption that all young people who entered military service at an early age would have the potential for attaining an "average civilian occupation income" at the time of their discharge. These disability payments levels are adjusted yearly by Congress, to correspond to cost-of-living increases provided in other Federal benefit programs. This "income loss compensation" can be reduced if it can be demonstrated that the individual was already disabled before entering service, in a way definable in the schedule for rating injuries and diseases. In that event, only the "additional disability" is compensable.¹³ Research can be prevented from escalating uncontrollably administrative cost. Claim decisions are subject to administrative review, but because of the relatively simple administrative structure of the program (and the existence of other VA programs providing for the needs of the veteran), few appeals are taken. No appeals to the courts are permitted.

The Commission believes a number of features of the VA service-connected disability program bear close examination in the structuring and experimental evaluation of alternative compensation plans for injured research subjects. In particular, the "average man" concept may have promise in determining benefit levels for injured subjects whose current income, if any, may not accurately reflect their true earnings capacity.

The Commission's health policy consultant noted that "if participation in research experiments were deemed by

¹² Comptroller General's Report on Compensation, *supra* note 5, Appendix II, and see generally Roy Lubove, *The Struggle for Social Security, 1900-1935*, Harvard University Press, Cambridge, Mass. (1968) at 45-65.

¹³ Letter from Dorothy C. Rasinski, M.D., J.D., Associate Director, Medical-Legal Affairs, Veterans Administration, to Alan J. Weisbard (1980).

law to be equivalent to service in the military, research subjects might be covered" by the VA service-connected disability program.¹⁴ The Commission believes this suggestion bears further exploration, but notes that VA benefits, unlike those afforded under F.E.C.A. or the Longshoremen's Act, have not historically been extended to new groups of beneficiaries.

Vaccine and Immunization Programs. Many of the issues involved in recent Congressional and Executive Branch efforts to formulate a national policy on compensation for injuries in vaccine and immunization programs bear a close relationship to questions arising in the context of research injuries. The Commission notes that the approaches under consideration for vaccine injuries are closely analogous to those examined here.¹⁵

The Commission agrees, for example, with the conclusion of the Office of Technology Assessment that "the swine flu program is widely regarded as exemplifying the problems inherent in compensating for vaccine related injuries via the tort law system."¹⁶ The Preference of the President's Commission that nonfault administrative and insurance mechanisms be explored as a means to compensate for research injuries, rather than pursuing remedies through the tort law system (including strict liability), is based in part on the swine flu experience.¹⁷

¹⁴ Jones, *Existing Federal Programs as Models for Compensation of Human Subjects*, *supra* note 4, at 33-34.

¹⁵ Office of Technology Assessment, U.S. Congress. *A Review of Selected Federal Vaccine and Immunization Policies* (1979); Office of Technology Assessment, U.S. Congress, *Compensation for Vaccine-Related Injuries* (1980); Reports and Recommendations of the National Immunization Work Groups (1977).

¹⁶ *Compensation for Vaccine-Related Injuries*, *supra* note 15 at 13.

¹⁷ The Federal government's ill-fated 1976 effort to immunize the public against swine flu nearly ended before it began, when vaccine manufacturers refused to transfer their vaccines from bulk to bottles for distribution, because the manufacturers were unable to secure insurance coverage against potential liability for vaccine-related injuries. Emergency legislation was rushed through Congress, providing that any claims arising from the swine flu program should be filed against the Federal government, while preserving the government's right to sue manufacturers for indemnification in the event of negligence in the production of the vaccines. Public Law 94-380. See R. E. Neustadt and Harvey V. Fineberg, *The Swine Flu Affair: Decision-making on a Slippery Disease*, U.S. Department of Health, Education and Welfare, Washington (1978). Under this legislation, the government assumed the "duty to warn" potential vaccine recipients of any known adverse reactions to the vaccine, and undertook to defend against any claims brought for vaccine injuries.

The results are well known. Although the feared swine flu epidemic never materialized, there quickly developed a mini-epidemic of claims against the Federal government, many related to the onset of Guillain-Barre Syndrome (GBS). As of August 12, 1981, some 4039 claims for a total of over \$2.89 billion in damages had been filed. Of these claims, 1523 had progressed to lawsuits, requiring

Evaluation of Governmental Alternatives. The Commission has noted the tendency of governmental compensation programs, once enacted, to expand beyond their originally contemplated scope, placing ever greater demands on the Federal treasury. One significant factor underlying the escalation in costs of many Federal compensation programs has been the general rate of price inflation throughout the economy, and the still higher inflation in medical costs. The Commission sees little in the design of the compensation program for research subjects which could significantly affect this overriding fact.

A second factor responsible for escalating costs is the power of particular political constituencies to expand the scope and benefit levels of compensation programs. To some degree, such expansions may serve legitimate policy interests; often it is merely a matter of politics. One of the most striking features of the research injury question is the near-absence of any active constituency group of research subjects. If the Commission's data on the incidence of research injuries is correct, it is exceedingly unlikely that any large or powerful constituency group representing injured research subjects will arise.

The presence or absence of a powerful constituency group does not affect the moral claim to compensation of those subjects who are injured in research. The lack of such a group does, however, diminish the likelihood that overwhelming political pressures will force an initially modest compensation program to expand beyond its appropriate contours.

Nonetheless, the Commission has paid special attention, in articulating its several alternative approaches toward

extraordinary efforts on the part of lawyers at the Justice Department, as well as imposing considerable expense on the government and burden on the Federal court system. Perhaps the major potential advantage of this system to the Federal government, the possibility that the government might have prevailed on the merits in many cases (on the basis that the government should not be held accountable for a failure to warn of risks that were unknown at the time) was put in question when then HEW Secretary Califano issued a statement accepting the government's responsibility for GBS claims. See *Compensation for Vaccine-Related Injuries* *supra* note 15, at 13-17. While the legal effect of this statement is open to question, the Justice Department subsequently took the position that it would not require proof of a theory of liability in cases in which GBS was established (although proof of liability is required in all other cases). As a result, the government incurred both the substantial costs of courtroom litigation and liability for the large damage awards associated with such litigation. It is difficult to imagine how an administrative mechanism for nonfault compensation could do worse.

compensation, to those aspects of a compensation program which might expand the scope and expense of a program beyond those initially contemplated. Perhaps most significant among these are the questions whether a program should encompass nonphysical injuries; injuries sustained in therapeutic research; and injuries sustained in research not conducted or supported by the Federal Government. Careful study of benefits and costs should precede any decision to include these categories in a compensation program.

A third reason why the scope of compensation programs has expanded and their costs have escalated is the tendency, particularly in the courts, to accord more liberal interpretations to eligibility and benefit criteria. Therefore, the Commission recommends that court review by precluded initially and dollar ceilings be set on awards as features of any program being tested out; reexamination of these features ought to await several years experience with an actual program in place.

A fourth basis for escalating costs is greater awareness by potential beneficiaries of the compensability of injuries. To the degree such awareness leads persons to make claims who are legitimately entitled to compensation, any "escalation" in costs is a sign that the program is doing its job and reaching the persons intended to receive benefits. However, greater awareness of the availability of compensation may also lead to specious claims by persons not legally entitled to relief. Costs associated with such claims include both any benefits erroneously paid out to undeserving claimants and the administrative expense of processing invalid claims. This problem of potentially excessive "induced costs" was a significant concern of several witnesses who questioned the wisdom of a compensation program and is seriously regarded by the Commission.¹⁸ The Commission's recommendation that any compensation program be tested first through a small experiment is based on the conclusion that the potential for induced costs must be carefully evaluated before Federal policymakers consider instituting a comprehensive plan or promulgating a requirement that research institutions adopt such plans.

Insurance Mechanisms as Models

Members of the Commission staff conducted extensive and fruitful discussions with representatives of the

¹⁸ Testimony of George Bernstein, Esq., transcript of 8th meeting of the President's Commission (January 6, 1981) at 189-95.

insurance industry—including company officials, insurance brokers, trade association officers, and institutional risk managers—to determine what role insurance mechanisms could usefully play in assuring medical care and financial redress for injured subjects. Several conclusions emerged from these discussions.

The insurers (and other interested parties) made a number of specific suggestions concerning the terms of a compensation program. Their submissions are published in the appendix volume accompanying this Report.¹⁹ The focus here is not on these specific suggestions, but broader structural approaches to incorporating insurance mechanisms as part of a compensation system. At least three distinct models (as well as combinations of these models) may be envisioned; institutional private insurance, institutional self-insurance, and pooled or collective insurance.

Institutional Private Insurance. Institutional private insurance is perhaps the most familiar model. Under this approach, each research institution would purchase, from commercial insurance companies, nonfault coverage of all subjects participating in covered research at that institution. Terms of coverage would be negotiated by the relevant institution and the insurance carrier, subject to minimum requirements. Premiums would be set according to normal underwriting standards, reflecting the type of institution, the mix of research conducted, and any prior claims experience. Coverage could be marketed either as a separate insurance product or, more likely, as part of the overall insurance package for the institution.

This is the approach successfully employed at the University of Washington (Seattle) for a number of years, originally in conjunction with the Argonaut Insurance Company and subsequently, between 1973 and 1979, with the Aetna Casualty and Surety Company.²⁰ The insurance carriers in that instance wrote coverage through a special endorsement to the university's comprehensive general liability insurance policy. Coverage was originally provided following a survey of adverse effects associated with research at the university during a one-year base period, at a premium cost of 50¢ per subject, or \$17,500. In subsequent years, the cost of insurance coverage was a fixed charge of \$35,000, without regard

to the number of subjects covered. The university's human subjects officer and risk manager reported that the insurance program "relieved concerns within the university for the economic protection of human subjects" and that "there have been no complications in the insurance program."²¹

The major drawbacks of this private insurance approach are, first, that the terms of coverage must be sufficiently attractive to induce participation by the private insurance industry (which implies significant limitations on the extent of coverage) and, second, that some research institutions may have difficulty in securing coverage. As noted by representatives of the private insurers, "the larger and more respected institutions will obtain coverage more easily," while other institutions "may be unable to obtain such coverage because their projects are too risky or because it is impossible to assess the degree of risk in the program. This will be particularly troublesome with respect to research in smaller institutions engaged in high risk, even if potentially beneficial, research."²²

Institutional Self-Insurance. The second model is that of institutional self-insurance. Here the institution itself defines the terms of coverage and establishes an actuarially sound sinking or reserve fund to cover future claims. No private insurance carrier is involved. As a result, the terms of coverage are potentially quite flexible, and many institutions find self-insurance less expensive and more satisfactory for their needs than insurance procured on private insurance markets. An increasing number of universities and hospitals have switched from commercial to self-insurance in recent years. For example, the University of Washington has for three years provided its own liability coverage, including insurance for adverse effects associated with research, through a program of self-insurance.

There are several drawbacks to institutional self-insurance, however, particularly for smaller research institutions. Since each institution establishes a fund to cover its own claims, risks are not spread as widely as with commercial insurance. Thus, in the event of an unusual string of losses (or even a single catastrophic loss), the reserve fund may be endangered,

requiring claims to be paid out of general funds. Further, many states have laws limiting the ability of state instrumentalities or nonprofit institutions to self-insure. In the state of Washington, a legislative change was required before the state university could self-insure.

The compensation program for research injuries at the Quincy Research Center, a drug testing facility in Kansas City, Missouri, combines elements of self-insurance and private insurance.²³ The research center has provided medical care under a self-insurance approach for all research participants since 1975. In addition, the research center provides financial compensation in the event of injury through a workers' compensation-type insurance arrangement. The director of the research center reports that standard rates for research subjects as employees are approximately twice as great as those for physicians and consultants, approximately five times as great as those for clerical office employees, slightly less than one-third as great as those for chauffeurs and drivers, and approximately equal to those for analytical chemists.²⁴

Collective or Pooled Insurance. A third model for insurance coverage for research injuries is collective or pooled insurance. Under this system, a group of research institutions could band together, perhaps with government assistance, to establish a collective insurance pool. Such an arrangement would retain many of the advantages of self-insurance, notably including flexibility in the terms of coverage and the ability to move forward with a program even in the absence of interest by the private insurance industry in providing appropriate coverage. But the collective approach would permit greater spreading of risks among institutions than would institutional self-insurance, and could be expected to result in lower administrative costs. Collective insurance pools might be especially important for smaller research institutions which face difficulties in securing coverage for research injuries in the private insurance market or in establishing their own self-insurance programs.

The Commission is not aware of any collective insurance pools for research injuries now operating in the United States. However, many such pools have

²¹ *Id.* at 3. The University of Washington has for several years been a self-insurer. The total amount paid in claims to injured subjects in the nearly 10 years it has had a formal compensation program averages less than 5¢ per subject. This amount does not include the value of free medical services provided to subjects.

²² See note 18 *supra*.

¹⁹ See Appendices O, P, Q, R, T to this Report.

²⁰ Diana McCann and John R. Pettit, *A Report on Adverse Effects Insurance for Human Subjects* (1980); see Appendix H to this Report at 1.

²³ John D. Arnold, *Incidence of Injury During Clinical Pharmacology Research and Indemnification of Injured Research Subjects at the Quincy Research Center* (1980); see Appendix I to this Report.

²⁴ *Id.* at 34-35.

been established for other analogous purposes. In many states, such insurance collectives are the primary source for medical malpractice insurance. A number of universities and hospitals have also participated in such plans to cover other insurance needs. These arrangements could be modified to provide coverage, on a nonfault basis, for research injuries. While the laws and regulations pose obstacles in certain jurisdictions, it seems clear that many institutions could provide protection to research subjects through such collective insurance pools.

Evaluation of Insurance Alternatives. The Commission does not believe that any one of these insurance models is fully satisfactory for all research institutions in all circumstances. The Commission concluded however, that if compensation for research injuries were desired virtually all research institutions desiring (or mandated) to develop a reasonable insurance program providing minimally adequate coverage for subjects injured in research conducted at that institution could do so through one or more of these models. The necessary arrangements would take a certain amount of time, as well as cooperation and coordination among research institutions, risk managers, insurance brokers, and insurance companies, but nonfault insurance coverage for research injuries appears to be feasible. Moreover, if implemented in sensible fashion, it offers a better basis for providing compensation to injured research subjects at reasonable cost to research institutions and the Federal government than any alternatives, such as tort litigation.

The Commission notes that under the existing policy of the Department of Health and Human Services, institutions conducting research pursuant to Federal grants and contracts may procure insurance coverage providing protection for research subjects on a nonfault basis, and may recover associated (reasonable) expenses under their grants and contracts as indirect costs or, in certain instances, as direct costs.²⁵ Thus,

²⁵ The Public Health Service Grants Policy Statement provides (at p. 19) that:

Insurance is usually treated and reimbursed as an indirect cost. In certain situations, however, where special insurance is required because of risks peculiar to the project, the premium may be charged as a direct cost if consistent with institutional policy. Such premiums may include those on hazard, malpractice, and other liability insurance to cover grant-supported personnel and activities.

See also the provisions governing recovery of allowable insurance costs at 45 CFR Part 74, Subpart Q, Appendix E (hospitals); and OMB Circulars A-87 (state and local governments); A-21 (educational institutions); and A-122 (other nonprofit organizations).

for institutions wishing to do so, insurance protection for subjects may now be provided, at government expense, without the need for changes in Federal statutes or regulations. The logic of the Commission's reasoning would point toward regarding the costs of a compensation program as direct costs like other identifiable items (including appropriate remuneration of subjects for their time and trouble in participating).

Having determined that a nonfault insurance system should be the basis of the "compensation programs" being tested, the Commission proposes a number of variables that should be considered in designing the experimental compensation programs. Before discussing those variables, however, the Commission's intent with respect to certain basic elements that the experimental compensation programs should embody should be made clear.

Objectives of a Compensation Program

From what has already been said it can be seen that a major objective of any "compensation plan" is to ensure that necessary medical care and financial indemnities are provided, in a fair and just fashion, to protect research subjects (and others who are dependent upon them for support) from the remediable harm that occurs as a result of injuries suffered in research. "Easing the plight of the victim" is not, however, the sole consequence—and need not be the sole objective—of a compensation program. A compensation program might also serve as a means of social control over the funding and conduct of biomedical and behavioral research.

First, the funds spent in compensating injured subjects could help to identify, and perhaps even to quantify with some precision, a cost of doing research that had previously been overlooked in decisions regarding the number or type of experiments to undertake. Specifically, it has been suggested that a compensation program could discourage overly risky research²⁷ and encourage

²⁶ The idea of a compensation fund is in no sense original. It has, however, usually been suggested as a device for easing the plight of the victim. I am not here suggesting it for that purpose (worthy though it might be), but rather as a way of introducing an additional control element over when a medical experiment is considered worthwhile.

Guido Calabresi, *Reflections on Medical Experimentation in Humans, in Experimentation with Human Subjects* (ed. by Paul Freund), George Braziller, New York (1970) at 196, n. 2.

²⁷ Clark C. Havighurst, *Mechanisms for Compensating Persons Injured in Human Experimentation*, in Task Force Report, *supra* note 3, Appendix A at 81, 83.

economically "efficient" allocation to research funds.²⁸ To the extent that specific funding decisions take account of the injuries associated with the research, an appropriate incentive is provided to researchers to exercise additional care in their work.²⁹

As laudable as such objectives may be, the difficulties in risk-estimation discussed in Chapter Four suggest that a system capable of producing actuarial estimates of risk exact enough to make superior decisions about allocation of research funds is, at best, an elusive ideal. Even were such estimates feasible, they would involve an expenditure of time and resources far in excess of that needed to establish a fair system of compensation—and probably far in excess of any benefits that might be gained from "wiser" decisions about the amount and kind of research that ought to be undertaken. Consequently, the Commission concluded that reliance in achieving control over research is better placed on other means (such as prior review by an IRB) rather than on the compensation system.

Within its own sphere, any program for providing compensation ought to be fair and efficient. That is, it should (a) treat like cases alike, (b) involve fair payment for the harm sought to be remedied, and (c) disburse payments with maximum efficiency and minimum administrative cost.

Finally, the existence of a compensation program may have indirect consequences for the research enterprise or for society generally. By indicating society's concerns for individuals serving the interests of the collectivity, a compensation program not only avoids a potentially unattractive societal image for research but may also permit research that is otherwise seen as "too risky" (because of the possible consequences for its subjects) to go forward. Indeed, the existence of compensation may make people more willing to serve in research projects generally. The experience gained through experimental compensation programs for research injuries may also provide instructive information for other forms of Federally sponsored activities.³⁰

Any compensation system necessarily entails some balancing of competing objectives. A design feature that

²⁸ Richard Zeckhauser, *An Analysis of Mechanisms for the Compensation of Injured Research Subjects*, in Task Force Report, *supra* note 3, Appendix A at 155, 156.

²⁹ See Havighurst, *supra* note 27, and Zeckhauser, *supra* note 28.

³⁰ See Zeckhauser, *supra* note 28; see also, Calabresi, *supra* note 26.

advances one objective (e.g., providing comprehensive compensation) may undercut other objectives (e.g., promotion of the most cost-effective research). The ultimate choice of objectives will be for the policymakers who choose among (or modify) the options set forth below. As noted earlier, the Commission, in considering compensation programs, has had in mind solely the objectives *internal* to the compensation system (i.e., fair and efficient provisions of relief to the victims of research in a manner that can be administered easily and at a cost that imposes the minimum burden on the research sector), rather than the broader goal of enhancing the regulatory process.

Basic Elements of a Compensation Program

(1) Definition of "compensation." The term "compensation for research injuries" has been variously defined, often leading to misunderstanding. As employed here, the term encompasses two aspects:

(a) assurance that necessary medical care and related services are provided to subjects injured in research, and (b) financial indemnification of an injured subject, or the subject's family, for economic losses sustained (including both out-of-pocket costs and lost wages) as a direct consequence of research injury.

A recurrent source of confusion as to the intended scope of a compensation program results from the fact that medical care for subjects injured in research is often provided directly by the investigator or by the research institution, without charge to the subject and often without any formalized accounting for the cost of the services rendered. As a conceptual matter, "compensation" encompasses the provision of such care, whether or not the financial value of the care is ever billed to the subject or even calculated as a bookkeeping entry. Sometimes, medical care for an injured subject may be provided for a fee by care-givers entirely unrelated to the research or the research institution, or may otherwise be accompanied by a bill for services rendered. Here, of course, "compensation" includes payment of the bill as well as provision of the care itself.

In both cases, what is *ethically* relevant is that necessary care is provided and that the costs of that care do not fall upon the injured subject. The questions of where the costs of the care ultimately fall (other than upon the injured subject), and how those costs are accounted for, are financially important and must be considered in the

design of the financing side of any compensation program. Experience gained through the operation of the compensation experiment will provide valuable clues as to the most efficacious financing structure. In this regard, however, the Commission recognizes the desirability of permitting flexibility as to how medical care is provided and financially accounted for, particularly in cases of trivial injuries or other injuries not requiring long-term medical care. Where "flexibility" should not be permitted is in the basic requirement that necessary care be provided in appropriate circumstances, and that the injured subject not be financially burdened by the cost of the care.

(2) Research covered. Coverage should be limited to biomedical research and specified behavioral research (i.e., only such behavioral research as is affirmatively determined in advance to impose more than minimal risk of bodily injury to research subjects) which is reviewed and approved in accordance with Federal regulations for the protection of human subjects.

(3) Nature of Injuries. Benefits should be provided on a nonfault basis to subjects sustaining nontrivial bodily injuries or death as a result of their participation in covered research.

(4) Benefits. Benefits should include short-term, emergency medical care, longer-term medical care (including rehabilitation) and related services, death benefits, and economic costs. (More limited benefits might be available to seriously ill subjects participating in covered research.)

(5) Other payments. Benefits should be provided only to the extent that they are not paid by other sources (e.g., health or disability insurance, liability insurance, social security, court judgments or private settlements).

(6) Unreasonable conduct. Benefits should be reduced or eliminated when injury results from the failure of the subject reasonably to conform to the provisions of the research (e.g., intentional falsification of medical history, failure to comply with investigator's directions on avoiding alcohol, drugs, etc.).

(7) Fact-finding. The use of expert fact-finding panels and arbitration for the resolution of disputes should be encouraged.

(8) Funding. The experimental compensation program should be funded by the Federal government. Reasonable costs of private, group, or self-insurance incurred by non-Federal research institutions should be recognized as allowable direct costs under Federal grants and contracts.

Variables to be Included in the Experimental Design

The Commission believes that those with final responsibility for designing and implementing the compensation experiment should have freedom to establish the configuration of the compensation plans that will be evaluated. The following discussion of the variables to be considered is offered as an aid to those making the decisions.

Scope of Covered Research

Government involvement. The ethical arguments favoring a compensation program for research injuries are strongest where the nexus between the research and the Federal government is closest. That is, the greater the role of the Federal government in the design, funding, and conduct of the research, and in the encouragement of subjects to participate, the greater the obligation of the Federal government to provide, or to assure the provision of, medical care and financial assistance to subjects injured in the research. Thus, a program might cover any or all of the following: (i) research conducted intramurally by Federal agencies; (ii) research supported by Federal grants and contracts; and (iii) research submitted to Federal agencies in fulfillment of regulatory requirements (e.g., for licensing of new drugs, medical devices, pesticides, etc.).

With respect to research supported by Federal agencies, several sponsoring agencies (including the Public Health Service) currently permit research institutions to include reasonable expenditures for insurance procured to protect subjects of research as part of the costs of grants and contracts,³¹ the practice is not widespread, however.

The creation on an experimental basis of compensation programs for Federally funded research should encourage the sponsors of private research submitted to FDA and other regulatory agencies to establish parallel nonfault compensation plans and to share their data with the agency overseeing the Federal experimental program. Indeed, some private sponsors of research have already implemented such plans. Until the results of the experimental evaluation are available, it is not possible to evaluate the desirability of requiring all sponsors of research that is privately funded but Federally regulated to provide nonfault compensation.

Finally, it has been argued that since the ethical considerations underlying compensation do not vary according to the source of the funds to conduct the

³¹ Public Health Service Grants Policy Statement at 19.

research, any compensation program should apply to all institutional research, not just to Federally funded research.³² "In addition to a question of simple equity among subjects, there are practical difficulties in having a compensation program that only applies to some studies even though the risk to the subject may be the same."³³ Although this position is highly persuasive, it does not follow, that "the cost of any such compensation program should be fully borne by the Federal government."³⁴ Intra-institutional equity could be achieved by voluntary action of each institution or by a government mandate. But such a requirement would at the moment be out of keeping with the entire theory of the data-gathering experiment. Nevertheless, the Federal government might offer to cover the costs of compensation in non-Federally as well as Federally supported research as in inducement to institutions to participate in the experiment.

Type of research and IRB review. Under well-established regulations, codified for the Department of Health and Human Services at 45 CFR Part 46, all Federally conducted or supported research with human subjects must undergo prior review. For most of the studies that could produce claims for compensation, the process required includes prior review and approval by a properly constituted Institutional Review Board (IRB) established by the body conducting the research.

The requirement of proper institutional review would exclude from coverage research which has not been fully screened and which may pose special risks of injury. Such a requirement may be necessary to safeguard the financial integrity of the compensation fund and to encourage investigators to cooperate with the IRB process. (Investigators who improperly short-circuit the review process may be liable to injured subjects in the courts under the legal theory of negligence per se; in some situations, however, potential defendants may escape liability under the defenses of sovereign or charitable immunity.)

Under recent revisions to the regulations on IRBs, certain research, in which risk is believed to be minimal or nonexistent, need not undergo full review by the IRB. Some such research, primarily that involving surveys, questionnaires, and educational tests or

the study of existing pathological and diagnostic specimens, poses no risk of bodily injury and is formally "exempt" from IRB review. Such research might well be left outside the scope of the compensation plans to be tested, since the primary concern is with redressing the harms that accompany bodily injury.

Other research, believed to pose only minimal risks of harm, is permitted by the new regulations to be reviewed and approved on an expedited basis. Biomedical research falling within this "expedited review" category may result in bodily injury to research subjects (e.g., a chipped tooth suffered by a subject who faints and falls following a "blood draw"). Therefore, bodily injuries resulting from biomedical research subject to expedited review probably should be included within the coverage of the experimental compensation plan.

A large proportion of behavioral research poses no risk whatever to subjects. Further, many though not all of the risks posed by behavioral research are risks of purely psychological or social injury. Inclusion of all behavioral research in a compensation program would impose economic costs and administrative burdens unwarranted by any possible benefits.

It is undeniable, however, that some research characterized as "behavioral" poses risks of bodily injury to research subjects. Such risks may flow from physical interventions similar to those employed in biomedical research, from subjecting subjects to unusual or unexpected stress or from other causes. Bodily injuries resulting from such research should be compensable, both as a matter of fairness and to avoid imposing administratively difficult requirements for line-drawing between biomedical research and physically risky behavioral research. The regulatory distinction between behavioral research eligible for expedited review and that requiring full IRB review could form the basis for distinguishing between behavioral research that is included in the compensation program and that which is not.

The problem of therapeutic research. The question of whether "therapeutic research" should be excluded from a compensation program for research injuries has been among the most vexing and contentious arising in the course of the Commission's study of compensation for research injuries.³⁵

³⁵ A closely related question involves the applicability of a compensation plan for research injuries to injuries incurred in the development of vaccines and in immunization programs.

The view that *all* research, whether "therapeutic" or "nontherapeutic," must be covered by a compensation program was not found to be persuasive. There is much to be said as an analytical matter, of course, for the conclusion of the Secretary's Task Force that "the distinction between therapeutic and nontherapeutic research . . . is not a valid criterion on which to make a determination as to which injured subjects are to be compensated."³⁶ But, as the Task Force acknowledged, it would be inordinately expensive to "compensate" all patient-subjects for all illness or injury they experience after participating in research.³⁷ Even setting

Compensation for vaccine-related injuries has received extensive attention elsewhere, notably in reports issued by the Office of Technology Assessment. See *A Review of Selected Federal Vaccine and Immunization Policies* *supra* note 15 and *Compensation for Vaccine-Related Injuries*, *supra* note 15. While vaccine injuries share certain characteristics with research injuries in that they are often incurred in governmentally encouraged (or sometimes required) activities on behalf of the public good, vaccine injuries also possess distinctive characteristics. Insofar as vaccines, virtually by definition, offer some promise of preventive health benefits to the subjects on whom they are tested, vaccine trials would be classified as "therapeutic" and thus excluded from the scope of compensable injuries under Plans I and III as well as under Plan II, unless the injuries were caused by additional research procedures classified as "nonbeneficial." It is recognized, however, that subjects in vaccine research are typically "normal volunteers," a status that might justify classifying the research as "nontherapeutic." The Commission concludes on balance that all vaccine-related injuries, both from the research and development phase and from routine administration, would probably best be handled by a single compensation system specifically addressed to vaccine injuries.

³⁶ Task Force Report, *supra* note 3, at VI-9.

³⁷ A distinction between "normal" and "sick" subjects is also sometimes advanced as a means of limiting the costs of a compensation program. This basis for excluding therapeutic research from coverage under a compensation system—that therapeutic research involves "sick" subjects—was not persuasive to the Commission. The proposed distinction would exclude from coverage those subjects for whom "injuries" are most likely to occur and to be of greatest severity, and those cases in which separating causes (underlying illness vs. research interventions) will be most problematic. The Commission finds the distinction between sick and well subjects to be unsupportable as a basis for policy because it might encourage researchers to recruit their subjects from amongst sick patients. Sick patients are sometimes recruited to nontherapeutic research on matters unrelated to their illness. The sick and dependent are already a vulnerable population, in need of compassion and protection. If a sick person is injured in a research project in a way that would entitle a normal subject to compensation, under one of the alternative programs set forth here, then the sick subject's claim to compensation stands on the same ethical ground as any other subject's. Special considerations about the measurement of the resulting injuries may, however, need to be taken into account. For example, the death benefit for a marginal decrease in life-expectancy of a terminally ill patient-subject participating in nontherapeutic research may be subject to a dollar ceiling not applicable in the case of a research-induced death of a normal volunteer.

³² John R. Pettit, Chair, University Risk Management and Insurance Association (URMIA) Human Subjects committee, letter to Alan J. Weisbard (August 20, 1981); see Appendix R to this Report.

³³ *Id.*

³⁴ *Id.*

aside the difficulties of separating injuries that were caused by the research from those that were not, measuring the *extent* of the injury is conceptually as well as practically extremely difficult. Many patients participate in highly risky experiments precisely because their condition is already so desperate that they have, in common parlance, "nothing left to lose" and they hope that something new will help them. The Task Force's proposed means of dealing with this difficulty, the so-called "on-balance test," was found by the Commission to pose enormous burdens of administration which could not be justified in light of the relatively weaker moral claim for compensating patients who participate in research with the hope of deriving personal health benefits.

Furthermore, providing compensation to subjects of therapeutic research on any more favorable basis than that applicable to injuries resulting from ordinary medical practice (including innovative therapy) accords research injuries preferential treatment. For reasons discussed more fully below, such a preference might not be ethically inappropriate. But it would generate a serious question in need of an empirical answer: Would inclusion of therapeutic research within a program's coverage create unfortunate (and expensive) incentives for patients to enroll in research protocols or for their physician to include them to make them eligible to have any "adverse effects" paid for, as they would not be if the patient's condition worsened during ordinary medical care?

Many researchers and commentators feel a moral debt toward patient-subjects who are injured in therapeutic research. Such research is intended, at least in part, to benefit society and to advance knowledge. And the subjects are seldom in a position to insist on receiving the experimental treatment outside a research protocol. For reasons of science, it is usually appropriate (and sometimes required under Federal regulations) to confine the procedure being tested to persons enrolled in a formal experiment. Moreover, the number of care-givers able to employ any significant new procedure will typically be small, and they will probably all be providing it in research settings, either individually or in collaborative projects. Thus though no evil or self-serving motivation is at work, a classic contract of adhesion may nonetheless result. For the patient-subject the choice to enroll in the experiment is a choice *à prendre ou à laisser*.

Some patient-subjects may thus be made to contribute to the general welfare in a way they otherwise might not. Yet society is not necessarily under a strong obligation to compensate those who are injured. This is particularly true if the "contribution" required of patient-subjects does not in fact impose any additional burden on them. The Commission found no conclusive data either to support or to contradict a conclusion that, when viewed as a whole on a retrospective basis, therapeutic research produces worse results than those experienced by comparable patients in standard (or innovative) therapy in settings not formally designated as "research."

Patients enrolled in experiments, however, are sometimes exposed to additional procedures that are undertaken for reasons of the research design rather than strictly for the benefits they provide.³⁸ As regards these "nonbeneficial" procedures, patient-subjects in therapeutic research are in the same position as are other subjects enrolled in experiments not intended to be therapeutic. Thus, it may be worthwhile to evaluate the practicability of permitting recovery for a limited class of injuries associated with therapeutic research: those arising from research that employs certain procedures that are "nonbeneficial" from the subjects' viewpoint.

All research projects coming within a compensation program should undergo prior review. As part of this review, under existing regulations (*see, e.g.*, 45 CFR § 46.116(A)(6) & (7)), the IRB or other responsible officials must assure that approved consent forms disclose whether compensation will be provided in the event of injury. Accordingly, an IRB will have to determine whether or not research is "therapeutic"; if it is, the fact that compensation is unavailable would have to be disclosed as part of the consent process. The HHS officials responsible for the proposed social policy experiment may, however, also wish to explore whether any harm caused by "nonbeneficial" research procedures can be separated from that caused by the research intervention as a whole and whether compensating for such harm is feasible and desirable. If

³⁸ For example, in some therapeutic research, fluid samples are taken more frequently or in greater volume than necessary for proper patient care, in order to gather additional data or to better document the research. Other times, an additional procedure may be performed (*e.g.*, a spinal tap) to learn more about the metabolic effects of a drug under study. If information derived from examination of the spinal fluid, while useful for a research objective, is neither necessary for, nor related to, the care of the patient, then the tap would be a "nonbeneficial" procedure.

so, the IRBs at a few institutions will need to undertake the additional task of determining whether each therapeutic research protocol involves any "nonbeneficial" procedures. If it does, subjects would be told of the compensation program for any injuries caused by the specified "nonbeneficial" procedures (but not injuries resulting from their underlying disease or from the therapy being tested). At a like number of institutions matched for relevant characteristics, the IRBs would perform the same analysis of the protocols, but compensation would not be promised or paid. Instead, the people conducting the social policy experiment would simply monitor the outcome of the therapeutic research to see how many injuries are reported to have been caused by procedures identified in advance by the IRB as "nonbeneficial." In this fashion it should be possible not only to test the feasibility of identifying "nonbeneficial" procedures in protocols and of separating injuries caused by such procedures from those with other causes, but also to have some idea whether the existence of a compensation program at an institution leads to a higher rate of reported injuries from "nonbeneficial" procedures. This issue can be further examined when the people conducting the social policy experiment examine the records in each case and review the basis on which a researcher determined that an injury was caused by a "nonbeneficial" procedure in therapeutic research.

Eligibility for Benefits. The eligibility criteria must specify which persons may receive benefits, for what types of injury, and on the basis of what proof.

Subjects of covered research. Benefits could be limited to persons injured in their capacity as research subjects or could be extended to investigators or to certain third parties injured as a result of research activities. In his testimony before the Commission, Dr. John Arnold of the Quincy Research Center suggested a number of possibilities of third party injury, notably including motor vehicle accidents caused by research subjects unfit to drive, or injuries resulting from aggressive behavior by subjects under the influence of investigational drugs. The Commission suggests that existing legal remedies provide appropriate recourse for third parties injured in such circumstances, and that extension of nonfault liability for injuries of this sort under the compensation system would not be advisable.

In this respect, the Commission departs from the recommendation of the

Secretary's Task Force that injured third parties should be compensated where "it is established by a preponderance of evidence that the injury is a *direct* consequence of the research."³⁹ [Emphasis in original.] The Task Force did not elaborate on what is meant by "direct," and representatives of the insurance industry have expressed considerable skepticism as to the practicability of this distinction. Further, there is serious doubt as to the availability of private insurance to cover third party injuries associated with research. While recognizing that injuries to third parties resulting from research—even indirectly—may be regarded as part of the true social cost of the research enterprise, the Commission believes that such injuries may be excluded from a nonfault compensation system as tangential to the main concerns of the system and as better handled by other means.

One remaining issue is the proper characterization of fetuses *in utero* of women who participate in research during the course of their pregnancies. Existing legal mechanisms may or may not provide appropriate relief in such situations. If a fetus whose mother is a research subject is directly exposed to bodily injury by actions of the investigators, such a fetus could be made eligible for compensation in the event that it is born with an injury indisputably caused by the research. It should be noted that injuries to fetuses, like injuries to other research subjects, may be affected by provisions governing compensation for latent injuries (see below).

Nontrivial bodily injuries. The Secretary's Task Force recommended in 1977 that compensation should be provided for "physical, psychological, or social injury" resulting from research. The "interim final regulation" published by the Department on November 3, 1978, required disclosure to subjects, as part of the informed consent process, of the availability of "compensation and medical treatment * * * if physical injury occurs."⁴⁰ The recently promulgated HHS regulations governing protection of human research subjects eliminate this limitation to "physical" injury, on the basis that "the Department sees no reason to limit such disclosure to only one kind of injury."⁴¹ The question of whether compensation should be provided for psychological or "social" injury (however defined) has been a controversial one, and has

received careful consideration by the Commission.

Although the courts have increasingly recognized claims for emotional or psychological damages in defined circumstances (e.g., a mother's claim of emotional anguish on seeing her child injured or killed in a motor vehicle accident, even in the absence of actual or threatened physical injury to the mother herself), many commentators have expressed concern measuring its degree, and computing appropriate monetary damages.⁴² All of these concerns have been expressed in letters or presentations to the Commission from representatives of the insurance industry, university risk managers, the Association of American Medical Colleges, researchers, and other independent experts.⁴³

Similar objections have been raised regarding the provision of compensation for "social injuries," a term left undefined by the Task Force which has resulted in considerable confusion and misunderstanding. The Commission understands the term "social injury" to refer to injuries to reputation, personal relationships, or legal status resulting from the disclosure of identifiable personal information gathered in the course of research. The Commission believes that the most serious problems likely to arise in this area (e.g., unauthorized disclosures of sensitive private information) are better handled by a combination of careful prior review of the design of research projects posing such risks and, where necessary, pursuit of legal remedies through the courts.

Nevertheless, as revealed in testimony before the Commission, the insurance industry appears willing to provide coverage for "social and emotional injuries" having "some relationship to an actual physical injury" and "directly related" to participation in research.⁴⁴ It may

eventually prove possible, in addition, to provide compensation for objectively measurable damages, including lost wages and out-of-pocket costs, associated with verifiable manifestations of psychological injuries. The Commission suggests that the feasibility of such coverage be among the variables tested in the compensation experiment.

With respect to trivial bodily injuries, which constitute a large proportion of the adverse effects associated with participation in research, the Commission believes that the administrative burdens and costs of including such injuries in a formal compensation scheme are likely to be unacceptably high relative to the compensation paid out and to the need (measured by degree of injury) of the injured subjects. Further, it appears that minor research injuries are being—and can continue to be—handled adequately by informal means, principally first aid and other medical care provided immediately by the research team and their institutional associates. A threshold level of bodily injury thus appears to be an acceptable prerequisite for coverage under the compensation system.

The Commission's reasoning with respect to dignitary harms is somewhat different, although the result is the same. Subjects improperly denied the opportunity for fully informed consent have suffered injury to their dignity and autonomy, even in the absence of bodily harm from participating in research. The question is whether a compensation system for research injuries should serve as a supplemental policing mechanism, in addition to the IRB and the possibility of legal action, to assure fully informed consent. The dangers of such an approach include the possibility of a heavy burden of claims and administrative paperwork, significant potential for unmeritorious claims, and a diversion of financial and administrative resources from other uses in the absence of serious physical or economic injury. Absent bodily injury, a nonfault compensation program is probably not an appropriate mechanism for redress in cases of failure by the investigator or the research institution to comply with existing laws and regulations requiring informed consent as a prerequisite to participation in research.

Causation. Determining the cause of injuries experienced by research subjects will be difficult at best, especially in the context of therapeutic research or research (whether therapeutic or nontherapeutic) involving seriously ill patients. Even where

³⁹ Task Force Report, *supra* note 3, at VI-12.

⁴⁰ 43 Federal Register 51559 (November 3, 1978), now codified at 45 CFR § 46.116(a)(6)(1981).

⁴¹ 46 Federal Register 8383 (January 26, 1981).

⁴² See Havighurst, *supra* note 27, at 89-90; see generally, *supra* notes 7-8 in Chapter 2 *infra*.

⁴³ American Insurance Association, *Statement Before the President's Commission*, see Appendix Q to this Report; University Risk Management and Insurance Association, *Position Paper Regarding a Compensation Program for Adverse Effects of Human Subjects Research* (1980), see Appendix R-1 to this Report at 10; Letter from John F. Sherman, Ph.D. (Vice-President, Association of American Medical Colleges) to Morris Abram (May 7, 1980) see Appendix T-13 to this Report at 6; John D. Arnold, *Incidence of Injury During Clinical Pharmacology Research and Indemnification of Injured Research Subjects at the Quincy Research Center*, see Appendix I to this Report at 19-27; Letter from Phillippe V. Cardon, M.D. to Barbara Mishkin (July 3, 1980), see Appendix T-2 to this Report.

⁴⁴ Testimony of Dennis R. Connolly, James D. Morrow and John R. Pettit, transcript of 4th meeting of the President's Commission (September 15, 1980) at 150-59.

theoretically satisfactory criteria for delineating causation can be established, the application of these criteria to actual cases by a large-scale, bureaucratic claims-resolution process can be deeply problematic. For example, compensation systems for occupational diseases have been less than notably successful in discerning the etiology of diseases, and administrative decisions often result in appeals and protracted litigation. These difficulties are probably inescapable given the current state of the art of medical science.

Some compensation systems have sought to avoid these difficulties by creating legal presumptions (e.g., designating specific injuries for which causation need not be proved) or by the simple (but sometimes expensive) expedient of providing compensation for all injuries that occur "in the course of" specified activities. Such systems exchange a measure of certainty as to causation for a more streamlined and less costly means of resolving claims. Whether this "tradeoff" is desirable depends on the characteristics of the problem the compensation system is designed to address.

With respect to nontherapeutic research, the Commission believes that problems of causation can be adequately managed through the familiar legal standard of proximate cause, coupled with a mild presumption of causation, through a shifting of the burden of "disproving" causation to the research sponsor.

More difficult questions of causation are likely to arise in the provision of compensation in the event of injuries resulting from nonbeneficial procedures employed in therapeutic research. The Commission encourages the use of expert review bodies and experimentation with different presumptions and standards and burdens of proof for the resolution of difficult questions of causation, and, closely related, of the degree of "excess injury."⁴⁵

Standards of Conduct. The extent to which a subject's own improper conduct should exclude that subject from receiving compensation in the event of injury attributable, at least in part, to that conduct must be determined.

Two types of misconduct require special mention in this regard. First is behavior by a subject which is

knowingly and deliberately self-destructive. Injuries resulting from willful intention to injure oneself or others are frequently excluded from coverage under workers' compensation and similar programs, and the Commission believes that such injuries should be excluded here.

Conduct which might be characterized as reckless or negligent, though short of willful self-destruction, poses a more difficult problem. Subjects may fail, for example to provide complete and truthful responses to questions concerning their medical history. Similarly, subjects may fail to heed an investigator's directions with respect to diet, ingestion of alcohol or drugs, or other limitations on behavior during the course of research. Such failure may be either deliberate or inadvertent, and in many cases are likely to proceed from an incomplete awareness of the gravity of possible consequences. The Commission believes that such behavior, not amounting to willful self-destruction, should reduce, but not necessarily eliminate (except in extreme cases) a subject's entitlement to compensation.

Time for Making a Claim. The problem of latent effects—adverse effects which are not manifested as injuries for a substantial period of years following exposure to the causative agent—will pose enormous difficulties in structuring a program of private insurance to provide compensation for research injuries. For a variety of technical reasons related to the accounting and financing reserve procedures utilized by the insurance industry, the insurers will almost certainly insist on a so-called "outside limitation" on their period of potential liability. This time limitation would be measured from the date of a subject's last participation in the research procedure, and would impose an absolute cutoff on claims brought after a fixed period. While the insurers have been willing to discuss an outside limitation period as long as ten to fifteen years, such a limitation would nevertheless preclude the award of compensation (through a private insurance mechanism) for injuries resulting from exposure to carcinogenic or other agents with latency periods measured in decades. The insurers candidly acknowledge that under such a provision, "there may well be instances where persons may be viewed as worthy of receiving compensation. Nevertheless, they will not receive it."⁴⁶

The resistance to providing relief for latent effects is not to universal. In particular, several Federal workers' compensation programs impose no outside limitation period, and require only that a claim be brought in timely fashion after the injury has manifested itself and the claimant can reasonably be expected to be aware of the causal relationship between the injury and his employment.⁴⁷

The Commission discerns no ethical rationale for setting any particular cutoff for victims of research-related latent injuries from a compensation program, but does recognize the practical problems involved in providing coverage for such injuries.

The Commission noted in addition that if any compensation plan is tested during an experimental period and later terminated, arrangements must be made either to inform potential research subjects, prior to their participation, that compensation for latent injuries will not be available after a specified period of time, or to establish a fund to cover liabilities for injuries that arise later.

Nature and Extent of Benefits. The primary component of "compensation" in the vast majority of cases of research injury will be the provision of medical care required as a result of the injury. The immediate concern is that necessary medical care be available to the injured subject; the second is that the financial burden of such care not fall upon the injured research subjects.⁴⁸

⁴⁷ Section 8122 of F.E.C.A. provides, in pertinent part, that:

"(a) An original claim of compensation for disability or death must be filed within 3 years after the injury or death. . . .

"(b) In a case of latent disability, the time for filing claim does not begin to run until the [subject] has a compensable disability and is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability to his [participation in covered research]. In such a case, the time for giving notice of injury begins to run when the [subject] is aware, or by the exercise of reasonable diligence should have been aware, that his condition is causally related to his [participation in covered research], whether or not there is a compensable disability. . . .

"(d) The time limitations in subsections (a) and (b) of this section do not—

"(1) begin to run against a minor until he reaches 21 years of age or has had a legal representative appointed; or

"(2) run against an incompetent individual while he is incompetent and has no duly appointed legal representative; or

"(3) run against any individual whose failure to comply is excused by the Secretary on the ground that such notice could not be given because of exceptional circumstances.

⁴⁸ For example, F.E.C.A. provides:

"8103(a): The United States shall furnish to [a subject] who is injured in the [course of research], the services, appliances, and supplies prescribed or recommended by a qualified physician, which the

⁴⁵ To illustrate one possibility: If a subject can demonstrate a "reasonable likelihood" that his injury resulted from a particular research procedure, a presumption of causation could be created. This presumption could then be overcome by clear and convincing scientific evidence that the injury resulted from causes extrinsic to the research.

⁴⁶ Connolly, Morrow, and Pettit, *supra* note 44.

The Commission heard testimony that short-term medical care is routinely provided by investigators or research institutions in the event of injury to research subjects, usually without charge to the subject. Yet, apart from information provided by the University of Washington and the Quincy Research Center, both of which have formal compensation programs, no systematic empirical evidence to support that claim was advanced, and the Commission's efforts to secure such evidence have been unsuccessful. Furthermore, examination of consent forms gathered from a number of research institutions suggests that the availability of free medical care in the event of injury, if that does constitute institutional policy, is not always brought to the attention of research subjects. Nevertheless, there appears to be no empirical basis for rejecting the claim that much short-term emergency care, and some related services, is provided in the event of research-related injuries although not announced to subjects in advance.

The situation with respect to longer-term medical care and related social and rehabilitative services, as well as long-term medical surveillance, is more difficult but also more clear. Available evidence suggests that few research institutions have made provision for supplying or financing such care. There is little basis for confidence that such care is now generally available, without cost to the subject, in the event of serious injury.

There appears to be little opposition to the notion that a compensation system, if one is to exist, should assure the provision of necessary medical care and closely allied services, both short-

and long-term, without cost to a research subject with more than trivial injuries. (The experimental period should allow exploration of the related question: ought such medical care be paid for by the "compensation fund" if it is minor and not expensive? This is a question more of bookkeeping and institutional efficiency rather than one of ethics. It serves as a reminder, however, that the experiment is intended to provide information of practical as well as ethical import.)

Those planning the compensation experiment must also determine the extent to which death benefits should be provided to a subject's survivors. How, if at all, should such benefits be limited in cases of a preexisting condition—particularly a terminal illness? Death benefits might be provided either according to a periodic schedule or as a lump-sum payment.

A certain number of research-related injuries result in functional impairments disabling subjects from participating in some or all of the activities of everyday life, whether permanently or for some period of time. Sometimes this entails loss of time from paid employment, possibly resulting in loss of wages. Disability may also entail out-of-pocket costs for housekeeping services, child care, and other activities normally performed by the injured research subject. In other instances, disability may entail losses which are very real, but are harder to measure in monetary terms, e.g., loss of time from school, or worsened conditions for already hospitalized patients. There appears to be little objections, in principle, to the provisions of some level of financial compensation for actual loss of wages and out-of-pocket costs directly resulting from research-induced injuries.

While some provision of compensation for financial losses is an accepted objective, questions have been raised about the means for implementing this principle and about its extension to nonmonetary losses. These concerns result, in large part, from fears of abuses and consequent unjustified costs. Experience with other compensation programs now in operation suggests these fears are not without basis.

The issue of benefit levels for disability is relatively straightforward in most compensation systems. In workers' compensation programs, for example, the injured worker is paid a fixed percentage of lost wages, perhaps with some adjustment if there are a dependent spouse and children. In contrast, many subjects of biomedical and behavioral research have no

meaningful wage level to provide a basis for this computation. Research subjects include, among others, persons with no current earnings (institutionalized persons, the unemployed, the elderly), and persons whose current wages do not reflect their potential earning capacities (medical students, interns). The small sums provided to some research subjects are remuneration for their time and inconvenience and are unlikely to provide a satisfactory basis for calculating compensation levels in the event of disabling injury. Thus, an alternative approach must be identified if benefits are to be provided in such cases.

Among the several possible approaches outlined for the Commission, one borrows the "average man" concept employed by the Veterans Administration, which determines benefit levels on the basis of a percentage (reflecting the degree of disability) of the earnings of the average worker in the nation, rather than on the basis of the earnings history or potential of the particular person injured.⁴⁹ A distinct but related approach is embodied in the Federal Employees' Compensation Act, which provides benefits to disabled volunteers in the Peace Corps, VISTA, the Jobs Corps, and similar programs at levels pegged to the Federal GS scale (GS-7 to GS-11 for Peace Corps,⁵⁰ GS-2 for the Job Corps⁵¹). Central to both these approaches is a determination that persons with similar disabilities should receive similar benefits. In addition to the administrative simplicity of this approach, it carries an ethical appeal as well.

This approach is not without its drawbacks however, particularly with respect to incentives that might be created in the recruitment of research subjects. A fixed scale of disability payments might tend to discourage potential subjects with higher current or potential earnings while inducing participation by the poor. If this effect is substantial, it would violate the ethical norms of just distribution of risks and benefits across the society.

On the other hand, concern has been expressed that the provision of "generous" financial benefits, particularly to persons not currently in the labor force, would induce abusive claims and provide little incentive for the affected individuals to return to normal activities as quickly as feasible.

⁴⁹ Jones, *supra* note 4.

⁵⁰ Currently \$15,922-\$23,566.

⁵¹ Currently \$9,381.

Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation. These services, appliances, and supplies shall be furnished—

"(1) whether or not disability has arisen; . . .

"(3) by or on the order of United States medical officers and hospitals, or, at the employee's option, by or on order of physicians and hospitals designated or approved by the Secretary.

"The employee may initially select a physician to provide medical services, appliances, and supplies, in accordance with such regulations and instructions as the Secretary considers necessary, and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies. . . .

"8103(b): The Secretary, under such limitations or conditions as he considers necessary, may authorize the employing agencies to provide for the initial furnishing of medical and other benefits under this section. . . .

"8104(a): The Secretary of Labor may direct a permanently disabled individual whose disability is compensable under this subchapter to undergo vocational rehabilitation. The Secretary shall provide for furnishing the vocational rehabilitation services. . . ."

One possible remedy, endorsed by the insurers, the medical colleges, and the university risk managers, would be to impose waiting periods during which disability payments would not be made. Differing waiting periods may be considered for current wages earners and for non-wage earners.

Finally, the Commission notes that a serious problem with many compensation systems, particularly those providing relief for long-term disabilities, is that they include no provision for adjusting benefit levels in response to inflation. As a result, periodic payments which were adequate at the time of award become, over the years, completely inadequate to meet the needs of the disabled party. This problem could be avoided if provision is made to index benefit levels to changes in the cost of living.

Limitations on Benefits

Pain and suffering. The award of damages for "pain and suffering," in traditional tort litigation, is to restore the injured party, as nearly as possible, to the position he would have been in absent the wrongful injury. In addition to repaying actual dollar losses, an attempt is made to compensate in dollars for intangible losses, including pain and suffering. The calculation of damages for pain and suffering is recognized, however, as very inexact, and some legal scholars argue that awards for pain and suffering constitute, in effect, a way for jurors to "punish the wrongdoer" and to provide funds for the injured party to pay legal fees.

In nonfault systems, the tacit element of "punishing the wrongdoer" is reduced or eliminated, several barriers to recovery for the injured party are removed, and greater stress is placed both on providing compensation in a manner more precisely tied to measurable losses and on controlling the overall costs of the system. Accordingly, the Commission concludes that recovery for pain and suffering, which is generally excluded from recovery under nonfault systems, should also be excluded here.

For that class of research involving already hospitalized, critically or terminally ill patients, however, a compensation system limited to lost wages and out-of-pocket costs—that is, one which does not cover pain and suffering—may amount to an empty promise. Patients in such research may offer true altruistic service to the society and may suffer grievously from the toxic and painful effects of powerful drugs. The Swedish compensation programs provide a precedent for the award of scheduled benefits, tied to objective

criteria, which might be followed in this regard. The Commission suggests that such a feature might be tested during the compensation experiment.

Punitive damages. Punitive damages, expressly reserved in tort law for conduct which is intentional, deliberate, and outrageous, are virtually always excluded from nonfault compensation systems. Were such egregious conduct to occur in a research context and result in injury, it is likely that the injured subject could pursue a legal remedy through the tort system. There appears little need to encumber a nonfault compensation system for research injuries with a concept so rooted in the negligence system, and the Commission recommends that punitive damages be excluded.

Legal fees. Historically, the introduction of nonfault compensation systems has often been accompanied by hopeful rhetoric about reducing or limiting the role of lawyers. This has rarely, if ever, proved to be the case, and the Commission hesitates to suggest that this system will prove the exception.

In recent years, a number of environmental and civil rights laws have provided for the award of attorneys' fees to the prevailing party in order to encourage attorneys to assist in the vindication of especially prized rights. Such laws remain the exception rather than the rule, however, and few compensation systems now provide for the payment of attorneys' fees to a prevailing claimant. The Commission recommends that fees for attorneys and expert witnesses be excluded from coverage.

Ceiling on Benefits. In addition to limitations on compensation built into the definitions of injury and of specific indemnities, the Commission believes that overall ceilings on monetary benefits should be imposed to control costs and preserve the fiscal integrity of the compensation program(s) during the course of the compensation experiment. For example, overall limitations of \$100,000 and \$10,000 per subject might be tried. Were a compensation program eventually to be adopted, a Federal backup program to provide compensation in excess of this ceiling for claims that arise in Federally supported research might be advisable.

Offset for Recoveries from Collateral Sources. While one important justification for the enactment of a nonfault compensation program for research injuries is the inadequacy of existing remedies for injured subjects, the Commission recognizes that many injured subjects are eligible for certain

benefits from a variety of sources external to the compensation plan itself.

The traditional approach in tort litigation and in some government programs, including benefits under the Veterans Administration programs, is *not* to reduce benefits to offset recoveries from most other sources. This policy avoids penalizing people for their foresight in securing health and life insurance. Further, this approach is consistent with the theoretical argument that to the extent research (or any other activity) results in injuries, the costs of those injuries are part of the underlying social costs of pursuing the activity. On this view, such injury-related costs should be taken into account by those who make decisions about pursuing (or funding) the activity, whether or not the injured party also happens to have another source of payment for his or her injury. This rationale is expounded by those who analyze the objectives of a compensation system from an economic standpoint, and similar rationales have sometimes been discussed by courts in cases involving drug or vaccine injuries.⁵² This approach would regard the compensation program as "primary" in the cost-bearing sense.

On the other hand, a provision allowing offsets for recoveries from at least some collateral sources might significantly reduce the budgetary costs of a compensation program, and is strongly urged by the insurers, the medical colleges, and some, but not all, participants in the university risk managers study. Under this approach, the compensation system would be "secondary" to other sources.

The basic justification of a compensation system for research injuries is to avoid leaving unpredictable, unfair or unbearable economic burdens on the backs of those who have agreed to serve as subjects. To the extent that the costs created by research injuries have already been paid by other sources, this critical function of a compensation system has been met. Since the Commission does not believe that the compensation program would be a good way of "controlling" what research gets undertaken, it does not regard it as necessary to attempt to quantify *all* costs to society of the "research enterprise." In particular, the Commission is concerned that the costs of a compensation program not be permitted to escalate in a fashion that would endanger the integrity and continued existence of the program itself, much less endanger biomedical

⁵² See Calabresi, *supra* note 26; Havighurst, *supra* note 27; Zeckhauser, *supra* note 28.

and behavioral research. Accordingly, the Commission suggests that benefits under the experimental program be "secondary" to other sources of benefits, so as to allow limited funds to be used where they are most needed.⁵³

Relation to Alternative Legal Remedies. As previously noted, much of the impetus for a nonfault compensation system for research injuries derives from the inadequacies of existing legal remedies in providing fair and expeditious relief for such injuries. Nonetheless, in some cases, an injured subject may perceive the possibility of a large recovery through the tort system, as well as a smaller (and more certain) recovery through the nonfault compensation program. The question is whether a subject should be permitted to pursue both remedies, either simultaneously or sequentially.

Most workers' compensation systems were designed to be exclusive remedies, doing away with preexisting legal remedies against the employer and fellow-employees. Over the years, as workers' compensation awards have (by statute) remained low while tort awards have increased dramatically, the courts have allowed that original exclusivity to be eroded. In the present legal environment, there is room for substantial doubt that a compensation program for research injuries that purported to provide an exclusive remedy for such injuries would be acceptable to the courts, particularly if the program imposes significant limitations on the size and nature of potential recoveries and requires

binding arbitration of disputes. It is also doubtful social policy to deny a subject, severely injured as a result of *negligent conduct*, his right to pursue a substantial damage award in the courts.

On the other hand, one may question the desirability of affording an injured subject two bites at the apple: a quick and relatively certain recovery through the compensation program, plus the chance of a large recovery in the courts. These are questions that deserve consideration in designing the "variables" to be tested in the experiment with compensation programs. Among the alternatives a compromise resolution, which is likely to be acceptable to the courts, seems attractive: requiring an injured subject to make a binding election within a reasonable time following injury as to which avenue to pursue. A subject would thereby waive any legal rights to alternate routes of recovery. This is essentially the system now in effect at the University of Washington, and it appears to be acceptable in principle to the insurers.

Resolution of Disputes. Any system involving the acceptance and rejection of claims and the determination of benefit levels is likely to result in occasional disputes. To the extent a compensation system for research injuries involves difficult questions of causation or of the extent of injury or may require individualized determinations of benefit levels for subjects with no wage history, those disputes will probably be complex. Recognizing this fact, the Task Force recommended that "the compensable injury criteria should be applied only after a group of competent individuals has reviewed each case and reached a determination whether and to what extent compensation should be given."⁵⁴

One vehicle for the resolution of disputes in this context is arbitration. Arbitration is frequently employed in insurance contexts, and its use as part of a research-injury compensation program appears acceptable to the insurers, as well as to other commentators.⁵⁵ The one objection sometimes expressed is that arbitration may tend to provide "something for everyone," rather than clear, principled decisions. This objection could be explored through the compensation experiment.⁵⁶

Financing Mechanisms. Assuming that compensation should be provided to subjects injured in research, who should pay the costs? Insofar as the ethical basis for providing compensation to subjects injured in research is founded on service rendered to society in general, including future generations, the society at large, acting through the Federal government, would appear to be the appropriate source of funding for a compensation program.

With respect to research conducted by the government—e.g., intramural research at the National Institutes of Health—direct government funding of a compensation program is relatively straightforward. With respect to other classes of research, however, additional factors may be relevant.

One possible function of a compensation program is to provide incentives to researchers and research institutions to conduct research safely. To the degree that these costs of compensation are shared by researchers and research institutions, incentives are created to enhance the safety of their research and to consider carefully the advisability of high-risk research. These incentives are thought to operate even in the context of a nonfault system, where negligence as such is not at issue.

The Commission believes, however, that adequate incentives for the careful conduct of research are provided by existing scientific norms and the consciences of those who place their fellow human beings at risk in experiments; these internal standards are buttressed by requirements for prior IRB approval and by the possibility of tort action in the event of negligence resulting in injury. The Commission is doubtful that imposing the financial and administrative burdens of cost-sharing on research institutions would produce added safety for subjects. Again this is a matter that might be tested; alternatively it might be decided as a matter of policy that the costs of a nonfault compensation system should be borne exclusively by sponsors of the research—and, during the proposed social policy experiment, these costs ought probably be borne solely by the Federal government.

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"(1) final and conclusive for all purposes and with respect to all questions of law and fact; and

"(2) not subject to review by another official of the United States or by a court by mandamus or otherwise."

⁵³ The Commission suggests that those conducting the compensation experiment not employ compensation programs that would specifically provide for subrogation of the compensation fund to any claim an injured subject may have against any person, other than the investigators or the research sponsor, nor provide for a retroactive adjustment in the amount of compensation after recovery from such a third party. It would seem proper to protect the funds available for compensation payments if the subject's injury has been caused by a third party's wrongdoings; moreover, once a tort claim against a third party has been adjudicated in a subject's favor, the subject would be receiving "double recovery," once from the fund and again from the tort action. The experience with subrogation rights under other governmental compensation schemes, however, is that they are seldom invoked; the United States Attorneys to whom they are assigned do not make them matters of high priority because the amounts involved rarely justify the costs and other burdens of prosecuting the claims. Under Plan I, the F.E.C.A. provision (§ 8131 on subrogation and § 8132 on adjustment after recovery from a third party) could be applied; a choice will have to be made under Plan II and III whether to provide for subrogation and other aspects of potential excessive compensation (see, for example, § 8129 of F.E.C.A., which authorizes regulations to recover over-payments) or to allow experience with these issues to accumulate during the experimental period in order to determine if the cost savings justify the administrative burdens.

⁵⁴ Task Force Report, *supra* note 3, at VI. 9.

⁵⁵ Irving Latimer, *Arbitral Processes For a Program to Compensate Injured Research Subjects* (1980); see Appendix N to this Report.

⁵⁶ For example, § 8149 of F.E.C.A. provides for administrative review, and § 8128(b) of F.E.C.A. provides that final administrative action be

Federal Register

Tuesday
November 23, 1982

Part IV

Environmental Protection Agency

Standards of Performance for New
Stationary Sources; Synthetic Fiber
Production Facilities

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2173-2]

Standards of Performance for New Stationary Sources; Synthetic Fiber Production Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standards would limit emissions of volatile organic compounds (VOC) from new and reconstructed synthetic fiber production facilities that use "solvent-spinning" processes. The proposed standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that emissions from the manufacture of synthetic fibers cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intent is to require that VOC emissions from new and reconstructed solvent-spun synthetic fiber production facilities be controlled to the level achievable through application of the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements. The proposed standards would not apply to modified facilities.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

DATES: *Comments.* Comments must be received on or before February 11, 1983.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by February 23, 1982, a public hearing will be held on January 11, 1983, beginning at 9 a.m. Persons interested in attending the hearing should call Mrs. Naomi Durkee at (919) 541-5578 to verify that a hearing will occur.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by December 23, 1982.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Document Section (A-130), Attention: Docket Number A-80-7, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by December 23, 1982, a public

hearing will be held on January 11, 1983. Persons interested in attending the hearing should call Mrs. Naomi Durkee at (919) 541-5578 to verify that a hearing will occur. Persons wishing to present oral testimony should notify Mrs. Naomi Durkee, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone number (919) 541-5578.

Background Information Document. The background information document (BID) for the proposed standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777. Please refer to "Synthetic Fiber Production Facilities—Background Information for Proposed Standards." (EPA-450/3-82-011a).

Docket: Docket No. A-80-7, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Smith, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5624.

SUPPLEMENTARY INFORMATION:

Proposed Standards

The proposed standards would limit emissions of volatile organic compounds (VOC) from new and reconstructed synthetic fiber production facilities that utilize an organic solvent in manufacturing the formed fiber. This would include the production of such fiber types as acrylic, modacrylic, cellulose acetate, spandex, etc. The standards would not apply to modified facilities.

The affected facility to which the proposed standards would apply is each solvent-spun synthetic fiber process, which is defined as the total of all fiber processing equipment having either a spinning solution preparation area or a solvent recovery system in common. The proposed standards would require that VOC emissions from each affected facility that produces acrylic fibers be limited to 10 kilograms (kg) per megagram (Mg) solvent fed to the spinning solution preparation area of precipitation bath. VOC emissions from each affected facility producing fiber

types other than acrylic would be limited to 17 kg per Mg solvent fed to the spinning solution preparation area or precipitation bath. Facilities that produce less than 500 Mg of fiber per year would not be covered by the proposed standards. The owner or operator of an affected facility would be required to measure the amount of makeup solvent introduced to the affected facility and to determine the amount of total solvent used within the affected facility by direct measure or through use of plant process records. Records would be maintained in a form suitable for inspection for at least 2 years.

Summary of Environmental, Energy, and Economic Impacts

In general, the estimated environmental, energy, and economic impacts associated with new source performance standards are based on a 5-year projection of anticipated growth in the industry affected by the standards. Because of the uncertainty associated with growth projections for the synthetic fibers industry, a range of annual growth rates was used to analyze the industry-wide impacts of the proposed standards. The estimates summarized below and throughout this notice reflect the highest estimates of growth in order to present worst-case impacts. Thus, impacts may be less than those presented if actual growth rates are less than estimated.

The proposed standards would reduce projected 1987 nationwide VOC emissions from new and reconstructed solvent-spun synthetic fiber production facilities by as much as 8.8 gigagrams (Gg) (10 thousand tons) per year. This represents a nationwide emission reduction of as much as 63 percent that would occur in the absence of this regulation. Emission reductions would range from about 1.1 Gg (1,200 tons) per year for a dry-spinning acrylic fiber plant to about 1.7 Gg (1,900 tons) per year for an acetate filtration tow plant.

The fifth-year water pollution and solid waste impacts of the proposed standards each represent less than a 1 percent increase over the impacts that would result in the absence of standards of performance.

The incremental energy necessary to operate the additional control equipment required to meet the proposed standards would range from 2 to 3 percent of the total energy required to operate the types of fiber production plants covered by the proposed standards. The total nationwide energy impact of the proposed standards would

be as much as 430 terajoules (403 billion Btu) per year in 1987.

The cumulative industry-wide capital costs would be as much as \$27.8 million by 1987, an 8 percent increase in costs for new facilities. Capital costs for implementing the standards at individual plants would range from \$4.2 to \$5.5 million. Economic analysis indicates that the annualized costs to individual solvent spun fiber plants would range from about \$1.2 million to \$1.3 million. However, there would also be a credit for recovered solvent in the range of \$1.0 to \$1.1 million. Net annualized costs would be about \$0.2 million for an individual plant. The annualized cost to the entire industry by 1987 would be as much as \$7.4 million; however, a corresponding \$6.2 million credit for additional solvent recovery would nearly offset these costs, resulting in net annualized cost to the industry of \$1.2 million by 1987. Analysis indicates the cost of emission control required by the proposed standards is not expected to prevent or hinder expansion or continued production by the solvent-spun synthetic fibers industry. These costs (savings) do not include lost opportunity costs (i.e., the profit or return on investment which could be derived by investing in other than air pollution control equipment).

Standards of performance have other benefits in addition to achieving reductions in emissions beyond those required by a typical State implementation plan. They establish a degree of national uniformity. Further, standards of performance provide documentation which reduces uncertainty in case-by-case determinations of best available control technology (BACT) for facilities located in attainment areas and lowest achievable emission rates (LAER) for facilities located in nonattainment areas. This documentation includes identification and comprehensive analysis of alternative emission control technologies, development of associated costs, an evaluation and verification of applicable emission test methods, and identification of specific emission limits achievable with alternate technologies. The costs are provided for in an economic analysis that reveals the affordability of controls in an unbiased study of the economic impact of controls on an industry.

The rulemaking process that implements a performance standard assures adequate technical review and promotes participation of representatives of the industry being considered for regulation, government, and the public affected by that

industry's emissions. The resultant regulation represents a balance in which government resources are applied in a well-publicized national forum to reach a decision on a pollution emission level that allows for a dynamic economy and a healthful environment.

Rationale

Selection of Source for Control

EPA has identified synthetic fiber production plants as sources of emissions that cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. As a result, the Agency listed this source on a priority list for development of new source performance standards (40 CFR 60.16, 44 FR 49222 (August 21, 1979)), in accordance with Section 111(b)(1)(A) and Section 111(f) of the Clean Air Act.

Man-made fibers include two types of products, the semisynthetics or cellulose (e.g., viscose rayon, cellulose acetate, and triacetate) and the true synthetics or noncellulosics (e.g., polyester, nylon, acrylic and modacrylic, spandex, and polyolefin). These nine fiber types comprise over 99 percent of the total production of man-made fibers in the United States. Solvent-spun synthetic and semisynthetic fibers constitute 16 percent of total U.S. fiber capacity. Semi-synthetics are formed when naturally occurring polymeric materials, such as cellulose, are dissolved or dispersed in a suitable solvent and then spun into fine filaments. True synthetics result from the polymerization of (usually) petroleum derivatives into long chain molecules (polymers), which are then processed into fiber form. For simplicity, the term "synthetic" will be used throughout this notice to mean both synthetic and semisynthetic.

The three major fiber manufacturing processes used in this industry are wet, dry, and melt spinning. A fourth, reaction spinning, is also used but to a far lesser extent. The spinning process used for a particular polymer depends on its melting point, heat stability, and solubility in organic solvents. Wet and dry spinning processes use large quantities of organic solvents to dissolve the polymer prior to extrusion. These processes would be covered by the proposed standards because large amounts of the organic solvents are emitted as VOC's to the atmosphere by these facilities. A typical dry spinning fibers plant with a production of 25 million kg per year would emit anywhere from 1 million to 3 million kg (about 1,000 to 3,000 tons) per year of VOC's, at existing control levels.

In 1980 there were 15 identified synthetic fiber manufacturing plants operating in the United States that utilized organic solvent in their spinning process. Production and capacity for the individual plants vary widely, as do the resulting VOC emissions. Individual facilities potentially affected by the proposed standards would produce from less than a thousand Mg to several hundred thousand Mg of product annually. Fiber types currently produced by solvent spinning methods include acrylic, modacrylic, cellulose acetate and triacetate, and spandex; various other fibers of lower production volumes are also subject to the proposed standards.

In the melt spinning process, the polymer is melted, extruded, and then cooled to solidify the extruded filaments. VOC emission rates from melt spinning processes are considerably lower than those of dry, wet, and reaction spinning fiber formation processes because organic solvents are not used in the fiber spinning process. Also, the nature of the emission points and the types of emissions are significantly different. Therefore, melt spinning synthetic fiber production facilities would not be subject to the proposed standards, but may be considered under a separate new source performance standard in the future consistent with EPA's priorities for setting standards.

The only product known to be produced in the United States using the reaction spinning process is spandex (also produced with the dry spinning process), and this process is used at only two plants. Solvent recovery and process data obtained from the plants indicate that significant technological problems exist with application of VOC emission controls on this process. Carbon adsorbers used at these facilities exhibit extreme fouling; apparently this results from continued polymerization of materials carried over from the fiber spinning and processing steps. Information on the use of carbon adsorption is available, and further investigation into VOC emission control is continuing by EPA and the plants involved. The use of carbon adsorption as a control technology is not sufficiently developed, however, to be considered "demonstrated" as meant by Section 111 of the Clean Air Act. The technology will be evaluated to determine if it is "demonstrated" as the information becomes further developed. Other control techniques considered for application to the reaction spinning process were absorption scrubbing and incineration. Absorption scrubbing

would not be a viable option because it would not be technically feasible to control the type of solvent used using common scrubbing techniques. Incineration of the VOC emissions may be feasible technologically but would be exorbitantly costly (an incremental cost as high as \$3,600 per ton of emission reduction when comparing incineration to the currently used carbon adsorption system). There are no other systems of emission control suitable for this process; therefore, reaction-spun spandex production facilities would not be subject to the proposed standards. Reaction spinning facilities, will, however, again be considered for coverage during the 4-year review of the standards.

Facilities that produce spandex using the dry spinning process would be covered by the standards. The only dry-spun spandex plant known in the United States is operated by Du Pont. Data obtained from this plant indicate that it is currently using the best demonstrated control technology upon which the standards are based and is achieving the proposed emission limit for nonacrylic fiber production facilities, 17 kg per Mg solvent feed. Therefore, there would be no adverse impacts on new facilities subject to the standard if they employ the same emission controls as Du Pont's existing plant. New spandex facilities are expected to be built in the near future and other producers besides Du Pont could enter the market. To ensure that the best system of control could be used at all new facilities, dry-spun spandex would be covered by the proposed standards.

The manufacturing processes as well as the pollutants involved in viscose rayon production (a wet/reaction spinning) are quite different from those of the other fiber types. Rayon manufacture by the viscose process is a significant source of carbon disulfide and hydrogen sulfide emissions. However, EPA was unable to identify control technology that would result in emission reductions beyond existing control levels. Furthermore, industry sources report that the high capital, labor, maintenance, and energy intensive characteristics of the viscose rayon process will in all likelihood prohibit further expansion of viscose rayon capacity. Also, new nonviscose processes are currently in the developmental stages. These new processes under development do not require the use of sulfur-containing compounds. It appears that the rayon industry will not increase capacity until and unless this nonviscose process can be implemented. These facts have led to

the exclusion of viscose rayon processes from the source category subject to the proposed standards. Emissions generated during manufacture of rayon by the viscose process may be considered for regulation under a separate standard.

Facilities that produce less than 500 Mg (551 tons) of fiber per year would be exempt from the standards. This is intended to exempt research and development facilities and specialty fiber producers that operate on an intermittent basis and manufacture small quantities of fiber. These facilities comprise less than 0.3 percent of the total U.S. synthetic fiber capacity, and emission from these facilities are correspondingly negligible.

This exemption is appropriate since the cost of recovery of all possible experimental solvents used at a given research and development facility would be disproportionately high, when compared to the small reduction in VOC emissions. A solvent recovery system for one type solvent may be ineffective or unsuited for recovery of a different solvent. Therefore, recovery of all possible solvents may require redesign and rebuilding of the recovery system each time a different solvent is introduced. Some specialty fiber types are also produced in small quantities on an intermittent basis, and operation of a recovery system would be disproportionately costly, when compared to the small reduction in VOC emissions.

Selection of Pollutant

The wet and dry organic solvent spinning processes require the use of large amounts of solvents such as dimethylformamide, dimethylacetamide, acetone, diethyl sulfone, succinonitrile, etc. For each unit mass of fiber produced, a unit of polymer is dissolved in about 2 to 3 units of solvent. A plant producing about 100 million kg of fiber annually, for instance, would therefore use about 200 to 300 million kg of solvent. Because of the large amounts of solvent used, the economics of the industry require that the solvent used in dissolving or spinning of the fiber be recovered for reuse. Typically, 94 to 97 percent of the solvent used at existing plants is captured and recovered directly from the spinning cells or cabinets, where there is almost total containment. The only efficiency-limiting factors at spinning are the degree of transfer to the control device (ducting), and the efficiency of the control device itself, including subsequent distillation and condensing. A large portion of the remaining solvent used in the solvent spinning process is

emitted as VOC from pre- and post-spinning process steps. Although this may seem small on a percentage basis, 3 to 6 percent, the absolute amounts of solvent VOC emissions are quite large. As previously noted, a typical dry spinning fibers plant with a production of 25 million kg of fiber per year would emit anywhere from 1 million to 3 million kg (1,000 to 3,000 tons) per year of VOC's at existing control levels.

Volatile organic compounds (VOC) are precursors to the formation of ozone and other oxidants. Photochemical oxidants result in a variety of adverse impacts on health and welfare, including impaired respiratory function, eye irritation, necrosis of plant tissue, and deterioration of selected synthetic materials, such as rubber. Further information on these effects can be found in the EPA document entitled "Air Quality Criteria for Ozone and Other Photochemical Oxidants" (EPA-600/8-78-004).

Study of the industry has also revealed that polymer particulates are emitted from storage and mixing areas, but only intermittently and in relatively small amounts; oils in the form of aerosols are also emitted at some texturizing steps. These emissions are an order of magnitude smaller than the solvent VOC emissions. The cost of controlling this small amount of particulate using demonstrated technology would be unreasonable. Therefore, the only pollutant to be regulated by the proposed standards is VOC.

Selection of the Affected Facility

The choice of the affected facility for this standard is based on the Agency's interpretation of section 111 of the Act and judicial construction of its meaning.¹ Under section 111, the NSPS must apply to "new sources;" "source" is defined as "any building, structure, facility, or installation which emits or may emit any air pollutant" (Section 111(a)(3)). Most industrial plants, however, consist of numerous pieces or groups of equipment that emit air pollutants, and that might be viewed as "sources." EPA, therefore, uses the term "affected facility" to designate the equipment within a particular kind of plant that is chosen as the "source" covered by a given standard.

In choosing the affected facility, EPA must decide which pieces or groups of equipment are the appropriate units for separate emission standards in the particular industrial context involved.

¹ The most important case is *ASARCO vs EPA*, 578 F.2d 319 (D.C. Cir. 1978).

The Agency must do this by examining the situation in light of the terms and purpose of Section 111. One major consideration in this examination is that the use of a narrower definition may result in bringing replacement equipment under the NSPS sooner; if, for example, an entire plant were designated as the affected facility, no part of the plant would be covered by the standard unless the plant as a whole is "modified" or "reconstructed." (The plant as a whole could be considered modified only if a physical change to one or more units of equipment in the plant resulted in an increase in the aggregate emissions from the entire plant. Similarly, the plant as a whole could be reconstructed only if replacements were made to the extent that their cost exceeded 50 percent of the cost of a whole new plant.)

If, on the other hand, each piece of equipment is designated as the affected facility, then as each piece is replaced, the replacement piece would be a new source subject to the standard. Since the purpose of Section 111 is to minimize emissions by the application of the best system of continuous air pollution control that the Administrator determines has been adequately demonstrated (considering cost, other health and environmental effects, and energy requirements), there is a presumption that a narrower designation of the affected facility is proper. This ensures that new emission sources within plants will be brought under the coverage of the standards as they are installed. This presumption can be overcome, however, if the Agency concludes that the relevant statutory factors (technical feasibility, cost, energy, and other environmental impacts) point to a broader definition. The relevance of these factors is discussed below.

There were four alternatives considered for the affected facility: (1) Each individual process point (such as filtering, spinning, washing, drying) along a fiber production line; (2) each line producing a single type of fiber; (3) each group of lines with a common spinning solution preparation area or solvent recovery system; and (4) the entire plant.

The first alternative of designating each individual process point in a line as an affected facility would not be feasible for both technical and cost reasons. Since VOC emissions from the various points are normally combined and ducted to a single emission control device and solvent recovery system or to the atmosphere, it would be impossible to determine, through

measurement of gaseous emissions, controlled emission rates from each point unless a separate control device were installed for each point. This means of emission control would be technically impractical and exorbitantly costly. Furthermore, the numerous VOC emission points along a production line (many of which are fugitive) would cause the cost for testing separate emission points to be very high. Determining emission rates through material balance would not be possible either. The solvent is introduced into the process line at the beginning solution preparation step and can be measured at that point. From there, however, there is no practical way to determine how much solvent passes into or from any process step. In addition, the number and arrangement of process steps involved in synthetic fiber production vary from one type of fiber to another and from one plant to another, even those producing the same type of fiber. Correspondingly, emission rates for a specific piece of equipment could vary, depending on the type of fiber being produced or the type of process being used. For example, a dryer at a wet-spun acrylic fiber plant would have a different emission rate from a dryer at a dry-spun acrylic fiber plant or acetate fiber plant. Therefore, selecting each process point as an affected facility with separate emission limits for each category of process points is not technically or administratively practicable.

The second alternative, designating each line producing a single type of fiber as an affected facility, would be more feasible than the first alternative. Emission rates within a single plant would not vary significantly from one line to another producing the same type of fiber. However, the process lines from spinning solution preparation through to packaged products are not discrete. For example, a single spinning solution preparation area may supply several spinning machines, which in turn may feed spun fiber to one or two dryers. In other words, the equipment in the several process lines are integrated, and for technical and economic reasons each plant's particular combination of equipment is unique. Existing plants also typically group several lines to share a common solvent recovery system and solution preparation area. These typical industry practices are expected to be incorporated into any new plants built in the future. With such an arrangement, it would be impossible to determine emission rates for each line in a group. Therefore, the second alternative of designating each line as

an affected facility has not been selected.

The third alternative of designating each group of lines with a common solution preparation area or solvent recovery system as an affected facility represents the smallest unit from which emissions can be determined reasonably, from both a technical and cost standpoint. VOC emission control could be determined by measuring the amount of solvent introduced into the solution preparation area (or areas) and the amount returned from the solvent recovery system (or systems) serving the group of lines. This alternative would accommodate the high degree of integration within both the production stages and emission control systems and would avoid the technical difficulties of selecting and enforcing numerical emission limits for individual process steps or lines. Each line with its own solution preparation area but sharing a common recovery system with other lines was not considered for designation as a separate affected facility. In order to determine emissions from such an affected facility, it would be necessary to shut down all lines except the line being tested for the period of the performance test, an unreasonable and economically burdensome length of time. Therefore, the proposed standards designate the affected facility as each "solvent spun synthetic fiber process," which is defined as the total of all equipment having either a spinning solution preparation system or a solvent recovery system in common and that is used to manufacture one or more types of synthetic fiber. It includes solution preparation, spinning, fiber processing, and solvent recovery. Each solvent spun synthetic fiber line with its own spinning solution preparation system and its own solvent recovery system would be considered a separate affected facility.

Polymer production areas are not considered part of the affected facility. Emissions that result from the manufacture of various polymers used to make fibers are being considered for a separate new source performance standard.

The fourth alternative, the entire plant, was considered in case it was necessary to go beyond a more narrow designation for technical, cost, or other reasons. Since the third alternative would not impose unreasonable adverse impacts on synthetic fiber manufacturers, designation of the entire plant as the affected facility is not considered necessary or desirable.

Selection of Basis of the Proposed Standards

Section 111 of the Clean Air Act, as amended, requires that standards of performance reflect the degree of emission control achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact, and energy requirements) has been adequately demonstrated.

Control Options. All present-day, solvent-spun fiber producers have an economic incentive to recover increasingly valuable process solvent. Typically, solvent is present in the greatest amounts in the gas and liquid streams into which polymer solutions or prepolymers are extruded. Therefore, recovery is most efficient and economical from these sources that produce the highest concentrations of solvent. This is referred to as the primary recovery system. Presently, domestic synthetic fiber manufacturing processes recover (using the primary recovery system) between 94 and 97 + percent of the total solvent introduced into the manufacturing process. This efficiency results from total capture of solvent vapor from the spin cell or cabinet, and transfer to control devices, distillation equipment, and condensers. Currently used recovery devices include scrubbers, absorption columns, condensers, and carbon adsorbers. The degree of solvent recovery achieved is dependent upon the number of process steps served by solvent vapor capture devices, the efficiency of each solvent vapor capture device, and the efficiency of the solvent recovery equipment.

The majority of VOC emissions not presently recovered by companies originate from process steps that are not serviced by the primary recovery system. Examples are the pre-spinning (solution mixing and filtering), post-spinning (washing, drawing, crimping, heat setting, and drying), and solvent recovery operations. If solvent capture and recovery schemes are extended to these processes, additional VOC emission control is possible. The degree of additional emission control will depend on the number of process points served by the capture and recovery system, and the system's efficiency.

VOC emissions captured at various emission points are ducted to a control device where the solvent is separated from the air stream and then sent to a purification system to remove contaminants from the solvent. Control devices, such as condensers, carbon

adsorbers, scrubbers, and distillation columns, are used extensively in the industry. Efficiencies of 98 to 99 percent are common with this type of equipment. One notable exception is carbon adsorbers that treat VOC emissions from cellulose filter tow dryers. Due to the high moisture content and residual oils in the gas stream from these dryers, the carbon adsorbers currently used by filter tow producers are only about 92 percent efficient. Another exception is a carbon adsorber treating a mixture of two solvents at a cellulose triacetate yarn plant and that is achieving only about 95 percent efficiency. This situation at this plant is considered unique. No other fiber plants were found that mix two or more solvents in fiber manufacture or solvent recovery. This technique should, therefore, be considered limited to cellulose triacetate filament yarn plants.

The most significant variable affecting the overall level of solvent recovery (and emission reduction), however, is not a function of the control device, but rather the degree of capture of the solvent vapors.

The most effective VOC emission capture system observed in the industry is used at an acrylic fiber production facility. A large portion of the solvent vapor generated during the manufacture of fiber is captured by enclosures that encase entire segments of the process line. These enclosures were originally designed and constructed with two objectives: (1) To minimize diffusion of solvent vapor into the room ventilation air in order to reduce worker exposure, and (2) to minimize the capture and unnecessary treatment of uncontaminated room air. By enclosing process points where fugitive solvent emissions are typically uncontrolled, an increase in overall efficiency of solvent recovery is accomplished. Enclosures reduce the volume of dilution air required to contain the solvent vapor for transport from the workplace. Different types of enclosures are used at different process stages. At the filtering stage, enclosures may consist of hoods and movable or flexible curtains that surround the filter press and extend to the floor. At spinning, enclosures may be glass screens, with self-closing doors for worker access. At those points where fiber is continuously transported from one process step to another, the fiber bundle may be transported within metal or glass ducting. Examination of solvent use and emission data greater than 90 percent overall efficiency in capturing VOC emissions at each of the process points to which they may be applied.

Enclosures are currently in use domestically at one acrylic and one acrylic/modacrylic fiber production plant. This capture technology is adequately demonstrated for both acrylic and modacrylic fiber production facilities. Enclosures are not being used at cellulose acetate filter tow plants in the United States. Filter tow producers have not yet found it profitable to enclose pre- and post-spinning portions of the manufacturing process. Also, the threshold limit value (TLV) as set by the Occupational Safety and Health Administration for worker exposure to acetone, the solvent used in production of filter tow, is 1,000 ppm, a level easily achieved through room ventilation. Therefore, there has been little incentive for filter tow producers to capture and recover acetone from pre- and post-spinning steps of the process. One producer, however, is operating enclosures on a pilot plant to determine their feasibility. In addition, a Japanese filter tow producer has been using enclosures successfully since 1980 and reports an overall recovery efficiency of over 80 percent, with no operational or safety problems. Enclosure technology is also currently applied at viscose rayon fiber plants. The application of enclosure technology to a fiber production process is more a function of the physical characteristics (or layout) of the production train rather than the individual process parameters (dryer temperature, solvent/polymer ratio, etc.) that might differentiate one production technique from another. The basic similarities of all fiber spinning and pre- and post-spinning steps clearly allows application of enclosure technology to all fiber production processes, with the exception of cellulose acetate filament yarn manufacture. Based on this information and the successful use of enclosures on a variety of fiber production facilities, EPA has concluded that enclosures as VOC emission capture devices are a demonstrated technology that can be broadly applied to all solvent-spun synthetic fiber production facilities.

When enclosures are applied to those process stages that typically emit the largest amounts of solvent vapor (e.g., spin cell exits or fiber dryers), emission reductions from 31 to 47 percent below baseline are achieved at individual plants. (Baseline refers to those emission levels that would occur in the absence of new source performance standards.) Furthermore, the same techniques can be extended to even more processing points (e.g., washing, drawing, crimping, etc.) for an even greater reduction in VOC emissions. A

60 to 76 percent reduction beyond the baseline emission rate could be achieved at individual plants by installing enclosure systems at these additional process points. Based on demonstrated experience of companies using enclosures, it is EPA's judgment that this type of capture system will not interfere with the normal processing of the formed fiber (i.e., would not present any operational or safety problems) for all fiber processes except acetate filament yarn, which is discussed below. Because of concern expressed by several fiber producers during development of the proposed standards, EPA emphasizes that its conclusions regarding the appropriateness of enclosure technology apply only to new or reconstructed facilities. Requiring enclosures on pre- and post-spinning operations at existing facilities not undergoing reconstruction could result in significant retrofit problems due to plant layout and space limitations. A new or reconstructed facility, on the other hand, could be designed to accommodate enclosures. (Modified facilities would be exempted from the proposed standards as discussed in the section entitled "Modification/Reconstruction Considerations.")

Enclosures as a means of VOC emission capture may not be feasible for processing cellulose acetate filament yarn, or any other filament yarn fiber because enclosures on post-spinning processing points cannot be easily used. The production process from the spin cell exit onward is unique and can almost be considered a batch operation. Filaments emerging from the spinning cell are manually brought together and immediately wound on bobbins. The bobbins are removed from the base of the spin cell when full. Due to the high take-up rates, bobbins are changed numerous times during the work day. There are no continuous processing stages, and the fiber is only rewound, twisted, or wound on beams. This need for direct and much more frequent worker access than for the other fiber types renders the use of spin cell enclosures infeasible for cellulose acetate filament yarn production.

Therefore, a different approach that has the potential of reducing emissions to similar levels is appropriate for filament yarn processing. This system uses an air management scheme in which ventilation air for the fiber take-up room is drawn from the solution preparation and fiber processing (twisting and beaming) areas. A fraction of this room air is then drawn into the spin cell, where it acts as the evaporation gas, and is subsequently

sent to the solvent recovery system. Another fraction of the take-up room air is used to dilute the high concentration vapor sent to solvent recovery. The overall level of control is dependent upon the amount of take-up room air sent directly to the control device; consequently, it is possible to achieve emission reductions similar to those obtained with enclosures by optimizing the volume of room air treated (55 to 72 percent, depending on the amount of room air treated). The technological limits of this control method are fixed by the mass of solvent being evaporated into the room air, the total volume of room air, and the mass or volume of solvent in room air lost as fugitives from the building. This technology is feasible only when certain solvents with relatively high TLV are used. Acetone, for example, has a TLV of 1,000 ppm. The TLV must be high enough so the vapor concentration in the fiber take-up room can be allowed to increase to a level which can be economically treated.

During the development of the proposed standards, it was determined that within the acrylic fibers segment of the industry there are manufacturing processes that do not involve the use of an organic solvent. Although a viable control option for some plants, this inorganic solvent production process was found to be not applicable to the entire fibers industry. According to experts, acrylic fibers manufactured using a solvent-spinning process cannot be reproduced exactly using inorganic processes. Therefore, the inorganic processes cannot be considered as alternatives to producing those acrylic fibers now manufactured using solvent-spinning techniques. There were also other reasons for eliminating its consideration as a control option for the proposed standards. While the inorganic process would result in an almost complete elimination of solvent VOC emissions, it would also generate a significant water pollution problem. Further, the inorganic solvent process (or portions of the process) is under patent, and a number of complex legal and economic issues could be raised if the proposed standards effectively forced a company to use a specific process that may be owned and protected by a competitor. The mutual competitive positions of the several acrylic fiber producers would be substantially altered, and their customers (textile firms, carpet manufacturers, etc.) would be forced to alter their processes and products to accommodate what would in fact be different products. The acrylic fibers

produced using the large variety of processes have certain specific but different characteristics that are well known and expected by the purchasers for quality control reasons. For these reasons, the inorganic solvent process is not considered a control option available to all segments of the synthetic fibers industry and was not used as a basis for any regulatory alternative.

Regulatory Alternatives. To compare the beneficial environmental impacts of the regulatory alternatives to any potential adverse environmental, energy, or economic impacts, EPA has selected a 5-year period for analysis. Generally, this is the analysis period used for all new source performance standards. Since 5-year projections tend to reflect current economic conditions, estimated growth rates for an industry can change significantly depending on the beginning and ending dates for the 5-year period selected. Because of the uncertainty associated with growth projections, a range of growth rates was used to analyze the industry-wide impacts of the regulatory alternatives. The worst case costs and benefits arising from the highest estimates of growth projections for the industry are presented. Thus, impacts may be less than those presented if actual growth rates are less than estimated.

In order to identify possible regulatory alternatives and analyze their impacts on the synthetic fibers industry, it was necessary to describe the types of plants that would be affected by this standard. No single model plant could adequately characterize all organic solvent spinning processes within the synthetic fibers industry, since each process is somewhat unique from a technical standpoint. Parameters such as fiber production rates, processing sequences, and polymer to solvent ratios vary from one type of fiber to another and often between plants producing the same fiber. Accordingly, five model plants were developed to represent all commonly occurring conditions, including those that would characterize worst case conditions, covering the range of different spinning operations. The models represent typical manufacturing processes and not individual fiber plants. In order to provide a basis for economic analysis, however, a fiber type and its spinning solvent were assigned to each model plant. The model plants represent wet-spun acrylic (Model Plant 1), dry-spun acrylic (Model Plant 2), dry-spun modacrylic (Model Plant 3), dry-spun acetate filter tow (Model Plant 4), and

dry-spun acetate filament and staple (Model Plant 5).

For all the regulatory alternatives for Model Plants 1 through 4, emission rates are based on capture devices that are 90 percent efficient on process stages other than drying (where 100 percent of vapor is ducted to the control devices), and control devices such as carbon adsorbers, scrubbers, and condensers that are assumed to be 98 percent efficient. The only exception is for cellulose acetate filter tow dryer emissions, for which carbon adsorption is only 92 percent efficient. However, because dryer emissions are controlled under baseline conditions, this lower efficiency does not affect the assumption of 98 percent efficiency for other applications, and the resulting emission limits. The differences among alternatives result from the capture of emissions from an increasing number of emission points in the process sequence. The exact emission points controlled depend on the specific fiber production process. The regulatory alternatives for Model Plant 5 are based on varying the volume of fiber take-up room air treated by the control device. The control device (carbon adsorber) is assumed to be 95 percent efficient.

Review of the performance of emission control techniques in the industry led to the identification of three regulatory alternatives that represent three distinct levels of control. Alternative I, referred to as baseline, represents the level of control that would be expected at new plants if no NSPS were established. It is important to note that there are no State or local emission regulations that apply specifically to the production of man-made fibers, nor has EPA published a control techniques guideline (CTG) for the industry. Of the eight States containing fiber production facilities, most employ a guideline regulating VOC emissions that is similar to California's Rule 66. In the absence of an NSPS, a new plant would be expected to control VOC emissions to a greater extent than required by State regulations because of the economic incentive for maximizing solvent recovery, or because of worker exposure limitations.

Therefore, the VOC emission levels presented in Alternative I reflect current industry control practices rather than levels imposed by regulations, and result from the collection of concentrated solvent vapor from within the spin cell and ducting of the vapor to a scrubber, condenser, or adsorber for recovery and reuse. In one case, Model Plant 4 describing cellulose acetate filter tow manufacturing, emissions from the

tow dryer are also captured and controlled.

Alternatives II and III are based on the use of efficient capture (either through physical enclosure or the use of air management) and control of solvent vapor at process stages other than from within the spin cells, such as solution preparation, blending, filtering, fiber drawing, washing, drying, lubricating, crimping, heat setting, finishing, or from the area at the base of the spin cells or spin baths (referred to as spin cell exits).

To analyze impacts of Regulatory Alternatives II and III, it was necessary to make some assumptions as to which emission points would be the most cost-effective to control. At an actual plant, however, control of different combinations of emission points than those selected by EPA for analysis may be appropriate although the overall emission reduction would be about the same.

For Regulatory Alternative II, VOC emissions from the following additional points are assumed to be controlled: Model Plant 1—the spin cell exit, washing, and drawing; Model plant 2—the spin cell exit; Model Plant 3—the dryer; Model Plant 4—the spin cell exit, tow line up to the crimper, and dryer; and Model Plant 5—air management scheme in which room ventilation air from the fiber take-up room and finishing areas are ducted to a control device.

For Regulatory Alternative III, VOC emissions from the following points, in addition to those listed for Alternatives I and II, are assumed to be controlled: Model Plant 1—crimping, steam setting and drying; Model Plant 2—steaming, and drying; Model Plant 3—spin cell exit, drawing, washing, crimping, and filtering; Model Plant 4—crimping; Model Plant 5—an increased volume of air vented to the control device instead of to the ambient air. It is not technically feasible to capture some emission streams at some facilities because these streams are not sufficiently concentrated. Therefore, these emission points are not controlled under Regulatory Alternatives II and III.

The emission rates associated with the three regulatory alternatives were calculated and compared and are shown in the table below.

EMISSION RATES FOR REGULATORY ALTERNATIVES Kg VOC/MG SOLVENT (Kg VOC/Mg POLYMER)

Model Plant	Alternative I	Alternative II	Alternative III
1.....	14(40)	9(26)	5(13)
2.....	21(45)	14(31)	8(18)
3.....	56(140)	35(86)	14(33)

EMISSION RATES FOR REGULATORY ALTERNATIVES Kg VOC/MG SOLVENT (Kg VOC/Mg POLYMER)—Continued

Model Plant	Alternative I	Alternative II	Alternative III
4.....	40(120)	22(67)	15(44)
5.....	49(145)	22(66)	14(40)

Under Alternative I (baseline), emissions from fiber plants would range from about 1.9 Gg per year for a dry-spun acrylic plant, to about 2.6 Gg per year for an acetate filtration tow plant. By 1987 nationwide VOC emissions from new synthetic fiber manufacturing plants would increase by as much as 13.7 Gg per year depending on the projected growth rate for the next 5 years. Under Alternative II, 1987 nationwide emissions would be as much as 8.1 Gg per year depending on the growth rate realized during the next 5 years. This represents an emission reduction of up to 41 percent below Alternative I. Emissions from individual fiber plants under Alternative II would range from about 1.3 Gg per year for a dry-spun acrylic plant to about 1.4 Gg per year for an acetate filtration tow plant. Under Alternative III, 1987 nationwide emissions would be as much as 5.1 Gg per year, depending on the growth rate realized during the next 5 years. This represents an emission reduction of up to 63 percent below Alternative I. Emissions from individual fiber plants would range from about 0.8 Gg per year for a dry-spun acrylic plant, to about 0.9 Gg per year for an acetate filtration tow plant.

Both Alternatives II and III involve the use of carbon adsorbers or absorption scrubbers to control VOC emissions. VOC-laden steam condensate from carbon bed regeneration and solvent-laden water from the adsorbers are sent to a series of distillation columns for solvent separation; the water fraction is returned to the plant for reuse or is treated and discharged. Insignificant amounts of water pollution would be generated by the control equipment and Alternatives II and III would have no adverse impact on water quality. As part of the control process, the control equipment required under Alternatives II or III would generate minimal solid waste, about 27 Mg (30 tons) of carbon waste that is not recoverable or recycled. No increase in noise levels is anticipated under either alternative.

An increase in energy consumption would result from compliance with either Alternative II or III. The incremental energy increase required to operate the additional control equipment at affected facilities would be

as much as 21 to 70 terajoules (20 to 66 billion Btu) per year at the level of Alternative II, for dry-spun acetate filtration tow and dry-spun acrylic, respectively. The impact under Alternative III would be as much as 44 to 127 terajoules (41 to 119 billion Btu) per year for acetate filtration tow and dry-spun acrylic fiber plants, respectively. Energy requirements for increased control at all affected facilities by 1987 under Alternatives II and III would be 224 and 430 terajoules (210 and 403 billion Btu) per year, respectively. The energy required to operate the additional control equipment at a typical affected facility would amount to about 2 to 3 percent of the total energy (2,700 terajoules or 2,500 billion Btu) required to operate an entire synthetic fiber manufacturing plant.

Both Alternatives II and III are reasonable from an economic perspective. The capital costs of the installed emission control equipment necessary to meet Alternatives II and III, on all affected synthetic fiber manufacturing facilities during the period of 1982 to 1987, would be as much as \$18.0 million and \$27.8 million, respectively. This would be in the range of a 4 to 8 percent increase in cost for new grass-roots installations. Capital costs for implementing Alternative II at individual plants expected to be built would be about \$3.0 million; capital costs for implementing Alternative III would range from \$4.2 to \$5.5 million. The annualized cost of operating this additional equipment at all projected affected facilities during 1987 would be about \$5.0 million and \$7.4 million for Regulatory Alternatives II and III, respectively. However, the annualized costs would be nearly offset by the value of additional solvent recovered, \$3.8 million for Alternative II and \$6.2 million for Alternative III. The net annualized cost to the industry would be \$1.2 million for both Alternative II and Alternative III in 1987. The increase in net annualized costs to individual solvent spun fiber plants for both alternatives would amount to about \$0.2 million. The annualized costs are considered reasonable and are not expected to hinder expansion in the organic-solvent-spun synthetic fiber production industry.

Regulatory Alternative III represents the most effective demonstrated technology and does not impose exorbitant or unacceptable impacts. A significant reduction in VOC emissions would result; there would be no significant water pollution, solid waste, or noise impact; and the energy, cost, and economic impact would be

reasonable. Also, there is no net increase in costs from Alternative II to Alternative III, so the incremental cost per ton of VOC emission reduction is zero. Therefore, Regulatory Alternative III, representing up to 63 percent reduction in VOC emissions, is selected as the basis for the proposed standards.

Selection of Format of the Proposed Standards

A number of formats for the proposed standards were considered. The format selected must not only be compatible with the control options and regulatory alternatives selected, but should also offer relative simplicity of enforcement, minimal recordkeeping, assurance of continuing compliance, and maximum process flexibility for the facility. The formats evaluated are as follows:

A format that limits emissions per unit of time (emission rate commonly used regulatory format and is reasonably straightforward in concept. Therefore, a certain consistency would be achieved by proposing this format. However, the complexity of the processes and the multiplicity of potential VOC sources makes direct gas-phase measurement of emissions impractical if not impossible. The cost of determining emissions from direct emission monitoring would be extremely high.

A format based on concentration of VOC in emission streams requires a minimum of process data, but this type of format is particularly unsuited for the synthetic fiber industry. Air flow rates over and around the various process points within a fiber manufacturing facility are variable and difficult to measure. In some cases, flow rates and VOC concentrations from particular processes within these facilities can only be measured by evaluating room air around the process due to the large number of fugitive VOC sources. Because of these disadvantages, the emission rate and the concentration formats were not selected.

A format based on solvent emissions per unit of polymer fiber product is commonly used within the fibers industry in reporting solvent use and loss. An advantage of this format is that it encourages producers to reduce their overall solvent use per unit of production. Typically, producers have an economic incentive to reduce the solvent-to-polymer ratio used in production of synthetic fibers because of the savings realized in such areas as the cost of solvent recovery operations. Reductions in solvent use in effect also reduce the overall potential to emit VOC's. However, a regulatory format of this type could result in a plant indirectly revealing sensitive production

process values. To specify the relationship between production and solvent use would require knowledge of exact solvent-to-polymer ratios for enforcement. These solvent-to-polymer ratios are generally proprietary. Therefore, this format was not selected.

A mass balance format based on total solvent emissions per unit of solvent feed to the process was also considered. It appears to have none of the disadvantages of the other formats. The major advantage of this format is the simple means of determining VOC emissions through use of a mass balance. The amount of solvent used and recovered and the amount of solvent introduced to make up solvent loss can be metered directly or determined from plant records. Knowledge of these values can then be used in a simple calculation to determine VOC emissions by solvent material balance. No knowledge of proprietary process information would be required for enforcement, and monitoring and recordkeeping would be simplified. Consequently, the mass balance format of "kg VOC emissions per Mg solvent feed" was selected as the format for expressing the standards of performance for synthetic fiber production facilities.

Selection of Numerical Emission Limitations

The proposed standards would reduce emissions from a variety of fiber spinning processes that have a wide range of uncontrolled emission rates. Baseline emission rates range from about 14 kg to about 56 kg per Mg solvent feed. Emission rate differences are in large part due to the variation within post-spinning process stages. For example, in some fiber processes (such as acrylics) the washing stage extracts residual solvent from the fiber, thus reducing the amount of solvent available for emission to the atmosphere. Other fiber processes, such as those for cellulose acetate and some modacrylic fibers, do not use a wash step. Installation of controls necessary to comply with Alternative III (selected as the basis for the standards) would not eliminate the range of emission rates that are a consequence of the basic variations in each process. Rather, implementation of Alternative III on an industry-wide basis would still result in different emission rates (on a unit-of-emissions-per-unit-of-solvent-feed basis) for different fiber processes.

Application of Alternative III control technology to a variety of processes with a range of uncontrolled emission rates would first lead to consideration of

a unique numerical emission limitation for each affected facility characterized by a model plant. Each emission limit would then represent the lowest possible emission rate that could be achieved through application of best demonstrated technology by all fiber types that are represented by a particular model plant type. This approach was not used, however, for the following reasons.

Because the application of direct gas-phase measurement techniques for synthetic fiber plants is impractical and exorbitantly expensive, emission rates must be determined indirectly via solvent material balance of metered solvent-use profiles. Some fiber plants may normally manufacture more than one fiber type simultaneously using the same solvent and solvent recovery facilities. For example, a plant may produce acetate filament yarn, acetate filtration tow, and modacrylic fibers. These three fibers could be produced with the same solvent but with three different processes, which as discussed above, would likely emit solvent vapor at three different emission levels if they were controlled separately. However, a plant of this type would typically use a common solvent recovery system. (In fact, separate recovery systems on each line would be impractical and quite expensive.) The solvent returned to the process lines for reuse, as well as makeup solvent introduced to replace solvent loss during processing, would thus come from a common source of supply.

These characteristics make it impossible to determine emissions from each process line independently. While the amounts of recovered and makeup solvent could be determined for the combination of lines, emissions could not be determined for each line producing a different fiber type independently, unless the remaining production lines were shut down for the period of a performance test. Because of the fluctuation in solvent inventory within the affected facility at any given point in time, several weeks of test data would be necessary to account for this variability in determining VOC emissions. Shutting down production for the lines not being tested for this length of time would constitute an unreasonable economic burden.

An alternative approach would be to divide the industry so that all affected facilities within a given group or subcategory are subject to the same emission limitation. Therefore, determination of compliance by material balance would be possible. Examination of the model plant parameters and

emission rates achievable under Alternative III reveal that two basic groupings may be identified of fiber type: (1) Acrylic fibers, and (2) all other fiber types. In addition to exhibiting different emission rates than other fiber types, acrylic fibers production facilities would not typically combine widely different process lines a single affected facility. An acrylic production facility may devote one or more lines to the production of some types of modacrylic fiber; however, the processes would be basically the same, given current industry practice, and would have similar VOC emission rates. Data obtained from an acrylic fiber plant that also produces modacrylic fibers using basically the same processing equipment as in acrylic fiber production indicates that plants producing both acrylic and modacrylic fibers with the same affected facility would be able to achieve the emission level for acrylic fiber production even while producing the modacrylic fibers. For these reasons a separate emission limit was selected for acrylic fiber production facilities.

EPA gathered process and emissions data from about 20 fiber producing facilities in developing its technical data base. EPA testing programs were conducted at two acrylic fiber plants in order to evaluate uncontrolled emission rates at various process points as well as to verify capture and control device efficiencies. Existing baseline emission rates were found to range from about 14 kg to 56 kg of VOC per Mg of solvent use. Based on emission data gathered at an acrylic fiber plant operating with what EPA considers the best vapor capture system in the industry, and solvent-use and recovery data provided by that plant, a capture efficiency of over 90 percent was determined to be achievable by enclosures around various process emission points. Because they are completely enclosed, a capture efficiency of 100 percent could be expected for dryers. The emission test data combined with data submitted from four other plants also demonstrated that control device efficiencies of 98 percent are being achieved. Thus, on those points not served by primary recovery system, for example, spinning solution preparation, washing, crimping, drawing, etc., overall emission control of 88 percent could be expected ($90 \text{ percent} \times 98 \text{ percent} = 88 \text{ percent}$). Since capture at dryers is essentially total, overall emission control and recovery efficiency would be 98 percent. However, since 94 to 97 percent of the solvent used in fiber production is already recovered from the spinning cell or cabinet by the

primary recovery system, the incremental effect of Alternative III is to raise the overall recovery to near 99 percent. Based on the uncontrolled emissions from the model plants, control of additional specific process steps in the wet and dry spinning of acrylic fibers would result in emission rates of 5 to 8 kg of VOC emissions per Mg of total solvent feed, respectively, on a long-term basis. Control of additional process steps in the manufacture of all other fiber types would result in controlled emission rates of 14 to 15 kg VOC emissions per Mg total solvent feed on a long-term basis.

Emission rates under Alternative III for acrylic fiber production facilities range from 5 to 8 kg of VOC per Mg of solvent used. To ensure that all acrylic fiber production facilities could achieve the proposed standard, the emission limit achievable under the worst case, 8 kg VOC per Mg of solvent feed, was selected.

All affected facilities producing nonacrylic fiber could be controlled by either of two technologies: installation of capture and control equipment to service emission sources not controlled under baseline conditions or use of plant air management. Emission rates of 14 to 15 kg VOC per Mg solvent feed can be achieved by using the enclosure method. As discussed under the section entitled, "Selection of Basis of the Proposed Standards," plant air management is the only technically feasible means of emission control for some fiber processes, such as cellulose acetate filament yarn processing. An emission rate of 14 kg VOC emissions per Mg solvent feed is achievable through the use of plant air management.

Enforcement of individual emission limits for different nonacrylic fiber processes is not possible, since an affected facility may contain more than one fiber process. Consequently, the least stringent Alternative III emission rate, 15 kg of VOC per Mg of solvent feed, was selected to ensure that any affected facility in this subcategory would technically be capable of meeting the standard regardless of the fiber being produced.

As discussed earlier in this section, it is reasonable to expect that facilities producing acrylic fiber may also produce some types of modacrylic fiber, using the same type of processing and emission control equipment and exhibiting the same VOC emission rate as they would without the modacrylic fiber. Normally, an acrylic fiber production facility would not likely be used to produce nonacrylic fiber other than modacrylic. Nevertheless, the

proposed standard for acrylic fiber production facilities would apply to facilities that produce both acrylic and any type of nonacrylic fiber, not just modacrylic. The purpose of this is to avoid providing an incentive for a plant owner to group one or more acrylic fiber lines with nonacrylic lines in an affected facility in order to be subject to a less stringent standard for the acrylic line than if it were grouped with other acrylic lines.

The emission values (8 kg for acrylic and 15 kg for nonacrylic) represent the overall long-term levels that would be achieved with the installation of the best system of emission reduction. No allowance has been made for normal variation in emission levels or solvent losses. The deviation of individual performance test results from the long-term average will vary inversely with the duration of the test period. The longer the performance test period, the less each individual emission determination will deviate from the long-term average emissions. For this reason, selection of a specific time period for the performance test establishes the normal variation in emission determinations that is to be expected for that performance test period.

Statistical analysis of monthly emission values representative of Alternative III emission levels, which were derived indirectly from data on solvent measures from several synthetic fiber plants, indicates a significant month-to-month emission variation. No obvious temporal pattern in the data was observed, nor could it be concluded that any of the variations were the result of improper operation and maintenance. With a monthly performance test period, an allowance could be added to Alternative III levels to account for the maximum monthly emission variability. However, the allowance would necessarily be so large that if a facility were able to reduce consistently its monthly emission variability, the facility's long-term emissions would be permitted to exceed the long-term level achievable under Alternative III, while at the same time meeting the adjusted short-term limit.

A 6-month rolling average (a rolling average of the single monthly averages for 6 consecutive months) was also evaluated. Comparing the single monthly averages with 6-month rolling averages shows that the deviation from the long-term mean of any 6-month average value is considerably less than the deviation of a single month value. The 6-month rolling average was selected as the performance test period

that would limit emissions consistent with Alternative III, since it reduces significantly the expected variability while at the same time allowing a monthly check on emission levels. EPA's analysis indicated that for a 6-month rolling average, a value of 2 kg VOC per Mg solvent feed should be added to the Alternative III long-term emission levels to compensate for normal variation.

The proposed standards, therefore, would require acrylic fiber production facilities to meet a limit of 10 kg VOC (the sum of 8 kg plus the 2 kg allowance for variability) emissions per Mg of solvent feed. Affected facilities producing other fiber types would be required to meet a limit of 17 kg VOC (the sum of 15 kg plus the 2 kg allowance for variability) emissions per Mg of solvent feed.

Modification/Reconstruction Considerations

Modification, as defined in 40 CFR 60.14, occurs when any physical or operational change to an existing facility results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies. Since new source performance standards apply to existing facilities that become affected facilities through modification, EPA evaluated the potential for adverse impacts of the proposed standards on modified facilities. The evaluation indicated that retrofitting a modified facility with the emission control technology on which the standards are based would, at least in some cases, be technically difficult and may be exorbitantly expensive, and that no generally applicable alternative control technology is available. EPA's evaluation also indicated, however, that no modifications are likely to occur in the foreseeable future. This is because process changes and capacity increases that might occur at existing facilities either would not increase emissions or would be exempt under 40 CFR 60.14(e)(1) through (8), thus not falling under the definition of modification. Since no modifications are expected, EPA decided not to conduct any further impact analyses for modified facilities, but instead to apply the proposed standards only to newly constructed and reconstructed facilities, and exempt modified facilities. This exemption of modified facilities will be reconsidered during the 4-year review of the standards to determine if it should be continued.

Reconstruction, as defined in 40 CFR 60.15, occurs when the fixed capital cost of replacement components of an existing facility exceeds 50 percent of the fixed capital cost that would be

required to construct a comparable entirely new facility, and it is technically and economically feasible to meet the applicable standards. After receiving notice from the owner or operator as required under 40 CFR 60.15(d), the Administrator will determine whether the proposed replacement constitutes a reconstruction. In accordance with 40 CFR 60.15(f), the Administrator's decision is based upon the following: (1) The fixed capital cost of the replacement components, (2) the estimated life of the facility, (3) the extent to which the components being replaced cause or contribute to the emissions from the facility, and (4) any economic or technical limitations on compliance that are inherent in the proposed replacements. Repair or rebuilding of an existing facility where costs would exceed 50 percent of the cost of replacing the facility would be unusual in the synthetic fibers industry.

Performance Test Methods

As discussed in previous sections of this notice, direct measurement of gaseous VOC emissions at synthetic fiber production facilities is an expensive and complicated process because of the many emission points, and potential for large amounts of fugitive VOC emissions. Therefore, the proposed performance test procedures do not require direct gas-phase measurement of VOC emission. Instead, the procedures depend on a material balance to determine VOC emissions. The material balance is based on two facts. (1) Solvent can be lost from the process by only two routes: into the air (i.e., air pollutant emissions) or not into the air (nongaseous solvent losses); solvent loss minus nongaseous loss equals (solvent) VOC emissions. (2) Virgin solvent is fed to the affected facility to compensate or make up for the solvent that is lost from within the facility during normal operation. Makeup solvent, however, does not necessarily equal solvent losses. Within an affected facility there is a finite amount of solvent contained in the tanks and pipes at any given time. This solvent inventory varies continuously, reflecting both losses from, and additions to, the system. Therefore, in relating makeup solvent to total solvent losses, an accounting must be made for solvent inventory variation. Total solvent losses equal makeup solvent plus solvent inventory change. Thus, the ability to accurately determine solvent makeup, solvent inventory, and nongaseous solvent losses allows the VOC emissions to be calculated:

**VOC Emission—Makeup Solvent—
Nongaseous Solvent Losses—Solvent
Inventory Variation**

Makeup. Makeup solvent is the virgin solvent added to the affected facility to compensate for solvent lost during manufacture of the fibers. The proposed performance test procedures require that the amount of makeup solvent introduced to the affected facility be measured and recorded each calendar month.

Nongaseous losses. The term nongaseous losses means solvent losses from the process that are not released into the air. Nongaseous losses may occur as a result of disposing of or cleaning used filtration media, through runoff of excess fiber lubricant applied at the exit of the spin cell, as part of the steam condensate during crimping and heating operations, as residual solvent in the product, and as hydrolysis products during distillation of crude solvent/water solution. Data from several fiber plants indicate that these losses range from 6 to 13 kg per Mg of solvent feed, with most plants in the 10 to 13 kg range.

There are two alternatives for providing an allowance for nongaseous losses in the performance test procedure. These losses could either be determined separately for each affected facility by the owner or operator, or a constant value could be assigned that would be used for all affected facilities. Determining nongaseous losses for each affected facility would be expensive and would involve analysis of solvent content in the process streams, product, and any other places where nongaseous losses could occur. Some of this information is considered highly proprietary by producers. For example, residual solvent content in the fiber is controlled, in some cases, to a predetermined specification to obtain desired fiber characteristics. The other alternative of assigning a constant value that would be used in all cases is considered more reasonable. The data indicate that the variation from plant to plant is not extreme, and new facilities could be expected to exhibit values within the range found. Therefore, the proposed performance test procedure assigns a value of 13 kg per Mg of solvent feed to be used in calculating emissions at all affected facilities. Although unlikely, it is possible that a greater nongaseous loss might occur. To accommodate this possibility, an owner or operator would be allowed to use a higher value if it could be demonstrated to the Administrator that greater nongaseous losses occur at a particular affected facility.

Solvent inventory variation. The term solvent inventory refers to the amount of solvent contained in an affected facility at any given time. The majority of the solvent is contained in two locations. One is the solvent feed holding tank at the beginning of the process; this tank contains both recovered solvent and virgin makeup solvent. The other location is the crude solvent/water holding tank that precedes the solvent recovery distillation units; this tank contains the solvent that was used in processing the fiber, and captured for reuse. If no accounting is made for solvent inventory variation, erroneous calculated values for VOC emissions result.

There are two means for obtaining the values for solvent inventory variation. One would be to require the owner or operator of each affected facility to determine the values during each performance test period. The second would be to develop an appropriate industry-wide allowance as was done for nongaseous losses. It is EPA's judgment that the more direct and site-specific method should be required because the material balance emission determination is directly dependent on accurate knowledge of the amount of solvent contained within the facility. Thus, the owner or operator of each affected facility would be required to determine and record the solvent inventory variation for the facility on a monthly basis. Nearly all fiber producers currently measure solvent inventory routinely. The determination must include the total amount of solvent contained in all tanks and pipes within the affected facility, in order to account for the inventory change in the crude solvent/water solution holding tank and solvent feed holding tank during the averaging period. This data will permit an accurate calculation of monthly solvent loss.

Solvent feed. The format of the proposed standards is in terms of the ratio of VOC emissions to total solvent feed used in the process. The term total solvent feed refers to the amount of solvent used to dissolve the polymer and formulate the precipitation bath, in the case of wet spinning. The proposed test procedures allow solvent feed to be determined by one of the following three ways: (1) By direct measurement; (2) by measuring the amount of recovered solvent returned to the solvent feed holding tank and the makeup solvent. (The solvent feed equals the sum of makeup solvent and recovered solvent corrected for inventory change in the solvent feed holding tank.); (3) from plant records of the amount of polymer

feed and the solvent-to-polymer ratio of each spinning solution. Each of these three methods would yield an accurate determination of the amount of solvent feed to be used in the equation for determining VOC emissions.

Performance test. As discussed in the section entitled "Selection of Numerical Emission Limitations," a 6-month rolling average was selected as the performance test averaging period. Each of the values to be used in the equation for determining VOC emissions would represent calendar month measurements or determinations. Shorter and longer time periods were considered, but 1 month was judged most appropriate primarily because of the solvent inventory variation discussed earlier. The shorter the time period over which emissions are calculated, the greater the effect of solvent inventory variation. Data from several plants indicate that solvent inventory variation will almost certainly exceed the amount of makeup solvent on a daily or weekly basis. At the other extreme, the variation on a yearly basis would be negligible. Between these two extremes of a significant variation and a negligible variation is a monthly period for which the 5 years of data show that solvent inventory exceeds the amount of makeup solvent only about 10 percent of the time. This time period for determining emissions is attractive because monitoring and enforcement could be conducted on a relatively short-term basis, reducing the possibility of undetected long-term violations of the proposed standards. For these reasons, 1 month is selected as the time period over which emissions would be determined.

In summary, the following procedure is used to determine emissions per Mg of solvent feed. The amount of makeup solvent added during a given month is divided by the total amount of solvent feed measured during the same period. The resulting value if multiplied by 1,000 to arrive at a number that will represent solvent losses per Mg.

Nongaseous losses must be detected, since this type of loss does not reflect solvent emissions. The value chosen to represent nongaseous losses, 13 kg/Mg, is subtracted from the number calculated in the paragraph above. Similarly, the solvent inventory variation is also subtracted, since it does not reflect actual VOC emissions. The value for inventory variation is calculated by subtracting the beginning solvent inventory from the ending inventory (and indicating whether positive or negative) and dividing the difference by the amount of solvent feed

measured during the month. This resulting value is then multiplied by 1,000 to arrive at a number that will represent variation *per Mg* of solvent feed. This number is then subtracted from the value for solvent losses *per Mg* to arrive at the monthly VOC emissions *per Mg*.

Each monthly value for VOC emissions would be averaged with the values for the preceding 5 months. Thus, each month there would be a 6-month average of VOC emissions that would be compared to the proposed emission limits to determine compliance.

Selection of Monitoring and Recordkeeping Requirements

The proposed standards would require owners or operators to do one of the following: (1) Install, calibrate, maintain, and operate monitoring devices that continuously measure and permanently record the amount of makeup solvent introduced into the affected facility, and one of the following: the total amount of solvent used to dissolve the polymer (and solvent fed to the precipitation bath where applicable), or the amount of solvent recovered for reuse; or (2) install, calibrate, maintain, and operate monitoring devices that continuously measure and permanently record the amount of make-up solvent introduced into the affected facility and record the monthly use of polymer and the solvent-to-polymer ratio(s) used in preparation of the spinning solution(s).

The continuous solvent flow monitors that would be required are commercially available and are already in use at some plants. Installation and operation of these continuous solvent flow monitors requires the same level of skill or experience as other instrumentation used at existing synthetic fiber manufacturing facilities. The installed capital cost of the totalizing flow meters is about \$5,000 per unit.

The measured values are volumetric flow, and are converted to weight measurements by multiplying the volume times the density of the solvent in use. Also, since some solvent streams may contain nonsolvent fractions, the weight measurement is multiplied by the fraction of the flow that is actual solvent. While temperature will also affect the readings, it was determined that the temperature-induced variations are less than 1 percent over the expected operating range and are not considered significant.

The records that would be required under the second choice are already kept at all existing plants and would impose no additional burden on affected facility owners or operators.

Impacts of Reporting Requirements

An analysis was conducted of the impacts of reporting and recordkeeping requirements of the proposed standards and the General Provisions of 40 CFR Part 60. Included in the analysis are the rationale for the evaluation of the major alternatives considered prior to the selection of the proposed requirements, and a description of the information required by the General Provisions and by the proposed standards. A copy of the reports impact analysis is included in Subcategory II-1 of EPA Docket No. A-80-7.

The recommended standards would require two types of reports, notification requirements that would enable the Agency to keep abreast of facilities subject to the standards, and reporting of results of the initial performance test. Owners or operators would be required to maintain records for 2 years on the process parameters that must be monitored.

The collection and maintenance of accurate data is essential for determining compliance with the standards. The data provides enforcement authorities with a historical record on the performance of a particular affected facility. Solvent-use data are already collected, at least in part, by several manufacturers for process reasons. These solvent-use data are taken from continuous recording flow meters on a monthly basis and used to calculate the solvent recovery for the previous month.

Based on the reports impact analysis, a total of 0.4 industry person-years would be required to comply with the recordkeeping and reporting requirements through the first 5 years of applicability. The Agency considers these impacts reasonable.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires clearance from the Office of Management and Budget (OMB) of certain public reporting/recordkeeping requirements before this rulemaking can be promulgated as final. This rulemaking does not involve a "collection of information" as defined in the 1980 Act. Therefore, the provisions of the Paperwork Reduction Act applicable to collection of information do not apply to this rulemaking.

Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the Addresses section of this preamble. Oral presentations will be

limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the Addresses section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (See ADDRESSES section of this preamble.)

Docket

The docket is an organized and complete file of information submitted to or otherwise considered in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to readily identify and locate documents so that they can participate in the rulemaking process; and (2) to serve as the record in case of judicial review except as noted in Section 307(d)(7)(A).

Miscellaneous

As prescribed by Section 111, establishment of standards of performance for solvent-spun synthetic fiber production plants was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of this standard was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues, and monitoring requirements.

In addition, the Administrator specifically invites comments concerning the reporting requirements of the proposed standards. Any comment submitted to the Administrator should contain specific information and data pertinent to an evaluation of the magnitude and severity of any adverse impact and should suggest alternative courses of action to avoid this impact. Recommended alternative reporting requirements should contain complete instructions and should state all the reasons why the recommended requirements would be considered an improvement.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This

review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, emission control technology improvements, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance under Section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations and for other regulatory alternatives. All aspects of the assessment were considered when the proposed standards were formulated to ensure that they would represent the best system of emission reduction, considering costs. The economic impact assessment is included in the background information document.

Comparisons of annualized costs per megagram of emission reduction were made for plants typical of those that are most likely to be built in the next 5 years. All three regulatory alternatives were examined. Compared to the baseline, Alternatives II and III result in emission reductions of 5.9 and 8.9 Gg per year, respectively, by 1987. Using these emission reduction figures, annualized costs per megagram of emission reduction of typical plants would be as much as \$400 and \$200, respectively, for Alternatives II and III.

At these same plants, Alternative III would result in an annual emission reduction of 3.0 Gg per year more than Alternative II. Alternative III would have an annualized cost of \$2.4 million more than Alternative II; however, the value of the additional solvent recovered would decrease the annualized cost by roughly the same amount. Thus, there would be no net annualized cost per Mg of emission reduction to the industry in implementing Alternative III over Alternative II. These costs (savings) do not include lost opportunity costs (i.e., the profit or return on investment which could be derived by investing in other than air pollution control equipment).

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be major. The industry-wide annualized costs in the fifth year after the standards would go into effect would be as much as \$7.4 million. When compared with the \$6.2 million in savings resulting from

improved solvent recovery, there is a net annualized cost of \$1.2 million. There would be less than 1.7 percent price increase associated with the proposed standards. The economic analysis of the proposed standards' effects on the industry did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms.

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

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because there would be no small entities affected.

List of Subjects in 40 CFR Part 60.

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

Dated: November 15, 1982.

Anne M. Gorsuch,
Administrator.

PART 60—[AMENDED]

It is proposed that 40 CFR Part 60 be amended by adding a new subpart as follows:

Subpart HHH—Standards of Performance for Synthetic Fiber Production Facilities

Sec.

60.600 Applicability and designation of affected facility.

60.601 Definitions.

60.602 Standard for volatile organic compounds.

60.603 Performance test and compliance provisions.

60.604 Reporting requirements.

Authority: Sec. 111 and 301(a) of the Clean Air Act, as amended, (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart HHH—Standards of Performance for Synthetic Fiber Production Facilities

§ 60.600 Applicability and designation of affected facility.

(a) Except as provided in paragraph (b) of this section, the affected facility to which the provisions of this subpart apply is each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year.

(b) The provisions of this subpart do not apply to any facility that uses the reaction spinning process to produce spandex fiber or the viscose process to produce rayon fiber.

(c) The provisions of this subpart apply to each facility as identified in paragraph (a) of this section and that commences construction or reconstruction after _____ (date of publication in the Federal Register). The provisions of this subpart do not apply to facilities that commence modification but not reconstruction after _____ (date of publication in the Federal Register).

§ 60.601 Definitions.

(a) All terms that are used in this subpart and are not defined below are given the same meaning as in the Act and in Subpart A of this part.

"Acrylic fiber" means a manufactured synthetic fiber in which the fiber-forming substance is any long-chain synthetic polymer composed of at least 85 percent by weight of acrylonitrile units.

"Makeup solvent" means the solvent introduced into the affected facility that compensates for solvent lost from the affected facility during their manufacturing process.

"Nongaseous losses" means the solvent that is not volatilized during fiber production, and that escapes the process and is unavailable for recovery, or is in a form or concentration unsuitable for economical recovery.

"Polymer" means any of the natural or synthetic compounds of usually high molecular weight that consist of many repeated links, each link being a relatively light and simple molecule.

"Precipitation bath" means the water, solvent, or other chemical bath into which the polymer or prepolymer (partially reacted material) solution is extruded, and that causes physical or chemical changes to occur in the extruded solution to result in a semi-hardened polymeric fiber.

"Rayon fiber" means a manufactured fiber composed of regenerated cellulose, as well as manufactured fibers composed of regenerated cellulose in which substituents have replaced not more than 15 percent of the hydrogens of the hydroxyl groups.

"Reaction spinning process" means the fiber-forming process where a prepolymer is extruded into a fluid medium and solidification takes place by chemical reaction to form the final polymeric material.

"Recovered solvent" means the solvent captured from liquid and gaseous process streams that is

concentrated in a control device and that may be purified for reuse.

"Solvent feed" means the solvent introduced into the spinning solution preparation system or precipitation bath. This feed stream includes the combination of recovered solvent and makeup solvent.

"Solvent inventory variation" means the normal changes in the total amount of solvent contained in the affected facility.

"Solvent recovery system" means the equipment associated with capture, transportation, collection, concentration, and purification of organic solvents. It may include enclosures, hoods, ducting, piping, scrubbers, condensers, carbon adsorbers, distillation equipment, and associated storage vessels.

"Solvent-spun synthetic fiber" means any synthetic fiber produced by a process that uses an organic solvent in the spinning solution, the precipitation bath, or processing of the spun fiber.

"Solvent-spun synthetic fiber process" means the total of all equipment having a common spinning solution preparation system or a common solvent recovery system, and that is used in the manufacture of solvent-spun synthetic fiber. It includes spinning solution preparation, spinning, fiber processing and solvent recovery, but does not include the polymer production equipment.

"Spandex fiber" means a manufactured fiber in which the fiber-forming substance is a long chain synthetic polymer comprised of at least 85 percent of a segmented polyurethane.

"Spinning solution" means the mixture of polymer, prepolymer, or copolymer and additives dissolved in solvent. The solution is prepared at a viscosity and solvent-to-polymer ratio that is suitable for extrusion into fibers.

"Spinning solution preparation system" means the equipment used to prepare spinning solutions; the system includes equipment for mixing, filtering, blending, and storage of the spinning solutions.

"Synthetic fiber" means any fiber composed partially or entirely of materials made by chemical synthesis, or made partially or entirely from chemically-modified naturally-occurring materials.

"Viscose process" means the fiber forming process where cellulose and concentrated caustic soda are reacted to form soda or alkali cellulose. This reacts with carbon disulfide to form sodium cellulose xanthate, which is then

dissolved in a solution of caustic soda. After ripening, the solution is spun into an acid coagulating bath. This precipitates the cellulose in the form of a regenerated cellulose filament.

§ 60.602 Standard for volatile organic compounds.

(a) On and after the date on which the initial performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause the discharge into the atmosphere from any affected facility that produces acrylic fibers, VOC emissions that exceed 10 kilograms (kg) VOC per megagram (Mg) solvent feed to the spinning solution preparation system or precipitation bath. VOC emissions from affected facilities that produce only nonacrylic fiber types shall not exceed 10 kg VOC per Mg solvent feed. VOC emissions from affected facilities that produce only nonacrylic fiber types shall not exceed 17 kg VOC per Mg solvent feed. Compliance with the emission limitations is determined on a 6-month rolling average basis as described in § 60.603.

§ 60.603 Performance test and compliance provisions.

(a) Section 60.8(f) does not apply to the performance test procedures required by this subpart.

(b) Each owner or operator of an affected facility shall determine compliance with the applicable standard in § 60.602(a) by determining and recording monthly the VOC emissions per Mg solvent feed from each affected facility for the current and preceding 5 consecutive calendar months and using these values to calculate the 6-month average emissions. Each calculation is considered a performance test. The owner or operator of an affected facility shall use the following procedure to determine VOC emissions for each calendar month:

(1) Install, calibrate, maintain, and operate monitoring devices that continuously measure and permanently record for each calendar month the amount of makeup solvent and solvent feed. These values shall be used in calculating VOC emissions according to paragraph (b)(2) of this section. All monitoring devices, meters, and peripheral equipment shall be calibrated and any error recorded. Total compounded error of the flow measuring and recording devices shall not exceed 1 percent accuracy over the operating

range. As an alternative to measuring solvent feed, the owner or operator may:

(i) Measure the amount of recovered solvent returned to the solvent feed storage tanks, and use the following equation to determine the amount of solvent feed:

Solvent Feed = Makeup Solvent + Recovered Solvent + Change in the Amount of Solvent Contained in the Solvent Feed Holding Tank.

(ii) Measure and record the amount of polymer introduced into the affected facility and the solvent-to-polymer ratio of the spinning solutions, and use the following equation to determine the amount of solvent feed:

$$\text{Solvent} = \frac{n}{\sum_{i=1}^n \text{Feed}}$$

$$(\text{Polymer Used})_i \times (\text{Solvent-to-Polymer Ratio})_i$$

where subscript "i" denotes each particular spinning solution used during the test period; values of "i" vary from one to the total number of spinning solutions, "n," used during the calendar month.

(2) VOC emissions shall be determined each calendar month by use of the following equations:

$$E = \frac{M_w}{S_w} - N - I \quad \text{and} \quad M_w = M_v S_p D$$

$$S_w = \frac{S_v S_p D}{1000} \quad I = \frac{I_E - I_S}{S_w}$$

where all values are for the calendar month only and where

E = Emissions in Kg per Mg solvent feed;

S_v = Measured or calculated volume of solvent feed in liters;

S_w = Weight of solvent feed in Mg;

M_v = Measured volume of makeup solvent in liters;

M_w = Weight of makeup in Kg;

N = Allowance for nongaseous losses per Mg solvent feed; (13 Kg/Mg);

S_p = Fraction of measured volume that is actual solvent (excludes water);

D = Density of the solvent in Kg/liter;

I = Allowance for solvent inventory variation or changes in the amount of solvent contained in the affected facility per Mg solvent feed (may be positive or negative);

I_s = Amount in Kg of solvent contained in the affected facility at the beginning of test period, as determined by owner or operator;

I_g = Amount in Kg of solvent contained in the affected facility at the close of test period, as determined by owner or operator.

(i) N, as used in the equation in paragraph (b)(2) of this section, equals 13 Kg per Mg solvent feed to the spinning solution preparation system and precipitation bath. This value shall be used in all cases unless an owner or operator demonstrates to the satisfaction of the Administrator that greater nongaseous losses occur at the affected facility. In this case, the greater

value may be substituted in the equation.

§ 60.604 Reporting requirements.

(a) The reporting requirements of § 60.8(a) apply only to the initial performance test.

(b) Solvent-spun synthetic fiber producing facilities exempted from these standards in § 60.600(a) (those producing less than 500 megagrams annually) shall report to the Administrator within 30 days whenever extruded fiber for the preceding 12

calendar months exceeds 500 megagrams.

Note: This regulation does not involve a "collection of information" as defined under the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Therefore, the provisions of the Paperwork Reduction Act applicable to collections of information do not apply to this regulation.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414).)

[FR Doc. 82-31920 Filed 11-22-82; 8:45am]

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Test at Federal Register

**Tuesday
November 23, 1982**

Part V

Department of Education

**Training Personnel for the Education of
the Handicapped; Proposed Rule**

DEPARTMENT OF EDUCATION

34 CFR Part 318

Training Personnel for the Education of the Handicapped

AGENCY: Education Department.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations for the implementation of Part D of the Education of the Handicapped Act (EHA), as amended. The Training Personnel for the Education of the Handicapped program provides financial assistance through grants to State educational agencies, institutions of higher education, and other nonprofit institutions or agencies to increase the quantity and to improve the quality of personnel available to educate handicapped children. The existing regulation were reviewed for regulatory burdens reduction. These regulations are issued as a result of that review.

DATES: Comments must be received on or before January 7, 1983.

ADDRESSES: Comments should be addressed to Dr. William R. Peterson, Special Education Programs, Department of Education 400 Maryland Ave., S.W., Donohoe Building, Room 4145, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. William R. Peterson, (202) 245-9491.

SUPPLEMENTARY INFORMATION: The Training Personnel for the Education of the Handicapped program was originally established under Pub. L. 89-10 in 1966 and is currently authorized under Part D of the Education of the Handicapped Act (Pub. L. 91-230, as amended) (20 U.S.C. 1431, 1432, and 1434).

Regulations for this program were initially published in the *Federal Register* on February 20, 1975 (40 FR 7419). Subsequent amendments to these regulations were published on April 19, 1977 (42 FR 20300), April 3, 1980 (45 FR 22532), and January 19, 1981 (46 FR 5379).

These proposed amended regulations provide, among other things for the distribution of program funds among the following seven priorities to eligible institutions and agencies: preparation of special educators; preparation of leadership personnel; preparation of related services personnel; State educational agency programing; special projects; specialized training of regular educators; and preparation of trainers of volunteers, including parents.

The proposed regulations implement the provisions of sections 631, 632, and

634 of Part D of the Education of the Handicapped Act (EHA), and incorporate the program regulations adopted on January 19, 1981 (noted above), and the Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78). The proposed regulations also include:

(a) Subpart A—General

The scope and purpose of the program are described in the proposed regulations under § 318.1. The proposed provisions implement Federal discretionary assistance to eligible grantees under sections 631, 632, and 634 of Part D of the Education of the Handicapped Act (EHA) (20 U.S.C. 1431, 1432, and 1434).

Section 318.2 in the proposed regulations identifies those institutions and agencies eligible for grant funds under the Training Personnel for the Education of the Handicapped Program. As provided in the existing regulations (§§ 318.3 and 318.4), eligible entities include (a) State educational agencies, (b) institutions of higher education, (c) other non-profit institutions or agencies.

Parts of the Education Department General Administrative Regulations (EDGAR) applicable to the Training Personnel for the Education of the Handicapped program are in § 318.3.

Definitions in EDGAR that are applicable to the Training Personnel for the Education of the Handicapped program are contained in § 318.4. The definitions of terms in the proposed regulations are less detailed than in the current § 318.6.

(b) Subpart B—What kinds of projects does the Secretary assist under this program?

Section 318.10(a) in the proposed regulations establishes the scope of training allowed under any priority funded. Section 318.10(b) in the proposed regulations establishes the seven priorities, one or more of which the Secretary annually may select for funding under the Training Personnel for the Education of the Handicapped program. These seven priorities incorporate the twelve (12) program priorities established in the existing regulations. See current § 318.21. Section 318.10(c) of the proposed regulations states that the Secretary in identifying priorities eligible for competition will specify those that include only preservice preparation, only inservice preparation, or both.

Proposed § 318.11(a) states that the Secretary establishes a separate competition for each priority selected annually under § 318.10(b). Section 318.11(b) discusses the treatment of an

application that addresses both a priority and a nonpriority area.

(c) Subpart D—How does the Secretary award a grant?

The proposed selection criteria used to award a grant are contained in § 318.30. The section incorporates the selection criteria in current § 318.20 but has been rewritten to add one criterion (need) and to clarify and consolidate other criteria.

(d) Subpart E—What conditions must be met by a grantee under the Student Financial Assistance Program?

Section 318.40-318.44 establish: (a) The authorization for the use of any portion of grant funds by the grantee for student financial assistance (§ 318.40), (b) the criteria for the awarding of direct student financial assistance by the grantee (§ 318.41), (c) the amount of student financial assistance under the program (§ 318.42), (d) the amount of financial assistance authorized for part-time students (§ 318.43), and (e) adjustments required by the grantee resulting from student withdrawal or dismissal (§ 318.44). This subpart is substantially simpler than the existing regulations (§ 318.40-318.70).

Approximately 1300 applications are submitted annually to the Training Personnel for the Education of the Handicapped program. The average award for successful applicants is \$35,000.

The proposed regulations enhance the capacity of grantees to serve handicapped children through the adoption of more flexible discretionary program requirements. In particular, the proposed amended regulations:

(a) Incorporate the twelve (12) program priorities identified in the current regulations into seven program priorities (§ 318.11); and

(b) Significantly reduce the student financial assistance requirements contained in the existing regulations.

The proposed regulations further eliminate overlapping and duplicative regulatory content and requirements, i.e., consolidating the description of eligible applicants in § 318.2, consolidating all program definitions in § 318.4, and eliminating the single departmental application requirement for institutions of higher education as prescribed in § 318.7 of the current regulations.

The selection criteria in § 318.30 of the proposed regulations have been reworded to clarify the criteria in current § 318.20, published on January 19, 1981 at 46 FR 5379. The maintenance of those selection criteria is necessary to assure the equitable selection of special education training programs under the

Training Personnel for the Education of the Handicapped program based upon need and quality.

In proposing these regulations, the Secretary is particularly interested in public comment as to the appropriateness of the proposed priorities (§ 318.10) and the proposed conditions governing student financial assistance (§ 318.42).

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These proposed regulations are more flexible and less prescriptive than the existing regulations and it is expected that more small entities will apply to participate in the program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations received on or before the 30th day after publication of this document will be considered before the Secretary issues final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4145, Donohue Building, 400 Sixth Street, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and the Department's overall intent to reduce regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Federal Register Thesaurus of Index Terms

List of Subjects in 34 CFR Part 318

Education, Education of handicapped, Grant programs—education, Student aid, Teacher.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed amended regulations.

(Catalog of Federal Domestic Assistance Number 84.029, Training Personnel for the Education of the Handicapped program)

Dated: November 11, 1982.

T. H. Bell,

Secretary of Education.

The Secretary proposes to amend Part 318 of Title 34 of the Code of Federal Regulations as follows:

PART 318—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED

Subpart A—General

Sec.

318.1 Training Personnel for the Education of Handicapped Children Program.

318.2 Who is eligible for a grant under Training Personnel for the Education of Handicapped Children?

318.3 What regulations apply to Training Personnel for the Education of Handicapped Children program?

318.4 What definitions apply to the Training Personnel for the Education of the Handicapped Children program?

318.5–318.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

318.10 What types of training priorities are considered for support by the Secretary under this Part?

318.11 How does the Secretary use priorities?

318.12–318.19 [Reserved]

Subpart C—[Reserved]

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318.30 What are the selection criteria used to award a grant?

318.31–318.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee Under the Student Financial Assistance Program?

318.40 Is student financial assistance authorized?

318.41 What are the student financial assistance criteria?

318.42 What amount of assistance is authorized?

318.43 What financial assistance is authorized for part-time students?

318.44 What is required for a financially assisted student who withdraws or is dismissed?

318.45–318.49 [Reserved]

Authority: Sections 631, 632, 632, 634, Pub. L. 91–230, 84 Stat. 164 (20 U.S.C. 1431, 1432, 1434), unless otherwise noted.

Subpart A—General

§ 318.1 Training Personnel for the Education of Handicapped Children program.

This program serves to increase the quantity and improve the quality of personnel available to educate handicapped children through the provision of grants to eligible agencies that have or will develop personnel preparation programs.

(20 U.S.C. 1431, 1432, 1434)

§ 318.2 Who is eligible for a grant under the Training Personnel for the Education of Handicapped Children program?

The following agencies are eligible for assistance under this part—

- (a) State educational agencies.
- (b) Institutions of higher education.
- (c) Other appropriate nonprofit institutions or agencies.

(20 U.S.C. 1431, 1432, 1434)

§ 318.3 What regulations apply to the Training Personnel for the Education of Handicapped Children program?

The following regulations apply to assistance under the Training Personnel for the Education of the Handicapped program—

- (a) The regulations in this Part 318.
- (b) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in—
 - (1) Part 74 (Administration of Grants);
 - (2) Part 75 (Direct Grant Programs);
 - (3) Part 77 (Definitions); and
 - (4) Part 78 (Education Appeal Board).

(20 U.S.C. 1431, 1432, 1434; 20 U.S.C. 1221e–3(a)(1))

§ 318.4 What definitions apply to the Training Personnel for the Education of Handicapped Children program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Award
Budget period
Department
EDGAR
Fiscal year
Grant period
Local educational agency
Nonprofit
Preschool
Private
Project

Public
Secretary
State
State educational agency

(20 U.S.C. 1431, 1432, 1434; 20 U.S.C. 1221e-3(a)(1))

§§ 318.5-318.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 318.10 What types of training priorities are considered for support by the Secretary under this part?

(a) Projects supported under this part which meet a priority as described in paragraphs (b) and (c) of this section may provide training to degree, non-degree, certified and non-certified personnel except that doctoral and post-doctoral preparation can be supported only under the priorities described in paragraphs (b)(2) and (b)(5) of this section.

(b) The Secretary may select annually one or more of the following priority areas for funding:

(1) *Preparation of special educators.* This priority supports projects designed to provide training for personnel engaged or preparing to engage in employment as special educators of handicapped children ages 0-21 years or as supervisors of such educators. The priority includes the preparation of early childhood specialists, special educators of the handicapped, special education administrators and supervisors, speech-language pathologists, audiologists, physical educators and vocational educators.

(2) *Preparation of leadership personnel.* This priority supports doctoral and post-doctoral preparation of professional personnel to conduct training of teacher trainers, researchers, administrators and other specialists.

(3) *Preparation of related services personnel.* This priority supports the preparation of individuals who provide developmental, corrective, and other supportive services as may be required to assist a handicapped child to benefit from special education. The priority supports the preparation of paraprofessional personnel, career educators, recreation specialists, health services personnel, school psychologists, social service providers, physical therapists and occupational therapists.

(4) *State educational agency programming.* This priority supports projects dealing with unique State-wide training in all or several of the need areas identified by the Comprehensive System of Personnel Development

(CSPD) and may include training in management and organizational design which enhance the ability of States to provide comprehensive services to handicapped children. Only State educational agencies are eligible to submit applications under this priority.

(5) *Special projects.* This priority supports the development, evaluation, and distribution of imaginative or innovative approaches to personnel preparation, and includes development of materials to prepare personnel to educate handicapped children.

(6) *Specialized training of regular educators.* This priority supports projects that provide deans or equivalent administrators from institutions of higher education or local educational agency officials the skills necessary to promote development of regular classroom teachers, administrators, and supervisors. The purpose is to provide quality education to handicapped children who receive part of their education in regular classes.

(7) *Preparation of trainers of volunteers, including parents.* This priority supports the preparation of trainers of volunteers, including parents, to assist in the provision of educational services to handicapped students. In addition to the preparation of volunteers and parents by experienced professionals, this priority may support projects which emphasize the training of parents by parents.

(c) When the Secretary annually selects priorities authorized to be addressed he will also identify the priorities that include only preservice preparation, only inservice preparation, or both.

(20 U.S.C. 1431, 1432, 1434)

§ 318.11 How does the Secretary use priorities?

(a) The Secretary establishes a separate competition for each priority selected for support in a given year. Activities proposed by eligible applicants which do not address selected annual priorities will not be considered for competition.

(b) If an application contains activities which address both a priority and a non-priority area, the Secretary considers for support only those activities that address a selected priority.

(20 U.S.C. 1431, 1432, 1434)

§§ 318.12-318.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 318.30 What are the selection criteria used to award a grant?

The Secretary uses the criteria in this section to evaluate applications for new awards. The criteria are not weighted.

(a) *Extent of need for the project.* (1) The Secretary reviews each application for information that shows the project meets the needs recognized in Part D of the Act.

(2) In conducting this review, the Secretary looks for information that—

(i) Describes the needs addressed by the project;

(ii) Specifies the personnel needs identified by each State educational agency for each State served under the proposed project;

(iii) Describes how the project relates to personnel needs identified by each State educational agency and any other needs data source; and

(iv) Describes the benefits to be gained by meeting those personnel needs.

(b) *Plan of Operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project; and

(2) the Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective; and

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities, and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590, *Evaluation by the grantee.*)

(2) The Secretary reviews each application for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows—

(i) The applicant plans to devote adequate resources to the project;

(ii) The facilities that the applicant plans to use are adequate; and

(iii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Participation.* (1) The Secretary reviews each application for information on—

(i) The extent to which program philosophy, program objectives, and activities implemented to attain program objectives are related to the educational needs of handicapped children; and

(ii) The extent to which the applicant involves students, employing agencies

and other concerned individuals in program planning, implementation, and evaluation.

(h) *Evaluation design.* (1) The Secretary reviews each application for information that shows the extent to which the evaluation design and procedures—

(i) Provide for assessment of the effectiveness and efficiency of the use of program resources in the attainment of program objectives; and

(ii) Provide for the collection of quantifiable program performance information including—

(A) The number of personnel prepared;

(B) The number of personnel placed in positions relevant to the education of handicapped children; and

(C) The type of locations and positions accepted by program graduates.

(iii) Describe procedures for assessing the impact of the program. In the case of an application for continuation support, provide evidence of the impact of the program upon other related programs within the institution, upon community programs for the education of handicapped children, and upon improvement of services for handicapped children at the local, State, and/or national level.

(i) *Program content.* (1) The Secretary reviews each application for information that shows—

(i) The extent to which the application includes a delineation of competencies that each program graduate will acquire and how the competencies will be evaluated;

(ii) The extent to which substantive content and organization of the program—

(A) Are appropriate for the student's attainment of professional knowledge and competencies that are necessary for the provision of quality educational services for handicapped children; and

(B) Demonstrate an awareness of relevant methods, procedures, techniques, and instructional media or materials that can be used in the preparation of personnel who serve handicapped children;

(iii) The extent to which appropriate practicum facilities are accessible to the applicant and students and are used for observation, participation, practice teaching, laboratory or clinical experience, internship, and other supervised experiences of adequate scope, combination and length.

(j) *Contributions.* The Secretary reviews each application for information that shows the amount of fiscal and other effort the applicant will contribute to the program and a delineation of the

procedures that will be implemented for the increase of this effort over a specified time period in relationship to the amount of Federal funds awarded for the support of the program.

(20 U.S.C. 1431, 1432, 1434)

§§ 318.31-318.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee Under the Student Financial Assistance Program?

§ 318.40 Is student financial assistance authorized?

A grantee may use any portion of a grant awarded under this Part to pay direct financial assistance to students.

(20 U.S.C. 1431, 1432, 1434)

§ 318.41 What are the student financial assistance criteria?

Direct financial assistance may be paid to students only if—

(a) The student is qualified for admission to the program of study;

(b) The student maintains acceptable progress in a course of study;

(c) The student demonstrates need for financial assistance as determined by criteria established by the grantee; and

(d) The student is a citizen or a national of the United States, or is legally in the United States for other than a temporary purpose and intends to become a permanent resident.

(20 U.S.C. 1431, 1432, 1434)

§ 318.42 What amount of assistance is authorized?

Subject to the limitations stated in §§ 318.43 and 318.44 grantees shall disburse financial assistance to students in amounts consistent with established grantee policies for providing financial assistance for various levels of study and for policies relevant to providing financial assistance to part-time and full-time students.

§ 318.43 What financial assistance is authorized for part-time students?

(a) Students enrolled for less than a full calendar year or a full-time academic year but for at least two days per week may receive a daily stipend. Such short-term students are not eligible for allowances for dependents.

(b) Students who are receiving calendar year or full-time academic year assistance at the time of their short-term study are not eligible for financial assistance under this section.

(20 U.S.C. 1431, 1432, 1434)

§ 318.44 What is required for a financially assisted student who withdraws?

A grantee shall make financial adjustments when the student

withdraws or is dismissed before the end of the program. In those instances where students withdraw from graduate and undergraduate academic year and short term programs, a grantee may give the remaining funds as a partial award to another student who is currently enrolled in the program assisted under this part. The Secretary considers the funds made available as a result of a financial adjustment as an overpayment, unless these funds are used as a partial award or are used in ways otherwise consistent with the requirements of this Part.

(20 U.S.C. 1431, 1432, 1434)

§§ 318.45-318.49 [Reserved]

[FR Doc. 82-32057 Filed 11-22-82; 8:45 am]

BILLING CODE 4000-01-M

Commodity Futures Trading Commission

Tuesday
November 23, 1982

Part VI

Commodity Futures Trading Commission

Registration and Order Deferring
Expiration Date of Registration of
Futures Commission Merchants and Floor
Brokers

**COMMODITY FUTURES TRADING
COMMISSION****17 CFR Part 3****Registration**

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has deferred by order from December 31, 1982 to March 31, 1983 the expiration date of the registration of any futures commission merchant ("FCM") or floor broker that is currently registered with the Commission or that will be registered with the Commission during the period subsequent to the date of the issuance of this order through the end of 1982 where such person's registration otherwise would expire on December 31, 1982. The Commission also has deferred from December 31, 1983 to March 31, 1984 the expiration date of the registration of any subsequently-registered FCM or floor broker. The Commission is taking this action to enhance the efficient administration of the Commission's registration program. Notwithstanding this order, the Commission may take enforcement action against any person affected thereby at any time, including without limitation the initiation of a proceeding to suspend or revoke registration pursuant to the Act and the Commission's regulations thereunder.

The Commission is publishing this order in the **Federal Register** to provide affected persons and the public with notice thereof. In this connection, the Commission will provide notice at a later date of conforming changes to its registration Forms 7-R and 8-R to reflect this order.

DATE: Effective date: November 18, 1982.

FOR FURTHER INFORMATION CONTACT: Robert P. Shiner, Assistant Director for Registration or David S. Mitchell, Esq., Legal Section, Division of Trading and Markets, Commodity Futures Trading Commission 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 254-9703 or 254-8955.

SUPPLEMENTARY INFORMATION:

On November 18, 1982, the Commission issued the following order which defers the expiration date of the registration of the persons described above as follows:*

**United States of America Before the
Commodity Futures Trading
Commission*****Order Deferring Expiration Date of
Registration of Futures Commission
Merchants and Floor Brokers***

The Commission, having determined that the efficient administration of its

registration program will be enhanced by deferring the expiration date of the registration of futures commission merchants and floor brokers:

It is hereby ordered that pursuant to Section 4f(1) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. 6f(1) (Supp. V 1981):

The expiration date of the registration of any futures commission merchant or floor broker which otherwise would be December 31, 1982 is deferred to, and any such registration shall instead expire on, March 31, 1983; and

The expiration date of the registration of any futures commission merchant or floor broker which otherwise would be December 31, 1983 is deferred to, and any such registration shall instead expire on, March 31, 1984; and

It is further ordered that notwithstanding the foregoing, the Commission may take enforcement action against any person affected hereby at any time, including without limitation the initiation of a proceeding to suspend or revoke registration pursuant to the Act and the Commission's regulations thereunder.

Issued in Washington, D.C., this 18th day of November, 1982.

By the Commission

Jean A. Webb,
Deputy Secretary of the Commission.

[FR Doc 82-32128 Filed 11-22-82; 8:45 am]

BILLING CODE 6351-01-M

* Assuming arguendo that this order is a rule for purposes of 5 U.S.C. 553 (1976), the Commission finds that prior notice and comment thereon is unnecessary as it merely defers the expiration date of registrations that otherwise would expire and does not impose any new requirements on persons affected thereby. 5 U.S.C. 553(b)(B) (1976).

**COMMODITY FUTURES TRADING
COMMISSION****Order Deferring Expiration Date of
Registration of Futures Commission
Merchants and Floor Brokers**

The Commission, having determined that the efficient administration of its registration program will be enhanced by deferring the expiration date of the registration of futures commission merchants and floor brokers:

It is hereby Ordered that pursuant to Section 4f(1) of the Commodity

Exchange Act, as amended (the "Act"), 7 U.S.C. 6f(1) (Supp. V 1981):

The expiration date of the registration of any futures commission merchant or floor broker which otherwise would be December 31, 1982 is deferred to, and any such registration shall instead expire on, March 31, 1983; and

The expiration date of the registration of any futures commission merchant or floor broker which otherwise would be December 31, 1983 is deferred to, and any such registration shall instead expire on, March 31, 1984; and

It is further ordered that notwithstanding the foregoing, the Commission may take enforcement action against any person affected hereby at any time, including without limitation the initiation of a proceeding to suspend or revoke registration pursuant to the Act and the Commission's regulations thereunder.

Issued in Washington, D.C., this 18th day of November, 1982.

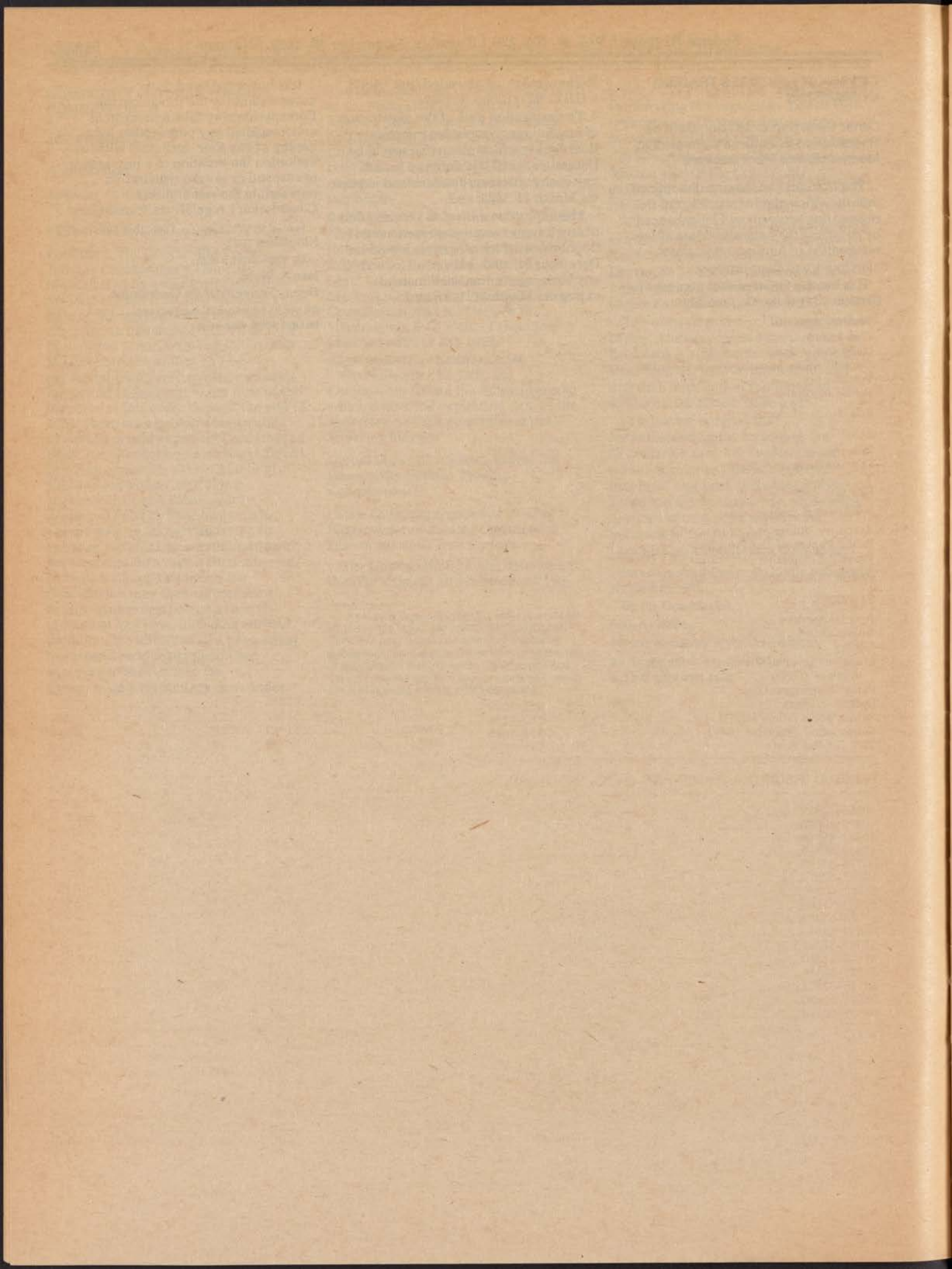
By the Commission.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 82-32160 Filed 12-22-82; 8:45 am]

BILLING CODE 6351-01-M



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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.) Documents normally scheduled for publication

on a day that will be a Federal holiday will be published the next work day following the holiday.

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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_____	Title 21—Food and Drugs (Part 1300 to end)	5.50	_____
_____	Title 26—Internal Revenue Part 1(1.301 to 1.400)	7.00	_____
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