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federal register

Tuesday
December 28, 1982

Selected Subjects

Aged
Health and Human Services Department

Animal Drugs
Food and Drug Administration

Banks, Banking
Depository Institutions Deregulation Committee

Coal Mining
Surface Mining Reclamation and Enforcement Office

Color Additives
Food and Drug Administration

Exports
International Trade Administration

Food Grades and Standards
Food and Drug Administration

Food Stamps
Food and Nutrition Services

Health Care
Veterans Administration

Health Records
Occupational Safety and Health Administration

Labeling
Food and Drug Administration

Marine Resources
National Oceanic and Atmospheric Administration

Milk Marketing Orders
Agricultural Marketing Service

CONTINUED INSIDE

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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.

Selected Subjects

Motor Vehicles
Environmental Protection Agency

Noise Control
Environmental Protection Agency

Nuclear Power Plants and Reactors
Nuclear Regulatory Commission

Organization and Functions (Government Agencies)
Agriculture Department

Political Activities (Government Employees)
Personnel Management Office

Prescription Drugs
Drug Enforcement Administration

Recreation Areas
Engineers Corps

Reporting and Recordkeeping Requirements
Civil Aeronautics Board

Securities
Securities and Exchange Commission

Wine
Alcohol, Tobacco and Firearms Bureau

Contents

Federal Register
Vol. 47, No. 249
Tuesday, December 28, 1982

The President
ADMINISTRATIVE ORDERS
57653 China, renewal of trade agreements (Memorandum of Dec. 23, 1982)
EXECUTIVE ORDERS
57651 Social Security Reform, National Commission on (EO 12397)

Executive Agencies

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
57728 Tennessee Valley

Agriculture Department
See also Agricultural Marketing Service; Food and Nutrition Service.
RULES
Organization and functions:
57656 Contract Appeals Board

Alcohol, Tobacco and Firearms Bureau
RULES
Alcohol; viticultural area designations:
57694 California Shenandoah Valley, Calif.
57696 Shenandoah Valley, Va. and W.Va.

Army Department
See also Engineers Corps.
NOTICES
57749 Agency forms submitted to OMB for review
Meetings:
57749 Science Board (2 documents)
57750 Privacy Act; systems of records

Centers for Disease Control
NOTICES
Grants and cooperative agreements:
57774 Occupational safety and health field research projects (NIOSH); surveillance program; correction
Meetings:
57774 Immunization Practices Advisory Committee

Civil Aeronautics Board
PROPOSED RULES
57733 Foreign air freight forwarders and cooperative shippers associations, all-cargo carriers, and certificated air carriers; reduction of reporting and recordkeeping requirements
NOTICES
57744 Commuter fitness determinations
Hearings, etc.:
57744 Newark-London back-up case

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
57744 Alabama
57744 South Carolina

Commerce Department
See also International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Adminstration.
NOTICES
57747 Advisory committees; availability of report on closed meetings
57746 Agency forms submitted to OMB for review

Copyright Royalty Tribunal
NOTICES
Cable royalty fees:
57748 Distribution procedures (1980)

Defense Department
See also Army Department; Engineers Corps.
NOTICES
Meetings:
57756 Science Board task forces
57755 Privacy Act; systems of records

Depository Institutions Deregulation Committee
PROPOSED RULES
Interest on deposits:
57729 Deposit rate ceilings deregulation

Drug Enforcement Administration
RULES
Schedules of controlled substances:
57693 Triazolam

Economic Regulatory Administration
NOTICES
57756 Natural gas imports; Canadian and Mexican importation; inquiry and conference

Employment and Training Administration
NOTICES
Adjustment assistance:
57787 Canton Malleable Iron Co.
Unemployment compensation; extended benefit periods:
57788 Oregon

Energy Department
See Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission.

Energy Research Office
NOTICES
57762 Nuclear-related activities, occupational employment survey (Form ER–828), proposed; inquiry

Engineers Corps
RULES
57703 Falls of the Ohio National Wildlife Conservation Area; protection, use, and management; interim rule

Environmental Protection Agency
RULES
Noise abatement programs:
57709 Portable air compressors, trucks, hearing protectors, truck mounted solid waste compactors, and motorcycles, etc.; product verification testing and reporting and recordkeeping requirements revoked
PROPOSED RULES
Hazardous waste programs; interim authorizations; various States:
57741 Washington; hearing; correction
Motor vehicle fuel economy:
57742 Retrofit devices; test procedures and evaluation criteria; amendment and clarification

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
57757 Algonquin Gas Transmission Co.
57758 Atkins, Callis H.
57758 Barrett, Harold T., Jr.
57759 Cliffs Electric Service Co.
57759 Consumers Power Co.
57759 Gas Gathering Corp.
57758 Kansas City Board of Public Utilities
57760 Montana Power Co.
57760 Natural Gas Pipeline Co. of America
57761 New England Power Pool
57761 Pennsylvania Power & Light Co.
57761, 57762 United Gas Pipe Line Co. (2 documents)
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
57762 Coronado Shores Condominium Association No. 1
57762 Genstar Building Materials Co.

Federal Home Loan Bank Board
NOTICES
Federal home loan bank system:
57768 Processing and settlement of items and demand deposit services; fee schedule

Federal Reserve System
NOTICES
57773 Agency forms submitted to OMB for review
Applications, etc.:
57773 Arthur Bancshares Corp. et al.
57773 Mellon National Corp.

Fish and Wildlife Service
NOTICES
57779 Endangered and threatened species permit applications

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
57692 Nitrofurazone solution
Color additives:
57681 D&C Red No. 6 and D&C Red No. 7; permanent listing
57691 D&C Red No. 6 and D&C Red No. 7; provisional listing; postponement of closing date
Food additives:
57692 Adjuvants, production aids, and sanitizers; tetrakis(methylene(3,5-di-tert-butyl-4-hydroxyhydrocinnamate)) methane; correction
Food for human consumption:
57692 Grapefruit juice; identity standard; effective date confirmed
57692 Pears, canned; identity and quality standards; effective date confirmed
PROPOSED RULES
Drug labeling:
57886 Salicylate-containing products; Reye syndrome warning; advance notice
GRAS or prior-sanctioned ingredients:
57738 Ammonium bicarbonate, ammonium carbonate, ammonium chloride, ammonium hydroxide, and mono and dibasic ammonium phosphate; tentative final rule; correction
Human drugs:
57738 Oral health care products (OTC); monograph establishment; extension of time
57738 Topical antifungal, topical antimicrobial, external analgesic, and skin protectant drug products (OTC); monograph establishment; advance notice; extension of time
NOTICES
Food additives, petitions filed or withdrawn:
57774 Ciba-Geigy Corp.
57775 M & T Chemicals, Inc.
57775 Toyo Seikan Kaisha, Ltd.; amendment
Meetings:
57775 Consumer information exchange

Food and Nutrition Service
RULES
Food stamps:
57666 State agency liabilities and Federal sanctions, performance reporting system, etc.; corrections and clarifications
PROPOSED RULES
Food stamp program:
57725 Adverse action and mass change notification

General Accounting Office
RULES
57655 Conflict of interests: CFR Part removed

Health and Human Services Department
See also Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration.
RULES
57850 Nondiscrimination on basis of age in federally assisted programs

Health Care Financing Administration
NOTICES
Medicare and Medicaid:
57775 Eligibility, benefits, reimbursement, and administration

Interior Department
See Fish and Wildlife Service; Land Management Bureau; National Park Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office.

Internal Revenue Service
NOTICES
Authority delegations:
57815 Chief Counsel et al.; execute consents fixing period of limitation on assessment or collection

International Trade Administration
RULES
Export licensing:
57671 Enforcement provisions
NOTICES
Export privileges, actions affecting:
57744 Toshiba Ampex Co., Ltd.

Interstate Commerce Commission
NOTICES
Motor carriers:
57780, 57781 Finance applications (2 documents)
57781, 57784 Permanent authority applications (2 documents)
57785 Permanent authority applications; operating rights republication
57785 Permanent authority applications; restriction removals
Railroad operation, acquisition, construction, etc.:
57786 Angelina & Neches River Railroad Co.; trackage rights exemption
57786 Chicago & North Western Transportation Co.; abandonment exemption
57786 Soo Line Railroad Co.; abandonment exemption

Justice Department
See Drug Enforcement Administration; Juvenile Justice and Delinquency Prevention Office.

Juvenile Justice and Delinquency Prevention Office
NOTICES
Meetings:
57787 Juvenile Justice and Delinquency Prevention National Advisory Committee; location change

Labor Department
See also Employment and Training Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration; Pension and Welfare Benefit Programs Office.

Land Management Bureau
RULES
Public Land orders:
Alaska [Editorial Note: This document, appearing at page 57275 in the **Federal Register** of December 23, 1982, was mistakenly listed under Interior Department in that issue's table of contents.]

Merit Systems Protection Board
NOTICES
57792 Privacy Act; systems of records; annual publication

Mine Safety and Health Administration
PROPOSED RULES
Metal and nonmetallic mine safety:
57883 Fire prevention and control safety standards; preproposal draft availability

National Bureau of Standards
NOTICES
Information processing standards, Federal:
57745 Hydrologic units in U.S. and Caribbean outlying areas, codes for identification; inquiry

National Oceanic and Atmospheric Administration
PROPOSED RULES
57904 Deep seabed mining; commercial recovery of hard mineral resources; advance notice
NOTICES
Fishery conservation and management:
57746 Alaska halibut fishery moratorium; North Pacific Fishery Management Council; hearings

National Park Service
NOTICES
Historic Places National Register; pending nominations:
57779 Florida et al.

National Science Foundation
NOTICES
Meetings:
57805 Precollege Education in Mathematics, Science, and Technology Commission

Nuclear Regulatory Commission
RULES
Production and utilization facilities, domestic licensing:
57670 Emergency plans and procedures; filing of copies of changes
NOTICES
Applications, etc.:
57806 Commonwealth Edison Co.
57806 Connecticut Yankee Atomic Power Co.
57807 Public Service Electric & Gas Co. et al.
Environmental statements; availability, etc.:
57807 Public Service Co. of New Hampshire et al.
Meetings:
57805 Nuclear Reactor Licensing Reform Proposals Ad Hoc Review Committee
57805 Reactor Safeguards Advisory Committee

Occupational Safety and Health Administration
RULES
57699 Occupational injuries and illnesses; exemption from recordkeeping requirements
PROPOSED RULES
Health and safety standards:
57739 Rim wheels, multi-piece and single piece; servicing; extension of time

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; prohibited transaction exemptions:
57702 Girard Bank Retirement Plan et al.

Pension Benefit Guaranty Corporation
RULES
Single-employer plans:
57788 Maximum guaranteeable benefit; correction

Personnel Management Office
RULES
57655 Authority citation and technical corrections

PROPOSED RULES
57724 Political activity of Federal employees; workplace solicitation and collection of political contributions prohibited
Reemployment rights:
57724 Senate Committee on Appropriations and Economic Stabilization Program employees; correction
NOTICES
Excepted service:
57807 Schedules A, B, and C; positions placed or revoked, update

Postal Service
NOTICES
Rates and fees:
57811 Preferred-rate mailers; rate increase

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
57778 Yellowstone Diversion Project, Mont.; hearing

Securities and Exchange Commission
RULES
Securities:
57679 Pro rata rule
NOTICES
Hearings, etc.:
57812 Consolidated Natural Gas Company et al.
57813 Sonat Offshore Drilling Inc.
57818 Meetings; Sunshine Act
Self-regulatory organizations; proposed rule changes:
57812 National Association of Securities Dealers, Inc.
57813 Philadelphia Stock Exchange, Inc.

State Department
NOTICES
Meetings:
57814 International Telegraph and Telephone Consultative Committee (2 documents)

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program submission; various States:
57739 Illinois
57741 Oklahoma; cancellation of comment period and hearing

Synthetic Fuels Corporation
NOTICES
57814 Project proposals; third solicitation; programmatic objectives statement; microfiche copies submission; extension of time

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, or man-made textiles:
57748 China

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
57814 Articles eligible for duty-free treatment, etc.

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; Internal Revenue Service.
NOTICES
Organization, functions, and authority delegations:
57815 Internal Revenue Commissioner; conduct tax audits, tax checks, and income filing record checks

Veterans Administration
RULES
Medical benefits:
57705 Alcohol and drug dependence or abuse treatment and rehabilitation in residential and nonresidential facilities by contract

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Administrative Orders:

Memorandums:

December 23, 1982 57653

Executive Orders:

12335 (Amended by EO 12397) 57651

12397 57651

4 CFR

12 57655

5 CFR

213 57655

315 57655

351 57655

551 57655

734 57655

738 57655

752 57655

950 57655

Proposed Rules:

352 57724

733 57724

7 CFR

24 57656

273 57666

274 57666

275 57666

276 57666

Proposed Rules:

272 57725

273 57725

1011 57728

10 CFR

50 57670

12 CFR

Proposed Rules:

1204 57729

14 CFR

Proposed Rules:

241 57733

248 57733

291 57733

297 57733

15 CFR

368 57671

369 57671

370 57671

372 57671

373 57671

387 57671

388 57671

Proposed Rules:

971 57904

17 CFR

240 57679

21 CFR

74 57681

81 (2 documents) 57681, 57691

82 57681

145 57692

146 57692

178 57692

524 57692

1308 57693

Proposed Rules:

184 57738

201 57886

333 57738

347 57738

348 57738

356 57738

27 CFR

9 (2 documents) 57694, 57696

29 CFR

1904 57699

2621 57702

Proposed Rules:

1910 57739

30 CFR

Proposed Rules:

55 57883

56 57883

57 57883

913 57739

936 57741

36 CFR

331 57703

38 CFR

17 57705

40 CFR

204 57709

205 57709

211 57709

Proposed Rules:

123 57741

610 57742

45 CFR

91 57850

Federal Register
Vol. 47, No. 249
Tuesday, December 28, 1982

Presidential Documents

Title 3—

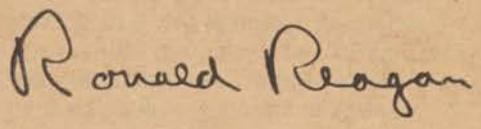
The President

Executive Order 12397 of December 23, 1982

National Commission on Social Security Reform

By the authority vested in me as President by the Constitution and laws of the United States of America, and specifically the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), it is hereby ordered that Section 2(b) of Executive Order No. 12335, establishing the National Commission on Social Security Reform, is hereby amended to provide as follows:

"The Commission shall make its report to the President by January 15, 1983.".



THE WHITE HOUSE,
December 23, 1982.

[FR Doc. 82-35230
Filed 12-23-82; 1:21 pm]
Billing code 3195-01-M

Presidential Documents

Memorandum of December 23, 1982

Renewal of Trade Agreements With the People's Republic of China—Finding and Determination Under Subsection 405(b)(1) of the Trade Act of 1974

Memorandum for the United States Trade Representative

Pursuant to my authority under Section 405 of the Trade Act of 1974 (19 U.S.C. 2435), I find that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement on Trade Relations between the United States of America and the People's Republic of China. I further determine that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations have been satisfactorily reciprocated by the People's Republic of China.

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

Ronald Reagan

THE WHITE HOUSE,
Washington, December 23, 1982.

[FR Doc. 82-35311
Filed 12-27-82; 10:45 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 47, No. 249
Tuesday, December 28, 1982

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.

GENERAL ACCOUNTING OFFICE

4 CFR Part 12

General Procedures; Code of Ethics

AGENCY: General Accounting Office.
ACTION: Final rule.

SUMMARY: This rule removes from the CFR, regulations setting forth the code of ethics of the General Accounting Office. Because of frequently changing requirements in GAO, these regulations will no longer be published in the **Federal Register**; instead, they will be set forth in GAO Orders 2735.1, 2735.2, and 2735.3. This will simplify the process for revising these regulations.

EFFECTIVE DATE: December 28, 1982.

FOR FURTHER INFORMATION CONTACT: Frances A. McCoy, Personnel Management Specialist, Personnel, United States General Accounting Office, Washington, D.C. (Area Code 202–275–5949).

Accordingly, Title 4 CFR, Part 12 is removed.

PART 4—[REMOVED]

(Sec. 311, 42 Stat. 25, as amended (31 U.S.C. 52; interpret or apply 18 U.S.C. 201–218)).

Charles A. Bowsher,
Comptroller General of the United States.

[FR Doc. 82-35154 Filed 12-27-82; 8:45 am]
BILLING CODE 1610-01-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213, 315, 351, 551, 734, 738, 752, and 950

Corrections; Technical Amendments

AGENCY: Office of Personnel Management.
ACTION: Final rule, corrections.

SUMMARY: The Office of Personnel Management is correcting minor inaccuracies and incomplete authority citations in its regulations under Title 5 of the Code of Federal Regulations (5 CFR). These amendments make no substantive changes to the regulations, but are issued to improve the technical integrity of 5 CFR by eliminating errors caused through administrative oversight.

EFFECTIVE DATE: December 28, 1982.

FOR FURTHER INFORMATION CONTACT: Laurel M. Burcham, (202) 254–5966.

SUPPLEMENTARY INFORMATION: In order to correct inaccuracies and omissions in its regulations, the Office of Personnel Management is making the following changes to Title 5 of the Code of Federal Regulations:

(1) In the heading of § 213.3201, the word "possible" is being replaced by the word "practicable." In final regulations published by OPM on April 3, 1982, (46 FR 20146) the word "practicable" appeared correctly in the table of contents but the word "possible" was inadvertently used in the section heading.

(2) In § 351.301, a reference to § 351.203(i)(1) is being changed to § 351.203(h) due to a redesignation of that paragraph published on April 29, 1982 (45 FR 28301).

(3) A final rule correction published on August 21, 1981, (46 FR 42437) amended § 752.401 by revising paragraph (c)(8) rather than redesignating it as (c)(9). The paragraph replaced by the revision is being reincorporated as (c)(9).

(4) The authority citations for several parts are being revised to reference the applicable sections of the United States Code or to correct Executive order citations.

Pursuant to section 553 of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking and the 30-day delay in effectiveness. The amendments are being made effective immediately because the changes involved are technical and clarifying in nature, and make no substantive alterations to the regulations. Publication before December 31, 1982, would enable the amendments to be incorporated in the 1983 edition of 5 CFR.

U.S. Office of Personnel Management.
Donald J. Devine,
Director.

Accordingly, OPM is amending Title 5 of the Code of Federal Regulations as follows:

PART 213—EXCEPTED SERVICE

§ 213.3201 [Amended]

1. The heading for § 213.3201 is amended by removing the word "possible" and inserting in its place the word "practicable."

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

2. The authority for § 315.708 is revised to read as follows:

§ 315.708 Conversion based on service as a Presidential Management Intern.

* * * * *

(E.O. 12364, 47 FR 22931, May 24, 1982)

PART 351—REDUCTION IN FORCE

§ 351.301 [Amended]

3. In § 351.301, the reference to section "351.203(i)(1)" is removed and section "351.203(h)" is inserted in its place.

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

4. In Part 551, the authority for Subpart B is revised to read as follows:

Subpart B—Exemptions

Authority: Sec 4(f) of the Fair Labor Standards Act as amended by Pub. L. 93–259, enacted April 8, 1974; 29 U.S.C. 204f.

PART 734—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

5. The authority for Part 734 is revised to read as follows:

Authority: Titles II and IV of Pub. L. 95–521 (October 26, 1978), as amended by Pub. L. 96–19 (June 13, 1979); 5 U.S.C. Appendix 201.

PART 738—OFFICE OF GOVERNMENT ETHICS

6. The authority for Part 738 is revised to read as follows:

Authority: Titles II and IV of Pub. L. 95–521 (October 26, 1978), as amended by Pub. L. 96–19 (June 13, 1979) and Pub. L. 96–28 (June 22, 1979); 5 U.S.C. Appendix 401.

PART 752—ADVERSE ACTIONS

7. In § 752.401(c), subparagraphs (9) through (14) are redesignated as subparagraphs (10) through (15) respectively; and a new subparagraph (9) is added to read as follows:

§ 752.401 Coverage.

* * * * *

(c) * * *

(9) Cancellation of a promotion to a position not classified prior to the promotion;

* * * * *

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

8. The authority citation for Part 950 is revised to read as follows:

Authority: E.O. 12353, 47 FR 12785, March 25, 1982.

(5 U.S.C. 1103)

[FR Doc. 82-35052 Filed 12-27-82; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 24

Organization and Functions; Rules of Procedure of Board of Contract Appeals, Department of Agriculture

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the jurisdiction of the Agriculture Board of Contract Appeals by deleting that provision related to referrals to the Board from the Commodity Credit Corporation and by excluding from the jurisdiction of the Board appeals from decisions of Forest Service officers with respect to disputes arising under grazing and special use permits issued by the Forest Service. Rules of Procedure to be followed in proceedings governed by the Contract Disputes Act are added to the presently published rules governing proceedings under the Board's nonstatutory jurisdiction. These changes result from the enactment of the Contract Disputes Act, review of existing procedures, and consideration of USDA and public experience since 1974 with current procedures.

EFFECTIVE DATE: January 27, 1983.

FOR FURTHER INFORMATION CONTACT: Administrative Judge Jewel F. Lewis, Chair, USDA Board of Contract Appeals, (202) 447-2066 or (202) 447-7023.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published on pages 36554-36564 of the **Federal Register** of August 20, 1982, and invited comments for 60 days ending October 19, 1982. No public comments were received.

Only one change has been made to the proposed rules. An exclusion to the Board's nonstatutory jurisdiction has been reinstated at section 24.4(b)(2) to clarify that management and policy decisions reviewable under Forest Service administrative appeal procedures found at 36 CFR 211.19 (proposed to be revised as 36 CFR 211.18) are not within the Board's jurisdiction. The language used is identical to the exclusion presently found at § 24.4(e)(2) and was reinstated to make clear no change is intended in this regard.

This rule will clarify the Agriculture Board of Contract Appeal's jurisdiction and procedures as well as remove confusion about the jurisdictional responsibility within the U.S. Department of Agriculture for review of disputes on grazing and special use permits by placing under 36 CFR 211.18 all aspects of appeals relating to grazing and special use permits which currently would be brought under § 24.4(e).

Regulatory Impact

This action is a delegation of administrative authority and is, therefore, exempt from the requirements of Executive Order 12291.

Small Entity Impact

This rule will not have a significant economic impact on a substantial number of small entities. Therefore, an analysis of impacts on small entities is not required.

Environmental Impact

This rule relates to delegation of authority and the internal administration of the U.S. Department of Agriculture. Therefore, it does not constitute a major federal action affecting the quality of the human environment.

Paperwork Burden

This rule will impose no additional paperwork requirements on individuals or groups who appeal decisions of the Department of Agriculture to the Board of Contract Appeals, Department of Agriculture.

List of Subjects in 7 CFR Part 24

Administrative practice and procedure, Agriculture, Government contracts, Organization and functions (Government agencies).

For the reasons set forth above, Part 24, Subpart A—Organization and Functions, and Subpart B—Rules of Procedure, of Subtitle A of Title 7, Code of Federal Regulations is revised to read as follows:

PART 24—BOARD OF CONTRACT APPEALS, DEPARTMENT OF AGRICULTURE

Subpart A—Organization and Functions

Sec.

24.1 General.
24.2 Composition of the Board.
24.3 Presiding Administrative Judge.
24.4 Jurisdiction.
24.5 Time for filing notice of appeal.
24.6 Board location and address.
24.7 Public information.
24.8 Rules of procedure.
24.9 Definitions.

Subpart B—Rules of Procedure

24.21 Rules of Procedure of Agriculture Board of Contract Appeals—AGBCA.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c) sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b); 30 Stat. 35, as amended (16 U.S.C. 551); 50 Stat. 525, as amended (7 U.S.C. 1011(f)); secs. 9, 10, 62 Stat. 1072, 1073 (15 U.S.C. 714g, 714h); sec. 8, 92 Stat. 2383 (41 U.S.C. 601-613).

Subpart A—Organization and Functions

§ 24.1 General.

The Board of Contract Appeals, United States Department of Agriculture (referred to as the "Board") is an agency of the Department established by the Secretary of Agriculture in accordance with the requirements of the Contract Disputes Act of 1978 (Pub. L. 95-563, 41 U.S.C. 601-613). The provisions of 5 U.S.C. 551-559 (Administrative Procedure Act, 80 Stat. 378, as amended) are not applicable to proceedings before the Board except for the requirements under 5 U.S.C. 552 (81 Stat. 54) respecting public information, agency rules, opinions, orders, and records.

§ 24.2 Composition of the Board.

The Board consists of a Chair, Vice Chair, and other members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. The Chair shall manage the business and operations of the Board, assign cases to members, and establish panels for cases. Except as provided in Rule 12.2 the Small Claims (Expedited) Procedure, and Rule 12.3 the Accelerated Procedure, § 24.21(b), and in Rule 9, Accelerated Procedure, § 24.21(c), decisions of the Board will be rendered by a panel of three Administrative Judges, and the decision

of the majority of the panel will constitute the decision of the Board. The Vice Chair shall perform the functions of the Chair upon request of the Chair or in the event of absence or inability of the Chair to act. Members are designated Administrative Judges.

§ 24.3 Presiding Administrative Judge.

The Chair acts as Presiding Administrative Judge, or designates a member of the Board to so act, in each proceeding. The Presiding Administrative Judge has power to:

(a) Rule upon motions and requests;

(b) Adjourn the hearing from time to time and change the time and place of hearing;

(c) Administer oaths and affirmations and take affidavits;

(d) Receive evidence;

(e) Order the taking of depositions;

(f) Admit or exclude evidence;

(g) Hear oral argument on facts or law;

(h) Consolidate appeals filed by two or more appellants; and

(i) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

In cases considered by the Board under § 24.4(b) the Chair is hereby delegated authority to request subpoenas pursuant to 5 U.S.C. 304.

§ 24.4 Jurisdiction.

(a) *Statutory.* Pursuant to the Contract Disputes Act of 1978 (Pub. L. 95–563, 41 U.S.C. 601–613), the Board shall consider and determine appeals from decisions of contracting officers relating to contracts entered into on or after March 1, 1979, and, at the contractor's election, contracts entered into prior to March 1, 1979, with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter. For purposes of this paragraph (a) the term "contracts" shall mean express or implied contracts made by the Department of Agriculture, agencies of the Department and the Commodity Credit Corporation, or by any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal, for:

(1) The procurement of property, other than real property in being;

(2) The procurement of services;

(3) The procurement of construction, alteration, repair or maintenance of real property; or

(4) The disposal of personal property.

(b) *Non-statutory.* (1) Pursuant to the Disputes Article of contracts, other than timber sale contracts, entered into prior to March 1, 1979, made by the Department of Agriculture, agencies of the Department and the Commodity Credit Corporation, the Board shall consider and determine appeals from decisions of contracting officers arising under such contracts, unless election by the contractor brings the appeal under the statutory jurisdiction described in paragraph (a) of this section.

(2) The Board shall have jurisdiction of appeals from decisions of contracting officers of the Forest Service (as defined in § 24.9), in which the issue under appeal arises under the terms or provisions of timber sale contracts, except that:

(i) Appeals subject to Board jurisdiction involving Forest Service decisions under § 24.4(a), (c) or (d) shall be excluded from jurisdiction under this paragraph.

(ii) Appeals subject to administrative review under 36 CFR 211.18 involving management and policy decisions and not involving breach of contract shall be excluded from jurisdiction under this paragraph, and

(iii) No appeal under this paragraph shall lie where the relief sought is reformation of contract, monetary damages or amendment of contract at the discretion of the Forest Service to extend the term of the contract.

(c) *Contract Work Hours Standards Act.* The Board shall have jurisdiction of appeals taken from decisions of contracting officers of the Department of Agriculture under the Contract Work Hours Standards Act (Pub. L. 87–581, August 13, 1962, 76 Stat. 357; 40 U.S.C. 327–332).

(d) *Debarment.* The Board shall have jurisdiction to hear and determine the issue of debarment and the period thereof, if any, on an appeal by a person debarred: (1) By an authorized official of the Commodity Credit Corporation under 7 CFR 1407.6(d), or (2) by an authorized official of the Department of Agriculture, under 41 CFR 4–1.604–1(b), or (3) by an authorized official of the Farmers Home Administration, under Subpart C of Part 1918, Chapter XVIII of this title.

§ 24.5 Time for filing notice of appeal.

A notice of appeal under § 24.4(a) shall be filed within 90 days from the date of receipt of a contracting officer's decision. (41 U.S.C. 606.) a notice of appeal under § 24.4(b)(1) shall be filed within 30 days from the date of receipt of the decision of the contracting officer or within such different time as may be prescribed in the contract or other applicable regulation of the Department. A notice of appeal under § 24.4(b)(2) shall be filed within 30 days from the date of receipt of the decision of the contracting officer of the Forest Service. The time for filing a notice of appeal shall not be extended by the Board.

§ 24.6 Board location and address.

The Board of Contract Appeals is located in Washington, D.C. All correspondence and all documents to be filed with the Board should be addressed to the Board of Contract Appeals, United States Department of Agriculture, Washington, D.C. 20250. The Board's telephone number is 202–447–7023.

§ 24.7 Public information.

(a) The records of the Board are open to the public for inspection and copying at the office of the Board. Decisions and rulings of the Board shall be published from time to time and copies made available to the public upon request at cost of duplication except that the Board shall, in its discretion, have authority to make copies of decisions and rulings available at no charge in accordance with the Record Copying Policy and Procedures of the Department (39 FR 26050). Hearings before the Board shall be open to the public.

(b) Information which is to be made available for public inspection and copying under provisions of 5 U.S.C. 552(a)(2) and 7 CFR 1.2 may be obtained at the office of the Board. The address of the Board is set forth in § 24.6. Except for such information as is generally available to the public, requests should be in writing and submitted in accordance with 7 CFR 1.3 and paragraphs (c) and (d) of this § 24.7.

(c) Facilities for copying are available at the office of the Board.

(d) Facilities for inspection and copying are available during established office hours for the Board, usually 8:30 a.m. to 5:00 p.m., Monday through Friday. The Department of Agriculture has established a schedule of fees for copies of information. The Board charges for copies of records in accordance with the Department fee schedule.

(e) The Vice Chair is authorized to receive requests for records submitted in accordance with 7 CFR 1.3(a), and to make determinations regarding whether to grant or deny requests for records exempt from mandatory disclosure under the provisions of 5 U.S.C. 552(b). This official is authorized to (1) Extend the ten-day administrative deadline for reply pursuant to 7 CFR 1.8, (2) make discretionary releases pursuant to 7 CFR 1.11(b) of records exempt from mandatory disclosure, and (3) make determinations regarding the charging of fees.

(f) Appeals from denials of requests submitted under paragraph (c) of this section shall be submitted in accordance with 7 CFR 1.3(e) to the Chair, Board of Contract Appeals, Department of Agriculture, 12th Street and Independence Avenue, SW, Washington, D.C. 20250. The Chair shall determine whether to grant or deny the appeal and shall also make all necessary determinations relating to an extension of the twenty-day administrative deadline for reply pursuant to 7 CFR 1.8, discretionary release pursuant to 7 CFR 1.11(b) of records exempt from mandatory disclosure under 5 U.S.C. 552(b), and the charging of appropriate fees.

§ 24.8 Rules of procedure.

The Chair of the Board shall prescribe its Rules of Procedure and publish such Rules in Subpart B of this Part 24 and may prescribe and so publish amendments from time to time. The Rules of Procedure and any amendments thereto shall be consistent with this subpart.

§ 24.9 Definitions.

"Board" means the Board of Contract Appeals established under this Subpart.

"Contract" means any agreement entered into the Department or its agencies or authorized officials with any person having the legal effect of a contract between the Department and such person.

"Contracting officer" means any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts and make determinations and findings with respect thereto and includes the authorized representative of the contracting officer, acting within the limits of his/her authority. For purposes of appeals under § 24.4(b)(2), "contracting officer of the Forest Service" means a Forest Supervisor, Forest and Range Experiment Station Director, Forest Products Laboratory Director, Area Director, Regional Forester, or the Chief, Forest Service, as the case may be, who is the person designated as the contracting officer under the contract, or any officer or employee of the Forest Service who is authorized to act in his/her stead.

"Department" means the United States Department of Agriculture.

"Government attorney" means the attorney of the Department designated to handle a particular appeal on behalf of the contracting officer.

"Person" means any individual, partnership, public or private corporation, association, agency or other legal entity.

Subpart B—Rules of Procedure

§ 24.21 Rules of Procedure of Agriculture Board of Contract Appeals—AGBCA.

(a) *Preface to Rules.*—(1) *Time, computation and extensions.* (i) All time limitations specified for various procedural actions are computed as maximums and are not to be fully exhausted if the action described can be accomplished in a lesser period. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time by either party shall be in writing and state good cause for the requested extension. The Board may grant such extensions on good cause shown except that the Board shall not extend the time prescribed under 7 CFR 24.5 for taking an appeal.

(ii) Except as otherwise provided by law, in computing any period of time prescribed by these rules or any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day. If mailing is required, the date of the postmark shall be treated as the date action was taken.

(2) *Ex parte Communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members not to ex parte communication concerning the Board's administrative functions or procedures.

(b) *Rules of Procedure Applicable to Appeals under the Contract Disputes Act of 1978, 41 USC 601 et seq.* (7 CFR 24.4(a)).

INDEX

Preliminary Procedures

Rule 1. Appeals, How and When Taken.
Rule 2. Notice of Appeal, Contents of.
Rule 3. Docketing of Appeals.
Rule 4. Preparation, Content, Organization, Forwarding, and Status of Appeal File.
Rule 5. Dismissal for Lack of Jurisdiction.
Rule 6. Pleadings.
Rule 7. Amendments of Pleadings or Record.
Rule 8. Hearing Election.
Rule 9. Prehearing Briefs.
Rule 10. Prehearing or Presubmission Conference.
Rule 11. Submission Without a Hearing.
Rule 12. Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures.
Rule 12.1. Elections To Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures.
Rule 12.2. The SMALL CLAIMS (EXPEDITED) Procedure.
Rule 12.3. The ACCELERATED Procedure.
Rule 12.4. Motions for Reconsideration in Rule 12 cases.
Rule 13. Settling the Record.
Rule 14. Discovery—Depositions.
Rule 15. Interrogatories to Parties, Admission of Facts, and Production and Inspection of Documents.
Rule 16. Service of Papers other than Subpoenas.

Hearings

Rule 17. Where and When Held.
Rule 18. Notice of Hearings.
Rule 19. Unexcused Absence of a Party.
Rule 20. Hearings: Nature; Examination of Witnesses.
Rule 21. Subpoenas.
Rule 22. Copies of Papers.
Rule 23. Posthearing Briefs.
Rule 24. Transcript of Proceedings.
Rule 25. Withdrawal of Exhibits.

Representation

Rule 26. The Appellant
Rule 27. The Government.

Miscellaneous

Rule 28. Decisions.
Rule 29. Motion for Reconsideration.
Rule 30. Dismissal without Prejudice.
Rule 31. Dismissal or Default for Failure To Prosecute or Defend.
Rule 32. Remand from Court.
Rule 33. Sanctions.
Rule 34. Applicability of These Rules.

RULES

Preliminary Procedures

Rule 1. Appeals, How and When Taken

(a) Notice of Appeal—90 days. Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Failure to Issue CO decision—60 days—$50,000 or less. Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (a) of this Rule 1, citing the failure of the contracting officer to issue a decision.

(c) Failure to Issue CO decision—Reasonable Time—more than $50,000. Where the contractor has submitted a claim in excess of $50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this Rule 1, citing the failure to issue a decision.

(d) Stay Pending Final CO Decision. Upon docketing of appeals filed pursuant to paragraphs (b) or (c) of this Rule 1, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

Rule 2. Notice of Appeal, Contents of

A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and agency or bureau involved in the dispute, the decision from which the appeal is taken, and the amount in dispute if known. The notice of appeal should be signed by the appellant (the contractor making the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

Rule 3. Docketing of Appeals

When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant, with a copy of these rules, and to the contracting officer.

Rule 4. Preparation, Content, Organization, Forwarding, and Status of Appeal File

(a) Duties of Contracting Officer. Within 30 days of receipt of a letter from the Board transmitting the complaint, the contracting officer shall assemble and transmit to the Board through agency channels an appeal file in triplicate consisting of all documents pertinent to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract, including specifications and pertinent amendments, plans, and drawings;

(3) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decisions was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered relevant to the appeal.

(b) Duties of the Appellant. Within 30 days after receipt from the Board of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board in triplicate any documents not contained therein which the appellant considers relevant to the appeal.

(c) Organization of Appeal File. Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) Lengthy Documents. Upon request by either party, the Board may waive the requirement to furnish to the other party through the Board copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted such party shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) Status of Documents in Appeal File. Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing, or if there is no hearing, of settling the record. If such objection is made the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence either prior to hearing or prior to closing the record if there is no hearing, in accordance with Rules 13 and 20.

(f) Dispensing with Appeal File requirements. Notwithstanding the foregoing, the filing of the Rule 4(a) and (b) documents may be dispensed with by the Board either upon request of the appellant in the notice of appeal or thereafter upon stipulation of the parties.

Rule 5. Dismissal for Lack of Jurisdiction

Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

Rule 6. Pleadings

(a) Appellant—Complaint. Except as provided in Rule 12.2(b) and Rule 12.3(b), within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a Complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a Complaint, although no particular form is required. Upon receipt of the Complaint, the Board shall serve a copy of it upon the Government. Should the Complaint not be filed within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its Complaint and the Government shall be so notified.

(b) Government—Answer. Within 30 days from receipt of the Complaint, or the aforesaid notice from the Board, the Government, shall prepare and file with the Board an original and two copies of an Answer thereto. The Answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the Answer, the Board shall serve a copy upon appellant. Should the Answer not be filed within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

Rule 7. Amendments of Pleadings or Record

The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the Complaint or Answer, or to reply to an Answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

Rule 8. Hearing Election

After filing of the Government's Answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

Rule 9. Prehearing Briefs

Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

Rule 10. Prehearing or Presubmission Conference

(a) Conference. Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Ruels 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an Administrative Judge or examiner of the Board for a conference to consider:

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements and rulings on

admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) The possibility of agreement disposing of any or all of the issues in dispute; and

(6) Such matters as may aid in the disposition of the appeal.

(b) Written results of conference. The Administrative Judge or examiner of the Board shall make such rulings and orders as may be appropriate to achieve settlement by agreement of the parties or to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the Administrative Judge or examiner and this writing shall thereafter constitute a part of the record.

Rule 11. Submission Without a Hearing

Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

Rule 12. Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures

Notwithstanding any other provisions of these Rules of Procedure, the SMALL CLAIMS (EXPEDITED) and ACCELERATED procedures shall be available solely at the election of the appellant.

Rule 12.1 Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures

(a) SMALL CLAIMS (EXPEDITED)—$10,000 or less. In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election. The details of this procedure appear in Rule 12.2.

(b) ACCELERATED—$50,000 or less. In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election. The details of this procedure appear in Rule 12.3.

(c) Time for Election. The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing the appeal unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board for good cause.

(d) Board Determines Amount in Dispute. In deciding whether the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure is applicable to a given appeal, the Board shall determine the amount in dispute.

Rule 12.2 The SMALL CLAIMS (EXPEDITED) Procedure

(a) Time Periods for Proceedings. In cases proceeding under the SMALL CLAIMS (EXPDITED) procedure, the following time periods shall apply: (1) Within ten days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs;

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) Identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether the appellant wants a hearing, and if so, fix a time and place therefor; (iv) require the Government to furnish all the additional documents relevant to the appeal, and (v) establish an expedited schedule for resolution of the appeal.

(b) Decisions—120 days. Pleadings, discovery and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) Form of Decisions. Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in the Judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the Appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

(d) No Precedent—Not Appealable. A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

Rule 12.3 The ACCELERATED Procedure

(a) Time Periods for Proceedings. In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules, including Rule 4, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(b) Decisions—180 days. Pleadings, discovery and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the dates scheduled, or if no hearing is scheduled, to close the record on a date that will allow decision within the 180-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 180-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record, and the filing of briefs, if any.

(c) Form of decisions. Written decisions by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chair or a Vice Chair or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

Rule 12.4. Motions for Reconsideration in Rule 12 cases

Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be

decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

Rule 13. Settling the Record

(a) Components of the Record. The record upon which the Board's decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogations received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) Closing Dates for Inclusion of Material. Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) Weight Given to Evidence. The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

Rule 14. Discovery—Depositions

(a) General Policy and Protective Orders. The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) When Depositions Permitted. After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) Orders on Depositions. The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) Use as Evidence. No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) Expenses. Each party shall bear its own expenses associated with the taking of any deposition.

(f) Subpoenas. Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

Rule 15. Interrogatories to Parties, Admission of Facts, and Production and Inspection of Documents

After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (a) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 30 days; (b) a request for the admission of specified facts and the authenticity of any documents, to be answered or objected to within 30 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders and of Rule 33 with respect to sanctions.

Rule 16. Service of Papers other than Subpoenas

Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of Complaints, Answers and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

Hearings

Rule 17. Where and When Held

Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

Rule 18. Notice of Hearings

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay.

Rule 19. Unexcused Absence of a Party

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

Rule 20. Hearings: Nature; Examination of Witnesses

(a) Nature of Hearings. Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding Administrative Judge or examiner. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) Examination of Witnesses. Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding Administrative Judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of Title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

Rule 21. Subpoenas

(a) General. Upon written request of either party filed with the recorder, or on the initiative of the Administrative Judge to whom a case is assigned, or who is otherwise designated by the Chair, such Administrative Judge may issue a subpoena requiring:

(1) Testimony at a deposition—the deposing of a witness in the city or county where such witness resides or is employed or transacts business in person, or at another location convenient for such witness that is specifically determined by the Board;

(2) Testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(3) Production of books and papers—in addition to (1) or (2), the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) Voluntary Cooperation. Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) Requests for Subpoenas.

(1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) Requests to Quash or Modify. Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) Form; Issuance.

(1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may, in the Judge's discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) Service.

(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place.

A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) Contumacy or Refusal to Obey a Subpoena. In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

Rule 22. Copies of Papers

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

Rule 23. Posthearing Briefs

Posthearing Briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding Administrative Judge or examiner at the conclusion of the hearing.

Rule 24. Transcript of Proceedings

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under Rule 12.2. Transcripts or copies of the proceedings shall be made available by the Board to the Government attorney. Appellant may order transcripts of the proceedings from the contract reporter at the hearing at actual cost of duplication (Pub. L. 92–463, October 6, 1972, 86 Stat. 770, 5 U.S.C. App. I).

Rule 25. Withdrawal of Exhibits

After a decision has become final, the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

Representation

Rule 26. The Appellant

An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

Rule 27. The Government

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time. Whenever appellant and the Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal. However, if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

Miscellaneous

Rule 28. Decisions

Decisions of the Board will be made in writing and authenticated copies of the decision will be fowarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in Rule 13.

Rule 29. Motion for Reconsideration

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Rule 30. Dismissal Without Prejudice

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause for suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

Rule 31. Dismissal or Default for Failure To Prosecute or Defend

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 33. If good cause is not shown the Board may take appropriate action.

Rule 32. Remand from Court

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

Rule 33. Sanctions

If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

Rule 34. Applicability of These Rules

These Rules of Procedure shall apply to contracts made by agencies described in

Section I, Preface to Rules, for: (1) The procurement of property, other than real property in being; (2) the procurement of services; (3) the procurement of construction, alteration, repair or maintenance of real property; or (4) the disposal of personal property. These Rules shall apply (1) mandatorily, to all appeals relating to contracts entered into on or after March 1, relating to earlier contracts, with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter.

Rules of Procedure Applicable to Appeals pursuant to the Disputes Article of Contracts and not under the Contract Disputes Act of 1978 (7 CFR § 24.4(b).

INDEX

Docketing, pleadings, preliminary procedures

1 Appeals, How taken
2 Notice of Appeal, Contents of
3 Forwarding of Appeals
4 Complaint
5 Appeal File
6 Answer
7 Additional pleadings and motions
8 Hearing election
9 Accelerated procedure
10 Prehearing or presubmission procedures
11 Submission without a hearing
12 Discovery procedures
13 Sanctions
14 Subpoena power

Hearings

15 Hearings, Notice of
16 Unexcused absence of a party
17 Hearings, open to public, verbatim transcript
18 Hearings, Conduct of

Posthearing or postsubmission procedures

19 Posthearing briefs
20 Closing the record
21 Copies of papers
22 Withdrawal of exhibits
23 Decisions
24 Reconsideration, Motion for

Dismissals

25 Dismissals

Miscellaneous

26 Representation of parties

Docketing, pleadings, preliminary procedures

Rule 1. Appeals, How Taken.

Notice of an appeal shall be in writing and the original, together with two copies, shall be mailed or otherwise furnished to the contracting officer from whose decision the appeal is taken, addressed to the Secretary of Agriculture, within the time specified in the contract or allowed by applicable provision of regulation or law. (See 7 CFR § 24.5)

Rule 2. Notice of Appeal, Contents of

A notice of appeal shall clearly identify the decision from which the appeal is taken, the date of decision, the contract number, the agency or field office of the Department cognizant of the dispute and shall indicate that an appeal is thereby intended. The notice of appeal need not follow any prescribed form. It may in the form of a letter. It should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appeallant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in Rule 4 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint if it otherwise fulfills the requirements of a complaint.

Rule 3. Forwarding of Appeals

When a notice of appeal in any form has been received by the contracting officer, the date of mailing (or date of receipt, if otherwise conveyed) shall be endorsed thereon by the contracting officer. The contracting officer shall forward the original and one copy of the notice of appeal to the Board within 10 days through agency channels. The agency office receiving such notice of appeal shall forward the original and one copy to the Board of Contract Appeals, United States Department of Agriculture, Washington, D.C. 20250, not later than 15 days from the date of receipt from its contracting officer. Following receipt by the Board of such notice of appeal, the Board will notify the appellant (contractor) and the contracting officer of the docketing of the appeal and will furnish a copy of these rules to the appellant.

Rule 4. Complaint

A complaint shall be filed by appellant with the Board not later than the date prescribed by letter from the Board except where the Board treats the notice of appeal as the complaint. The complaint shall contain simple, concise and direct statements of each claim and the dollar amount claimed, alleging the basis for each claim with appropriate reference to contract provisions. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. If a complaint is not timely filed, the Board may treat the notice of appeal as the complaint if it deems the issues to be sufficiently defined. The Board will notify the Government attorney of any such determination.

Rule 5. Appeal File

(a) Duties of contracting officer. The contracting officer shall assemble and file with the Board within the time prescribed by letter from the Board, three copies of all documents pertinent to the appeal as an appeal file including as applicable but not necessarily limited to:

(1) The decision and findings of fact from which appeal is taken;

(2) The contract including pertinent specifications, amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

(b) Organization of appeal file. Documents in the appeal file may be originals or legible facsimile or authenticated copies thereof, and shall be arranged in chronological order, where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(c) Board action upon receipt of appeal file. The Board upon receipt of the appeal file from the contracting officer will send a copy thereof to appellant and to the Government attorney. The appellant and the Government attorney may supplement the appeal file by filing with the Board three copies of any additional documents not contained in the appeal file assembled by the contracting officer which appellant or the Government attorney believes are also pertinent to the appeal. Such filings shall be made with the Board within the time prescribed by the Board. The Board upon receipt of any such additional documents will send a copy thereof to the other party.

(d) Status of documents in appeal file. Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or of closing the record in the event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record as evidence.

(e) Lengthy documents. The Board may waive the requirement of including in the copy of the appeal file to be furnished to the other party copies of bulky, lengthy, or out-of-size documents when a party shows to the satisfaction of the Board that providing such documents would impose an undue burden, provided that such documents are available for inspection at the office of the party filing only one copy thereof. Such documents will also be available for inspection at the office of the Board.

Rule 6. Answer.

The Government attorney will be requested by the Board to file an answer on behalf of the contracting officer after the complaint has been filed. The answer shall be filed with the Board within the time prescribed by letter from the Board and shall be in an original and two copies setting forth simple, concise, and direct statements of defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims as appropriate. The Board will send a copy of the answer to appellant. If a counterclaim is filed, an opportunity will be afforded to appellant to file a response. If an answer is not timely filed, the Board may, in its discretion, enter a general denial and so notify the appellant.

Rule 7. Additional Pleadings and Motions

The presiding officer may permit or require such additional pleadings or amendments thereto and motions to be filed as may be desirable in the interests of defining the issues and affording the parties full opportunity to prepare their cases. When issues within the proper scope of the appeal,

but not raised by the pleadings or the appeal file are tried by express or implied consent of the parties, or by permission of the presiding officer, such issues shall be treated in all respects as if raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or appeal file, it may be admitted within the proper scope of the appeal: *Provided, however,* That the objecting party may be granted a continuance if necessary to enable such party to meet such evidence.

Rule 8. Hearing Election.

A hearing before the Board shall be a matter of right which shall be afforded to appellant. The Government attorney may request a hearing in any case. If the parties waive a hearing the case shall be submitted on the record except where the presiding officer requires a hearing. The Board will ascertain from the parties whether a hearing is requested and ordinarily this will be done after the appeal file and pleadings have been received by the Board.

Rule 9. Accelerated Procedure

(a) Election. Either party may notify the Board of its election to have the appeal handled under this Rule 9. If both parties agree to handling under accelerated procedure, the presiding officer shall determine whether the appeal falls within the dollar limitation prescribed in paragraph (b) of this Rule 9 and whether the case otherwise is appropriate, taking into consideration the nature of the dispute, for handling under accelerated procedure. The determination of the presiding officer to handle or not handle the appeal under accelerated procedure shall be final.

(b) Dollar amount limitation. In order to be eligible for handling under accelerated procedure, the appeal shall involve $25,000 or less consisting of the claim of appellant together with the amount involved in any counterclaim filed by the Government attorney. If no dollar amount of claim or counterclaim is involved, the presiding officer shall determine whether the appeal can be properly disposed of under this Rule 9.

(c) Elimination of procedures. In cases proceeding under this Rule 9, parties are encouraged to the extent possible consistent with adequate presentation of their factual and legal positions to waive pleadings, discovery and briefs.

(d) Presiding officer as decision maker. The presiding officer in any appeal handled under accelerated procedure shall issue a short written decision as soon as practicable after closing of the record and such decision shall be the final decision of the Board.

Rule 10. Prehearing or Presubmission Procedures

(a) Prehearing orders. The presiding officer may issue an order in cases where a hearing will be held prescribing as to one or more the following that the parties shall:

(1) Exchange a list of witnesses giving titles and a brief description of the subject matter of the testimony;

(2) Exchange proposed exhibits and prepare an additional set thereof for the presiding officer; and

(3) Exchange a list of expert witnesses with a summary of their qualifications and testimony.

(b) Prehearing orders in complex cases. The presiding officer may issue a more comprehensive order in cases where a hearing will be held and it appears that the issues are confused, complex, that the hearing will be unduly long, or where quantum is involved. Such order, in addition to covering one or more of the items under (a) of this rule, may prescribe as to one or more of the following that the parties shall:

(1) Submit to the presiding officer a stipulation of all facts not in dispute;

(2) Attempt preparation of an agreed statement of factual and legal issues and, failing therein, submit separate statements; and

(3) Submit to the other party, where the issue of quantum will be heard, a statement of the monetary claim in detail with accounting schedules and explanations and afford the other party the right to an audit with the audit report to be available to both parties.

(c) Prehearing or presubmission briefs and oral argument. The presiding officer may require or allow the filing of prehearing or presubmission briefs in such manner as prescribed and may also require or allow oral argument in such manner as prescribed prior to hearing or submission on the record.

(d) Prehearing or presubmission conference. The presiding officer may require a prehearing or presubmission conference to consider:

(1) The simplification or clarification of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record or similar agreements which will avoid unnecessary proof;

(3) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence if the case is to be heard;

(4) The possibility of agreement disposing of all or any of the issues in dispute;

(5) Such other matters as may aid in the disposition of the appeal.

The results of the conference shall be reduced to writing by the presiding officer and this writing shall constitute part of the record.

Rule 11. Submission Without a Hearing

Either party may elect to waive a hearing and if the other party as well as the Board do not require a hearing, the case shall be submitted upon the record before the Board. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument and briefs.

Rule 12. Discovery procedures

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and such order may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the presiding officer may, upon application of either party and for good cause shown, order the taking of testimony or any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the presiding officer.

(d) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

(e) Interrogatories to parties. After an appeal has been docketed, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the presiding officer will determine the extent to which the interrogatories will be permitted.

(f) Admission of facts. After an appeal has been docketed, a party may serve on the other party a request for the admission of specified facts. The party served shall answer each requested item or file objections thereto within 30 days after service. The presiding officer will rule on any such objections. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond or object to the request for admission.

(g) Production, inspection and copying of documents. After an appeal has been docketed, a party may arrange with the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot agree thereon, the presiding officer shall specify just terms and conditions in making the inspection and making copies and photographs. Expenses of making copies and photographs shall be borne by the party seeking to make or cause to be made copies and photographs.

Rule 13. Sanctions

If any party fails or refuses to obey an order issued by the presiding officer, the presiding officer may make such order in regard to the failure deemed necessary to the just and expeditious conduct of the appeal.

Rule 14. Subpoena Power

The Chairman has authority by delegation from the Secretary to request the appropriate United States Attorney to apply to the appropriate United States District Court for the issuance of subpoenas pursuant to 5 U.S.C. 304.

Hearings

Rule 15. Hearings, Notice of

The presiding officer shall give notice of the time and place set for hearing which shall be scheduled as may best serve the interests of the parties and the Board. Such notice shall be sent to the parties in writing not less than 30 days in advance of the date for such hearing unless the parties waive notice.

Rule 16. Unexcused Absence of a Party

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

Rule 17. Hearings, Open to Public, Verbatim Transcript

Hearings shall be open to the public. Testimony shall be reported verbatim. Transcripts of the proceedings shall be made available by the Board to the Government attorney. Appellant may order transcripts of the proceedings from the contract reporter at the hearing at actual cost of duplication (Pub. L. 92–463, October 6, 1972, 86 Stat. 770, 5 U.S.C. App. I).

Rule 18. Hearings, Conduct of

(a) General. Hearings shall be as informal as may be reasonable and appropriate under the circumstances. The parties may offer such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding officer. The presiding officer shall receive only evidence which is germane to the issues involved and shall exclude, insofar as practicable, evidence which is immaterial, irrelevant or unduly repetitious or which is not of the sort upon which responsible persons are accustomed to rely. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board members considering the case, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The presiding officer may in any case require evidence in addition to that offered by the parties.

(b) Examination of witnesses. Witnesses will be examined under oath or affirmation subject to cross-examination and questions from the presiding officer and Board members. If the testimony of a witness is not given under oath, the presiding officer may warn the witness that statements made may be subject to provisions of law imposing penalties for knowingly making false representations (18 U.S.C. 287, 1001).

(c) Burden of proof and order of proceeding. The burden of proof rests on the appellant asserting the claim or error in the decision except that the burden of proof in case of counter-claims rests on the party asserting them. Unless otherwise permitted by the presiding officer, the appellant shall proceed first at the hearing followed by the presentation of the Government attorney and any rebuttal case permitted by the presiding officer.

(d) Objections. If a party objects to the admission or rejection of any evidence or to a limitation of the scope of any examination or cross-examination, such party shall state briefly the grounds of such objection and the presiding officer shall rule thereon or reserve ruling.

(e) Records and documents. Upon proof of authenticity, papers, books, records or documents shall be admissible in evidence without the production of the person who made or prepared the same except that the person who prepared documents specially for use at the hearing should be available to explain such documents.

(f) Exhibits. All documents offered in evidence at a hearing shall be marked for identification by number or letter as prescribed by the presiding officer. Except where the presiding officer finds that the furnishing of copies is impracticable, a copy of each proposed exhibit shall be made available to the other party when offer is made or prior to the hearing, if possible.

(g) Offer of proof. Whenever evidence is excluded from the record the offering party may make an offer of proof briefly stating the evidence proposed to be received into evidence.

(h) Official notice. Official notice will be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided,* That the parties shall be given adequate notice of matters so noticed and shall be given adequate opportunity to show that such facts are erroneously noticed.

(i) Depositions. No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the presiding officer may receive depositions as evidence in supplementation of that record.

Posthearing or postsubmission procedures

Rule 19. Posthearing Briefs

The presiding officer shall prescribe the manner of filing any posthearing briefs.

Rule 20. Closing the Record

(a) *Contents.* The record consists of the appeal file described in Rule 5 and, to the extent the following have been filed, the pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conference and hearings, hearing exhibits, posthearing briefs and documents which the presiding officer has specifically designated be made part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.

(b) Closing or settling of record. Except as the presiding officer may otherwise order, no proof shall be received in evidence after completion of a hearing or in cases submitted on the record, after the parties have been notified that the case is ready for decision. The weight to be attached to any evidence of record will rest within the sound discretion of the Board members considering the case. The presiding officer may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

Rule 21. Copies of papers

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be submitted therefor, during or after the hearing.

Rule 22. Withdrawal of exhibits.

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be repaired by the Board in its discretion as a condition of granting permission for such withdrawal.

Rule 23. Decisions

The Board shall issue written decisions containing findings of fact and conclusions and shall send copies simultaneously to the parties by certified mail or, if delivered directly, with a notation of the date of delivery. Decision of the Board will be made solely upon the record as described in Rule 20.

Rule 24. Reconsideration, Motion for

A motion for reconsideration of a Board decision, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion and shall be filed within 30 days from the date of receipt of a copy of the Board decision by the party filing

the motion. The Board, in its discretion, may deny the motion or permit such additional proceedings as deemed necessary.

Dismissals

Rule 25. Dismissals

(a) Lack of jurisdiction. A motion to dismiss for lack of jurisdiction may be filed by a party at any time. The Board may also raise the question of jurisdiction at any time on its own motion. The presiding officer shall prescribe any necessary proceedings including but not limited to written arguments, briefs or hearing on the issue of jurisdiction. The presiding officer shall issue a Ruling on the issue of jurisdiction unless the Chairman requires a full three member panel or consider the issue of jurisdiction in which event the designated panel shall issue the Ruling on the issue of jurisdiction.

(b) Failure to prosecute. Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the presiding officer, comply with orders of the presiding officer, or otherwise indicates an intention not to continue the prosection or defense of an appeal, the presiding officer may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the presiding officer may issue an Order of Dismissal for failure to prosecute or take such other action deemed reasonable and proper under the circumstances.

(c) Without prejudice. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the presiding officer, exercising sound discretion, may dismiss such appeals without prejudice to restoration to the docket when the cause of suspension has been removed. Unless either party or the Board acts within 3 years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

(d) Settlement or withdrawal. The parties may settle the issues at any state of the proceedings before issuance of a decision of the Board. The appellant may withdraw the appeal at any time. The presiding officer in the event of settlement or withdrawal shall issue an Order of Dismissal.

Miscellaneous

Rule 26. Representation of Parties.

Appellant may appear before the Board in person or be represented by an authorized representative or attorney subject to the limitations prescribed in 7 CFR 1.26 regarding representation before the Department. The Government shall be represented by the Government attorney.

For Subpart A:

Dated: December 22, 1982.

John R. Block,

Secretary of Agriculture.

For Subpart B:

Dated: December 6, 1982.

Jewel F. Lewis,

Administrative Judge, Chair, Board of Contract Appeals.

[FR Doc. 82-35134 Filed 12-27-82; 8:45 am]

BILLING CODE 3410-01-M

Food and Nutrition Service

7 CFR Parts 273, 274, 275 and 276

[Amdt. No. 237]

Food Stamp Program; Corrections to Food Stamp Rules

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; Corrections and clarity revisions.

SUMMARY: This action amends Food Stamp Program regulations in the areas of: (1) State agency liabilities and Federal sanctions; (2) Performance Reporting Systems; (3) State agency reporting and destruction of unusable coupons; and (4) Thrifty Food Plan Amounts. This action corrects errors in paragraph referencing and makes clarity revisions only. The action will not result in any policy changes. This document also corrects similar errors or makes clarity changes in the following individual **Federal Register** publications: *1980 Amendments to the Food Stamp Act of 1977, Policy Interpretations, and Miscellaneous Technical Amendments* (issued April 23, 1982); *Proration of Initial Month Benefits* (issued May 14, 1982), *Nondiscretionary Fraud, Waste, Abuse and Simplification Provisions* (issued August 13, 1982), *Household Composition, Income Standards, Adjustments, Deductions, Outreach and Technical Amendments* (issued November 19, 1982), and *Eligibility Criteria and Reduction or Termination of Benefits* (issued December 14, 1982).

EFFECTIVE DATE: This action is effective January 27, 1983.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, Policy and Regulations Section, Program Standards Branch, Program Development Division, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302, (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under Executive Order 12291. The rule will not result in annual economic impacts of more than $100 million or major increases in costs or prices nor will it have a significant adverse effect on competition, employment, productivity, investment, or foreign trade. Further, the rule is unrelated to the ability of United States-based enterprises to compete with foreign-based enterprises. Therefore, the rule has been classified as "non-major".

Regulatory Flexibility Act

The rule also has been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant impact on a substantial number of small entities.

Public Participation

As noted above, the amendments made by this final rule are to correct errors and improve clarity and will result in no change in policy. For these reasons, the Department has determined in accordance with 5 U.S.C. 553(b) that notice of proposed rulemaking and public comment on this rulemaking is unnecessary.

Paperwork Reduction Act

This rulemaking does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget.

7 CFR 273.2(f)(1)(ii)(A) is being amended to change the reference to § 273.4(a) (2) through (6) to reference § 273.4 (a)(2) through (a)(8). Rules issued April 23, 1982 (47 FR 17756), added two more alien provisions to § 273.4.

7 CFR 273.10, Appendix B is being removed. Appendix B sets forth the Thrifty Food Plan Amounts (the amounts on which FSP coupon allotments are based) that were applicable for Guam and the Virgin Islands beginning January 1980. We neglected to delete the Appendix B table when Appendix A to 7 CFR 273.10 was revised to set forth the January 1981 Thrifty Food Plan Amounts for all FSP areas of operation.

7 CFR 271.6(b) (i) and (vi) are being amended to reflect that the State of New York is under the jurisdiction of the Food and Nutrition Services' Burlington, Massachusetts Regional Office, not the Robbinsville, New Jersey Regional Office.

7 CFR 274.2 is being amended to remove paragraph (4) from paragraph (h) and add it to paragraph (i) instead. The paragraph was added to (h) based on rules issued December 8, 1981 (46 FR 60160). However, before the December rules were issued, an earlier rule issued October 9, 1981 (46 FR 50277), redesignated paragraph (h) as (i). This redesignation was overlooked when the December 8 rules were issued. Also, the

December 8 rules redesignated paragraph (g) of 7 CFR 273.11 as (h). A reference to § 273.11 (g)(2) appearing in 7 CFR 274.2(h)(1) and 274.3(c)(1) which were overlooked when the redesignation occurred are corrected by the rule to reference §273.11(h)(2).

7 CFR 274.8(b)(2) is being amended to replace the reference to Form FNS–136 with a reference to form FNS–471, Coupon Account and Destruction Report. Form FNS–471 has officially replaced form FNS–136 and is currently in use.

7 CFR 275.3(b) is being amended to reflect that the review of a State agency's Performance Reporting System consists of one phase, not two phases. The second phase was removed from the CFR by final rules issued January 23, 1981, at 46 FR 7257.

7 CFR 275.11(f) is being amended to delete the last sentence of the section which states that State agencies' eligibility for enhanced funding is dependent on achievement of a 95 percent sample completion rate. Through an agency oversight, the above referenced line was not removed when the Sanction/Incentive System regulations were published on January 23, 1981, (46 FR 7257) which changed this policy. Failure to meet the 95 percent competition rate results in adjustments to a State agency's error rate and does not *automatically* render a State agency ineligible for enhanced funding.

7 CFR 276.1(a)(1) is being amended to correct an error in paragraph referencing. This action removes the reference to § 276.2(c)(iv) appearing in paragraph (a)(1). This regulatory paragraph does not exist.

Amendments to Individual Federal Register Publications

This action corrects typographical errors or clarifies provisions issued in the individual Federal Register publications of April 23, 1982, May 14, 1982 and August 13, 1982.

At 47 FR 17756 issued April 23, 1982

(a) § 271.2, in the definition of a "Drug addiction or alcoholic treatment and rehabilitation program", appearing in the rule at page 17762, the reference to 278.1 (a), (b) and (d)(1) is being removed. The phrase gives the impression that one must meet the requirements of 7 CFR 278.1 to be granted Program participation. This is not true nor was this the intent of the final rule change in the definition. Only those who also wish to be authorized as a retailer must comply with 7 CFR 278.1. Thus, a correction is necessary to remove the reference and eliminate confusion or misapplication of the provision.

(b) § 273.2, paragraph (f)(1)(ii)(C), appearing on page 17762, is being amended to correct the reference to § 273.4 (a)(4) through (a)(6). The reference should be to § 273.4 (a)(4) through (a)(8). The April 23rd rule added two more alien provisions to § 273.4.

(c) Also in § 273.2, paragraph (f)(1)(ii)(E) appearing on page 17763 is being corrected to add a reference to section 203(a)(7) of the Immigration and Nationality Act that was unintentionally left out.

(d) In § 273.4, paragraphs (a)(4) and (a)(5) appearing on page 17763, are being amended to correct the cut-off dates appearing in these paragraphs to reflect new dates that were recently prescribed by rules issued by the Immigration and Naturalization Service (INS). Paragraph (f)(1)(ii)(C) under § 273.2 on page 17763 is also being amended to add the April 1, 1980, date to clarify when an INS form I–94 is valid for FSP purposes.

(e) § 273.8, amendatory instruction No. (6)(a) on page 17764 which requires a revision to the last sentence of paragraph (d) under that section is incorrect. The sentence that should be revised is the next to last sentence in § 273.8(d). This is being corrected.

(f) In § 273.8, paragraph (e)(11)(ix) appearing on page 17764, is being changed to correct a reference to a Public Law. Paragraph (c)(10)(ix) under § 273.9 at page 17765 is also being corrected for a similar Public Law reference error.

(g) Also in § 273.8, paragraph (h)(1)(vi) appearing on page 17764, is being corrected to reflect revised language for this paragraph that was added by a final rule issued August 25, 1981 (46 FR 43020) and was unintentionally excluded in the April 23rd rule.

(h) Again, in § 273.8, paragraph (h)(4)(iii) appearing on page 17764, is being corrected to add a phrase in the first sentence that was unintentionally omitted.

(i) In § 273.18, paragraph (b)(3)(ii) appearing on page 17767 is being corrected to add a phrase that was unintentionally omitted.

At 47 FR 20739 issued May 14, 1982

(a) In § 272.8, paragraph (h) appearing on page 20741 is being corrected because of a typographical error. The word "retrospective" should be "retroactive".

At 47 FR 35166 issued August 13, 1982

(a) In § 272.4 paragraphs (c) and (f) on page 35168 were relettered as (b) through (e). However, these paragraphs contained regulatory references to each other that were not revised to reflect the new designated paragraphs. The references are being corrected.

At 47 FR 52328 issued November 19, 1982

(a) In § 272.4, amendatory instruction number 6 (appearing in column 1, page 52334) is incorrect. The reference to revise paragraphs (c)(1) and (c)(2) should refer to revisions for paragraphs (b)(1) and (b)(2) as rules issued August 13, 1982 (47 FR 35166) redesignated all of paragraph (c) as (b). The amendatory instruction and its corresponding regulatory amendment are being corrected.

(b) In § 273.11, in amendatory instruction number 13 (column 3, page 52337), the portion of that instruction calling for a revision to paragraphs (a)(4)(ii)(C) and (c)(3) and an amendment to paragraph (c)(4) is being removed. Paragraph (a)(4)(ii)(C) was further revised by rules issued on April 23, 1982 (47 FR 17756), and paragraphs (c)(3) and (c)(4) were redesignated and revised by rules issued on October 8, 1982 (47 FR 44692). Respectively, the April 23rd and October 8th language of these paragraphs is the final version intended to be adopted by the Department. Therefore, amendatory instruction number 13 of the November 19, 1982 rules is being corrected by this final action to remove any instruction to change these three paragraphs.

(c) In the preamble to the November 19, 1982 rule (column 2, page 52332) it was stated that 7 CFR 273.20 was being amended to remove all references to the State of Massachusetts. However, we neglected to provide conforming regulatory language to initiate the deletions. The regulatory text of the November 19 rule is being corrected to add the necessary amendatory instruction to remove the references.

At 47 FR 55903 issued December 14, 1982

(a) In the preamble of the December 14 interim rule (column 1, page 55904), the Department explained that 1982 Food Stamp Act amendments redefined who constitutes an elderly or disabled member for Food Stamp Program purposes. The interim rule amended 7 CFR 271.2 to reflect the new definition of elderly and disabled persons. However, the Department unintentionally overlooked other sections throughout the regulations which refer to the old definition of an elderly and disabled household that also needed to be changed. Therefore, this action is correcting the regulatory text of the December 14, 1982 rule to add necessary amendatory instructions and/or pertinent regulatory language to reflect

the new definition in 7 CFR 273.9(d)(3) and (d)(4), 273.10(e)(2)(i)(A), and 273.21(b)(2)(i)(B) and (b)(2)(ii).

List of Subjects

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting requirements.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs, Penalties.

Accordingly, as set out below, the Code of Federal Regulations is amended at 7 CFR Parts 273, 274, 275 and 276. Also, amendments are made to regulations issued on April 23, 1982 (47 FR 17756), May 14, 1982 (47 FR 20739), and August 13, 1982 (47 FR 35166).

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Corrected]

1. At 47 FR 17762 (column 1), issued on April 23, 1982, the definition of a "Drug addict or alcoholic treatment and rehabilitation program" in § 271.2 is corrected for clarity by removing the words "the requirement of paragraphs (a), (b), and (d)(1) of § 278.1 are met and", appearing in the last sentence.

2. In 7 CFR 271.2, paragraph (b)(1)(i) is amended by removing the reference to the State of "New York" in paragraph (b)(1)(i) and adding a reference to the State of "New York" to paragraph (b)(1)(vi) in alphabetical order.

PART 272—REQUIREMENTS FOR PARTICIPATION STATE AGENCIES

§272.8 [Corrected]

3. At 47 FR 20741 (column 3), issued May 14, 1982, in paragraph (h) of § 272.8, the word "retrospective" is corrected to read "retroactive."

§ 272.4 [Corrected]

4. At 47 FR 35168 (column 3), issued August 13, 1982, amendatory instruction number 3 under § 272.4 is corrected by adding a new sentence at the end of the instruction to read as follows:

"Also, regulatory references contained in some of these newly redesignated paragraphs are amended as follows:

(b)(1)—the reference to (c)(2) and (3) is amended to read (b)(2) and (3),
(b)(2)(iii)—the reference to (c)(3) is amended to read (b)(3),
(b)(4)—the reference to (c)(2) and (3) is amended to read (b)(2) and (3),
(b)(5)—the reference to (c)(3) or (4) is amended to read (b)(3) or (4),
(c)(2)—the reference to (d)(1) is amended to read (c)(1),
(d)(1)(i)—the reference to (e)(1)(iv) is amended to read (d)(1)(iv) and
(d)(3)—the reference to (e)(1)(iv) is amended to read (d)(1)(iv)."

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.2 [Amended]

5. In 7 CFR 273.2, paragraph (f)(1)(ii)(A) is amended by replacing the reference to "(a)(2) through (6)" with the reference to "(a)(2) through (a)(8)."

§ 273.10 [Amended]

6. In 7 CFR 273.10, Appendix B is removed.

§ 273.2 [Corrected]

7. At 47 FR 17762 (column 3), issued April 23, 1982, the reference to "§ 273.4 (a)(4) through (a)(6)" appearing in paragraph (f)(1)(ii)(C) of § 273.2 is corrected to read "§ 273.4 (a)(4) through (a)(8)."

8. At 47 FR 17763 (column 1), issued April 23, 1982, the second sentence in paragraph (f)(1)(ii)(C) of § 273.2 is corrected by adding a new sentence after the second sentence to read as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification.* * * *
(1) *Mandatory verification.* * * *
(ii) *Alien status.* * * *

(C) * * * However, an INS Form I–94 annotated with section 203(a)(7) of the Immigration and Nationality Act must have been issued prior to April 1, 1980 to be considered as acceptable verification. * * *

* * * * *

9. At 47 FR 17763 (column 1), issued April 23, 1982, paragraph (f)(1)(ii)(E) of § 273.2 is corrected by adding the reference of "203(a)(7)" in the second sentence, between the reference to "101(a)(20)" and "207".

§ 273.4 [Corrected]

10. At 47 FR 17763 (column 3), issued April 23, 1982, paragraph (a)(4) and (a)(5) of § 273.4 are corrected by replacing the dates of March 17, 1980 and March 18, 1980, with the dates of March 31, 1980 and April 1, 1980, respectively.

§ 273.8 [Corrected]

11. At 47 FR 17764 (column 1), issued April 23, 1982, amendatory instruction number 6(a) under § 273.8 is corrected to read that "The next to the last sentence in paragraph (d) is revised." Therefore, the last sentence of paragraph (d) as codified based on rules issued December 8, 1981 (46 FR 60166) remains unchanged.

12. At 47 FR 17764 (column 2), issued April 23, 1982, the reference to "Public Law 94–433" in paragraph (e)(11)(ix) of § 273.8 is corrected to read "Public Law 95–433."

13. At 47 FR 17764, issued April 23, 1982, paragraph (h)(1)(vi) of § 273.8 (column 2) and the first sentence of paragraph (h)(4)(iii) of § 273.8 (column 3) are corrected to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(h) *Handling of licensed vehicles*

* * *

(l) * * *

(vi) Necessary to transport a physically disabled household member (or ineligible alien or disqualified person whose resources are being considered available to the household) regardless of the purpose of such transportation (limited to one vehicle for physically disabled household member). A vehicle shall be considered necessary for the transportation of a physically disabled household member if the vehicle is specially equipped to meet the specific needs of the disabled person or if the vehicle is a special type of vehicle that makes it possible to transport the disabled person. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member.

* * * * *

(4) * * *

(iii) Any other vehicle used to transport household members (or an ineligible alien or disqualified household member whose resources are being considered available to household) to and from employment, or to and from training or education which is preparatory to employment, or to seek employment in compliance with the job search criteria. * * *

* * * * *

§ 273.9 [Corrected]

14. At 47 FR 17765 (column 1), issued April 23, 1982, the reference to "(c)(1)(iii)" appearing in paragraph

(b)(1)(iv) of § 273.9 is corrected to read "(c)(10)(iii)".

15. At 47 FR 17765 (column 2), issued April 23, 1982, the reference to "Public Law 95–443" appearing in paragraph (c)(10)(ix) of § 273.9 is corrected to read "Public Law 95–433."

16. At 47 FR 17767 (column 2), issued April 23, 1982, the first sentence in paragraph (b)(3)(ii) of § 273.18 is corrected to read as follows:

§ 273.18 Claims against households.

* * * * *

(b) *Nonfraud claims.* * * *

(3) *Collecting nonfraud claims.* * * *

(ii) State agencies shall initiate collection action by sending the household a written demand letter, designed by FNS, which informs the household of the amount owed, the reason for the claim, the period of time the claim covers, any offsetting that was done to reduce the claim, how the household may pay the claim, and the household's right to a fair hearing if the household disagrees with the State agency's determination. * * *

§ 273.11 [Corrected]

17. At 47 FR 52337 (column 3), issued November 19, 1982, amendatory instruction number 13 is corrected by removing that portion of the instruction calling for a revision to paragraphs (a)(4)(ii)(C) and (c)(3) and an amendment to paragraph (c)(4). Also the corresponding amendatory language under § 273.11 for paragraphs (a)(4)(ii)(C) and (c)(3) appearing on page 52338 in columns 1 and 2, respectively are removed.

18. At 47 FR 52334 (column 1), issued November 19, 1982, amendatory instruction number 6 and its accompanying language change to § 272.4 are corrected to read as follows:

"6. In § 272.4, paragraph (b)(1) and the introductory sentence to paragraph (b)(2) are revised to read as follows:

§ 272.4 Program administration and personnel requirements.

* * * * *

(b) *Bilingual requirements.* (1) Based on the estimated total number of low-income households in a project area which speak the same non-English language (a single-language minority), the State agency shall provide bilingual program information and certification materials, and staff or interpreters as specified in paragraphs (b) (2) and (3) of this section. Single-language minority refers to households which speak the same non-English language and which do not contain adult(s) fluent in English as a second langauge;

(2) The State agency will provide materials used in Program informational activities in the appropriate language(s) as follows. * * *

* * * * *"

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

19. At 47 FR 52338 (column 3), issued November 19, 1982, the regulatory text is being corrected to add the following new amendatory instruction and accompanying amendatory text in numerical order to read as follows:

"15. In § 273.20, paragraphs (a), (b) and (c) are amended by removing all references to the State of Massachusetts."

20. At 47 FR 55909, issued December 14, 1982, the regulatory text is corrected by adding new amendatory instructions (d) and (e) to amendatory instruction No. 7 appearing in the middle of column 2. The instructions read as follows:

"(d) Paragraph (d)(3) is amended by removing everything in the first sentence after the phrase "incurred by any household member who is" and inserting the phrase "elderly or disabled as defined in § 271.2" at the end of that sentence instead.

(e) Paragraph (d)(4) is amended by removing everything in the second sentence after the phrase "unless the household contains a member who is" and inserting the phrase "elderly or disabled as defined in § 271.2" at the end of that sentence instead."

21. At 47 FR 55909, issued December 14, 1982, the regulatory text is corrected by adding a new amendatory instruction (m) to the end of amendatory instruction No. 8 appearing near the top of column 3. The instruction reads as follows:

"(m) Paragraph (e)(2)(i)(A) is amended by removing the phrase "sixty years of age or over, or a member who receives Supplemental Security Income (SSI) benefits under title XVI of the Social Security Act or disability and blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act" and inserting the phrase "elderly or disabled as defined in § 271.2 "in its place."

22. At 47 FR 55910, issued December 14, 1982, the regulatory text is being corrected by adding new amendatory instructions No. 10 (a) and (b) just after the last five asterisks appearing at the end of column 2. The instructions read as follows:

"10. In § 273.21:

(a) Paragraph (b)(2)(i)(A) is amended by removing everything after the phrase "are all without earned income and are" and inserting the phrase "elderly or disabled as defined in § 271.2" instead.

(b) Paragraph (b)(2)(ii) is amended by removing everything between the phrase "are all without earned income and are" and the phrase "unless these households file AFDC monthly reports" and inserting the phrase "elderly or disabled as defined in § 271.2" between the remaining phrases."

PART 274—ISSUANCE AND USE OF FOOD COUPONS

23. In 7 CFR 274.2 paragraph (h)(4) is removed and the third sentence of paragraph (h)(1) is amended by replacing the reference to § 273.11(g)(2) with a reference to § 273.11(h)(2).

24. In 7 CFR 274.2, a paragraph (4) is added to paragraph (i) to read as follows:

§ 274.2 Issuance systems.

* * * * *

(i) * * *

(4) Residents of shelters for battered women and children, as such shelters are defined in § 271.2 and which are not authorized by FNS to redeem through wholesalers, may request that all or part of their coupons be of the 1-dollar denomination and State agencies are authorized to grant this request where feasible.

§ 274.3 [Amended]

25. In 7 CFR 274.3, paragraph (c)(1) is amended by replacing the reference of "§ 273.11(g)(2)" with a reference to "§ 273.11(h)(2)."

§ 274.8 [Amended]

26. In 7 CFR 274.8, paragraph (b)(2) is amended by replacing the reference to "Form FNS–136, Certificate of Destruction of Food Coupons" with a reference to "Form FNS–471, Coupon Account and Destruction Report".

PART 275—PERFORMANCE REPORTING SYSTEM

27. In 7 CFR 275.3, paragraph (b) is revised to read as follows:

§ 275.3 Federal monitoring.

* * * * *

(b) *Reviews of State Agency's Performance Reporting System.* FNS will review each State agency's performance reporting system on an annual basis (in terms of management evaluation (ME) reviews conducted by the State agency). The review will include but not be limited to a determination of whether or not the State is complying with FNS regulations, an assessment of the State's methods and procedures for conducting ME reviews including sampling techniques, and an assessment of the data collected by the State in conducting the reviews.

* * * * *

§ 275.11 [Amended]

28. In 7 CFR 275.11, paragraph (f) is amended by removing the last sentence of the paragraph.

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

29. In 7 CFR 276.1, paragraph (a)(1) is amended by replacing the phrase "Except as set forth in § 276.2(c)(iv)," with the phrase "Except as otherwise provided in these regulations,".

(91 Stat. 958 (7 U.S.C. 2011–2029))

(Catalog of Federal Domestic Assistance Programs No. 10. 551, Food Stamps)

Dated: December 21, 1982.

Robert E. Leard,

Associate Administrator.

[FR Doc. 82-35092 Filed 12-27-82; 8:45 am]

BILLING CODE 3410-30-M

NUCLEAR REGULATORY COMMISSION

10 CFR part 50

Filing of Copies of Changes to Emergency Plans and Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to reduce the number of copies of changes to nuclear power plant emergency plans and procedures. The total number of copies to be submitted will be reduced from 13 to 3. The Commission has determined that 3 copies will be sufficient for processing purposes. These amendments will reduce the regulatory burden on the affected licensees.

DATE: The effective date of this rule will be December 28, 1982.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Perkins, Chief, Incident Response Branch, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (Telephone 301–492–7361).

SUPPLEMENTARY INFORMATION: On August 19, 1980, the Nuclear Regulatory Commission published in the Federal Register (45 FR 55402) amendments to its regulations for the upgrading of emergency planning and preparedness. The effective date for those regulations was November 3, 1980.

In those regulations, § 50.54(q) required licensees to furnish three copies of changes to the emergency plan and emergency plan implementing procedures to NRC Regional Administrators and ten copies to the Director, Office of Nuclear Reactor Regulation. The amendment contained in this notice reduces to 3 the total number of copies the licensee is required to submit (one copy to be sent to the appropriate Regional Administrator and two copies to NRC Headquarters).

Because these amendments relate solely to procedural matters, the Commission has found that good cause exists for omitting notice of proposed rulemaking and public procedure thereon, as unnecessary. Since the amendment relieves licensees from restrictions under regulations currently in effect, it is effective upon publication.

Paperwork Reduction Act Statement

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget; OMB approval No. 3150–0011.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 50 are published as a document subject to codification.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Paragraph (q) of § 50.54 is revised to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(q) A licensee authorized to possess and/or operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the standards in § 50.47(b) of this part and the requirements in Appendix E to this Part. A licensee authorized to possess and/or operate a research reactor or a fuel facility shall follow and maintain in effect emergency plans which meet the requirements in Appendix E of this part. The nuclear power reactor licensee may make changes to these plans without Commission approval only if such changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of §§ 50.47(b) of this part and the requirements of Appendix E of this Part. The research reactor licensee and/or the fuel facility licensee may make changes to these plans without Commission approval only if such changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the requirements of Appendix E of this part. Proposed changes that decrease the effectiveness of the approved emergency plans shall not be implemented without application to and approval by the Commission. The licensee shall furnish one copy of each proposed change for approval to the Administrator of the appropriate NRC Regional Office specified in Appendix D of Part 20 of this chapter and two copies to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555. If a change is made without approval, the licensee shall furnish one copy to the Administrator of the appropriate NRC Regional Office specified in Appendix D of Part 20 of this chapter and two copies of the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days after the change is made.

3. Part V, "IMPLEMENTING PROCEDURES," of Appendix E is revised to read as follows:

Appendix E—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *

V. Implementing Procedures

No less than 180 days prior to the scheduled issuance of an operating license for a nuclear power reactor or a license to possess nuclear material one copy of the applicant's detailed implementing procedures for its emergency plan shall be submitted to the Administrator of the appropriate NRC Regional Office, specified in Appendix D of Part 20 of this chapter and two copies are to be sent to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Licensees who are authorized to operate a nuclear power facility shall submit one copy of any changes to the emergency plan or procedures to the Administrator of the appropriate NRC Regional Office, specified in Appendix D, 10 CFR Part 20, and two copies to the Document Control Desk within 30 days of such changes.

Dated at Bethesda, Maryland, this 29th day of November 1982.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 82-35005 Filed 12-27-82; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 368, 369, 370, 372, 373, 387, and 388

[Docket No. 21213-249]

Revision of Enforcement Provisions of the Export Administration Regulations and Conforming Amendments

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule

SUMMARY: This rule finalizes revisions to the Enforcement provisions of the Export Administration Regulations (Part 387, Title 15, Code of Federal Regulations) which were published in interim form on December 22, 1980 (45 FR 84021) with request for comments. All comments, both written and oral, were considered and portions of the Regulations were changed in response to those comments. This rule incorporates amendments to the Export Administration Act (Pub. L. 97-145), reflects current organizational and administrative procedures within the International Trade Administration, revises and incorporates into Part 387 a provision relating to interrogatories or requests to produce documents, codified prior to October 12, 1979 in § 388.15 of the Regulations, and modifies recordkeeping requirements. This rule also makes technical amendments to Part 388 relating to administrative proceedings. Conforming amendments are also made to Parts 368 through 386; reporting for the antiboycott regulations are clarified; one interpretation in the antiboycott regulations is deleted, and four are redesignated as Supplement Nos. 1, 2, 3, 4, and 5, "Interpretations."

DATE: Effective December 28, 1982.

FOR FURTHER INFORMATION CONTACT:

Howard N. Fenton, Office of Antiboycott Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 3886, Washington, D.C. 20230, (202) 377-2381

Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, U.S. Department of Commerce, Room 1099-A, Washington, D.C. 20230, (202) 377-4811.

SUPPLEMENTARY INFORMATION:

I. Substance of the Regulations

This rule makes final the revisions to the Export Administration Regulations to incorporate changes in the Export Adminstration Act relating to criminal penalties, to conform specific violation provisions to the Export Administration Act, to reflect organizational changes within the International Trade Administration, to establish as distinct violations the failure to comply with reporting requirements and the failure to answer interrogatories or respond to requests for admission or to produce evidence during investigations conducted under the Export Administration Act of 1979, as amended (the "Act") and to conform this Part with revised Part 388.

The antiboycott regulations are amended to delete a supplement that has been superseded and renumber the remaining supplements.

In the interest of reducing the regulatory burden on the export community and persons reporting boycott-related requests, this rule permits recordkeeping entities, as defined in § 387.13(b), to request a limited exception to the recordkeeping requirements of Part 387. If granted an exception, the recordkeeping entity is allowed to maintain micrographic reproductions rather than originals of documents during the first year of the retention period, as well as in subsequent years. The Department is also exempting certain types of documents from the recordkeeping requirement.

Part 388 of the Export Administration Regulations details the administrative proceedings that the Office of Antiboycott Compliance and the Office of Export Enforcement may initiate to impose sanctions for violations of the Export Administration Act of 1979. The Regulations provide for the settlement of cases prior to the service of a charging letter if a consent agreement and order are approved by the Deputy Assistant Secretary of Commerce for Export Enforcement. This rule provides the Deputy Assistant Secretary with the flexibility to suspend a sanction under any terms or conditions that he may specify in such an order.

The authority of the Office of Export Administration to revise, suspend or revoke licenses or, in the case of bulk licenses described in Part 373, portions of licenses, is clarified.

The paragraph dealing with revocation of export licenses under § 373.7, Service Supply (SL) Procedure, is removed because it is redundant. All export licenses, including bulk licenses, and other authorizations are subject to revision, suspension, or revocation without notice under § 370.3 and § 372.9.

The definitions of "department," "party," "presiding official," and "respondent" in § 388.2 are revised.

II. Recordkeeping Requirements

Office of Export Administration and Office of Antiboycott Compliance information collection requirements contained in this regulation (§ 387.13) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB numbers 0625-0104 and 0625-0036, respectively.

III. Issues and Public Comments

The Department received five public comments on the interim rule published December 22, 1980. Three comments noted with approval revised § 387.13(g) which, upon request, allows companies to maintain records on micrographic systems during the first year of the retention period. One comment suggested that records should be retainable in micrographic systems immediately upon their receipt. Because maintenance of original records for the first year of the retention period facilitates the investigative process, the Department, though sensitive to the reporting burden (as evidenced by its willingness to consider exceptional cases), cannot further reduce that burden without jeopardizing its ability to enforce the Act effectively. Another comment suggested a number of documents that should be exempt from recordkeeping requirements under § 387.13(h). Several of the suggestions have been adopted and included in that section.

The Export Administration Act of 1979 was amended by Pub. L. 97-145 after

publication of these rules in interim form. Consequently, the sanctions provision, § 387.1, has been amended to conform it to the new penalty provisions that apply to violations occurring after December 29, 1981.

IV. Rulemaking Procedure and Invitation for Comments

In connection with various rulemaking requirements, the Office of Export Administration, the Office of Export Enforcement, and the Office of Antiboycott Compliance have determined that:

1. Under section 13(a) of the Act (50 U.S.C. app. 2412) this rule is exempt from public participation in rulemaking procedures of the Administrative Procedure Act. This rule was published in interim form. All comments, both written and oral, were considered, as contemplated by section 13(b) of the Act. This rule addresses those comments and confirms the regulations as a final rule.

2. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

3. This rule does not impose an additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

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

This rule is issued in final form. Although there is no formal comment period, public comments on these regulations are welcome on a continuing basis. All public comments on these regulations are a matter of public record and are available for public inspection and copying. Communications from agencies of the U.S. Government or foreign governments are not made available for public inspection.

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

Drafting Information

The principal authors of these rules are Pamela P. Breed, Deputy Assistant General Counsel—Enforcement and Litigation, Daniel C. Hurley, Jr., Attorney-Advisor, and Margo E. Jackson, Attorney-Advisor.

List of Subjects

15 CFR Part 368

Imports, Penalties.

15 CFR Part 369

Boycotts, Reporting requirements, Trade practices.

15 CFR Part 370

Exports, Administrative practice and procedure.

15 CFR Parts 372, 373

Exports.

15 CFR Part 387

Exports, law enforcement, Penalties.

15 CFR Part 388

Administrative practice and procedure, Exports, Penalties, Boycotts.

For the reasons set forth above, the regulations on Enforcement, 15 CFR Part 387, as well as portions of Parts 368 through 386 and 388 are amended as set forth below.

1. 15 CFR Part 387 is revised as set forth below.

PART 387—ENFORCEMENT

Sec.

387.1 Sanctions.
387.2 Causing, aiding, and abetting a violation.
387.3 Solicitation, attempt, and conspiracy.
387.4 Acting with knowledge of a violation.
387.5 Misrepresentation and concealment of facts.
387.6 Export, diversion, reexport, transshipment.
387.7 Failure to comply with reporting requirements.
387.8 Failure to answer interrogatories or respond to requests for admission or to produce documents.
387.9 Licensee accountable for use of license.
387.10 Unauthorized use and alterations of export control documents.
387.11 Trafficking and advertising export control documents.
387.12 Transactions with persons subject to denial orders.
387.13 Recordkeeping.
387.14 Where to report violations.

Authority. Sec. 4, Pub. L. 97–145 (to be codified at 50 U.S.C. app. 2410;) Secs. 4, 5, 6, 7, 8, 11, 12, 15 and 21, Pub. L. 96–72, 50 U.S.C. app. § 2401, et seq. (Supp. III 1979); E.O. 12214, (45 FR 29783, May 6, 1980); Department Organization Order 10–3 of February 15, 1982 (unpublished) and International Trade Administration Organization and Function Orders 41–1, effective February 15, 1982 (unpublished) and 41–4, effective May 18, 1982 (47 FR 29582, July 7, 1982).

§ 387.1 Sanctions.

(a) *Criminal.*—(1) *Violations of Export Administration Act.*—(i) *General.* Except as provided in paragraph (a)(1)(ii) of this section, whoever knowingly violates the Export Administration Act ("the Act") or any regulation, order, or license issued under the Act is punishable for each violation by a fine of not more than five times the value of the exports involved or $50,000, whichever is greater, or by imprisonment for not more than five years, or both.

(ii) *Willful violations.* Whoever willfully exports anything contrary to any provision of the Act or any regulation, order, or license issued under the Act, with the knowledge that such exports will be used for the benefit of any country to which exports are restricted for national security or foreign policy purposes except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both. Any person who is issued a validated license under this Act for the export of any goods or technology to a controlled country and who, with the knowledge that such export is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than five years, or both. For purposes of this Part, "controlled country" means any country described in section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370).

(2) *Violations of False Statements Act.* The submission of false or misleading information or the concealment of material facts, whether in connection with license applications, boycott reports, Shipper's Export Declarations, investigations, compliance proceedings, appeals, or otherwise, is also punishable by a fine of not more than $10,000, or by imprisonment for not more than five years, or both, for each violation (18 U.S.C. 1001).

(b) *Administrative.*[1]—(1) *Denial of export privileges.* Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is also subject to administrative action which may result in suspension, revocation, or denial of export privileges conferred under the Export Administration Act (*see* § 388.3 et seq.).

(2) *Exclusion from practice.* Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is further subject to administrative action which may result in exclusion from practice before the International Trade Administration (*see* § 390.2(a)).

(3) *Civil penalty.* A civil penalty may be imposed for each violation of the Export Administration Act or any regulation, order or license issued under the Act either in addition to, or instead of, any other liability or penalty which may be imposed. The civil penalty may not exceed $10,000 for each violation except that the civil penalty for each violation involving national security controls imposed under § 5 of the Act may not exceed $100,000. The payment of such penalty may be deferred or suspended, in whole or in part, for a period of time that may exceed one year. Deferral or suspension shall not operate as a bar in the collection of the penalty in the event that the conditions of the suspension or deferral are not fulfilled. When any person fails to pay a penalty imposed under this § 387.1(b)(3), civil action for the recovery of the penalty may be brought in the name of the United States, in which action the court shall determine *de novo* all issues necessary to establish liability. Once a penalty has been paid, no action for its refund may be maintained in any court.[2]

(4) *Seizure.* Commodities or technical data which have been, are being, or are intended to be, exported or shipped from or taken out of the United States in violation of the Export Administration Act or of any regulation, order, or license issued under the Act are subject to being seized and detained, as are the vessels, vehicles, and aircraft carrying such commodities or technical data. Seized commodities or technical data are subject to forfeiture (22 U.S.C. 401) (*see* § 386.8(b)(6)).

[1] Violations of the Act or Regulations, or any order or license issued under the Act, may result in the imposition of administrative sanctions, and also or alternatively of a fine or imprisonment as described in paragraph (a) of this section, seizure or forfeiture of property under 22 U.S.C. 401, or any other liability or penalty imposed by law. The U.S. Department of Commerce may compromise and settle any administrative proceeding brought with respect to such violations.

[2] The U.S. Department of Commerce may refund the penalty at any time within two years of payment if it is found that there was a material error of fact or of law.

§ 387.2 Causing, aiding, and abetting a violation.

No person may cause, or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of any act required, by the Export Administration Act or any regulation, order, or license issued under the Act.

§ 387.3 Solicitation, attempt, and conspiracy.

(a) *Solicitation and attempt.* No person may do any act that solicits the commission of, or that constitutes an attempt to bring about, a violation of the Export Administration Act or any regulation, order, or license issued under the Act.

(b) *Conspiracy.* No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the Export Administration Act or any regulation, order, or license issued under the Act.

§ 387.4 Acting with knowledge of a violation.

No person may order, buy, receive, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any commodity or technical data exported or to be exported from the United States or which is otherwise subject to the Export Administration Regulations, with knowledge or reason to know that a violation of the Export Administration Act or any regulation, order, or license has occurred, is about to occur, or is intended to occur with respect to any transaction.

§ 387.5 Misrepresentation and concealment of facts.

(a) *Misrepresentation and concealment.* No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, whether directly to the Office of Export Administration, the Office of Export Enforcement,[1] the Office of Antiboycott Compliance, any customs office, or an official of any other United States agency, or indirectly to any of the foregoing through any other person or foreign government agency or official:

[1] For purposes of Part 387, the Office of Export Enforcement enforces the Export Administration Regulations relating to short supply controls imposed under section 7 of the Act. Such controls are otherwise the responsibility of the Office of Industrial Resource Administration.

(1) In the course of an investigation or other action instituted under the authority of the Export Administration Act;

(2) In connection with the preparation, submission, issuance, use, or maintenance of any export control document, as defined in §370.2, or restrictive trade practice or boycott request report, as defined in § 369.6;

(3) For the purpose of or in connection with effecting an export from the United States, or the reexport, transshipment, or diversion of any such export.

(b) *Scope.* Paragraph (a) of this section applies to all representations, statements, and certifications made to, and material facts concealed from, the Office of Export Administration, the Office of Export Enforcement, the Office of Antiboycott Compliance, and the U.S. Customs Service, or other agencies with respect to matters within the jurisdiction of these agencies under the statutes, Executive Orders, and regulations relating to export control, restrictive trade practices or boycotts, and orders or licenses issued or established under the Act.

(c) *Representations to be continuing in effect; notification.* All representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify, in writing, the Office of Export Administration, the Office of Export Enforcement, or the Office of Antiboycott Compliance, as well as any other cognizant agency(ies), of any change of any material fact or intention from that previously represented, stated, or certified. Such notification shall be made immediately upon receipt of any information which would lead a reasonably prudent person to believe that a change of material fact or intention has occurred or may occur in the future.

§ 387.6 Export, diversion, reexport, transshipment.

Except as specifically authorized by the Office of Export Administration, in consultation with the Office of Export Enforcement, no person may export, dispose of, divert, direct, mail or otherwise ship, transship, or reexport commodities or technical data to any person or destination or for any use in violation of or contrary to the terms, provisions, or conditions of any export control document, any prior representation, any form of notification of prohibition against such action, or any provision of the Export

Administration Act or any regulation, order, or license issued under the Act.

§ 387.7 Failure to comply with reporting requirements.

No person may fail or refuse to comply with reporting requirements in violation of the Export Administration Act or of any order, regulation or license issued under the Act. *See,* for example, §§ 369.6 and 373.4(e)(3).

§ 387.8 Failure to answer interrogatories or respond to requests for admission or to produce documents.

(a) *Interrogatories and requests for admission or to produce documents.* Whenever the Office of Export Enforcement or the Office of Antiboycott Compliance finds it impracticable, during the course of an investigation, other proceeding or action, to subpoena a person, or books, writings, records, or other tangible things bearing upon the matter being investigated, the Office of Export Enforcement or the Office of Antiboycott Compliance may serve upon such person interrogatories, requests for admission of facts, requests for the production of books, records and other writings, or requests to produce or make available other tangible things for inspection, including commodities or technical data exported from the United States, as therein specifically set forth. If a person, within 20 days after receiving interrogatories or requests, fails or refuses to (1) furnish responsive answers to such interrogatories or requests for admissions, (2) produce the requested books, records and other writings, or (3) produce or make available for inspection other tangible things requested, including commodities or technical data exported from the United States, which are in that person's possession, custody or control, without good cause being shown, an order may be issued as provided in § 383.3(a)(2), denying export privileges to such person. This order shall remain in effect for five years or until such person responds to the interrogatories or requests or gives adequate reasons for failure or refusal to so respond.

(b) *Service.* Interrogatories or requests shall be served in the same manner as provided in § 388.4 (b) and (c) for service of a charging letter.

(c) *Enforcement procedures.* The procedure regarding applications for denial orders under § 387.8(a) and motions to vacate or modify such orders shall conform substantially to that provided for temporary denial orders by § 388.19 (b) and (c).

§ 387.9 Licensee accountable for use of license.

The person to whom a license is issued becomes the licensee and will be held strictly accountable for use of the license. The licensee may not, without prior written approval of the Office of Export Administration, in consultation with the Office of Export Enforcement, permit any other person to facilitate or effect the export of any commodity or technical data described in the license, except under his direction and responsibility as his true agent in fact. No term of sale or export or other agreement between the licensee or the order party and the purchaser or ultimate consignee of such commodity or technical data may provide otherwise.

§ 387.10 Unauthorized use and alterations of export control documents.

Except as otherwise specifically authorized in the Export Administration Regulations or in writing by the Office of Export Administration, in consultation with the Office of Export Enforcement, no licensee or other person, may obtain, use, alter, or assist in or permit the use or alteration of, any export control document, for the purpose of or in connection with facilitating or effecting any export or reexport other than that set forth in such document and in accordance with all the terms, provisions, and conditions thereof.

§ 387.11 Trafficking and advertising export control documents.

(a) *Unlawful practices.* Without prior written approval of the Office of Export Administration, in consultation with the Office of Export Enforcement, no person may do any of the following with respect to any export or reexport under any export control document:

(1) *Transfers or changes of authority.* Effect any transfer of, or other change of the authority granted in such document, whether by sale, grant, gift, loan or otherwise, to any person; or permit any person to use the same other than for the true account of and as true agent in fact for the licensee; or, if that person is not the licensee, to receive or accept a transfer or other change of the authority granted in, or otherwise use an export control document except for the true account of and as true agent in fact for the licensee.

(2) *Change in named parties.* Effect any change of, substitution for, or addition to, the parties named in an export control document; or transfer, obtain, purchase, or create any interest or participation in the transaction described in any export control document.

(3) *Unlawful advertising or soliciting.* Offer or solicit by advertisement, circular, or other communication any transfer or change of an export control document or any interest therein prohibited above. Such communication shall be deemed unlawful:

(i) Even though coupled with a condition requiring approval by the Office of Export Administration of a new consignor or consignee or other change in the export license, by way of transfer, amendment or otherwise;

(ii) Where, in offering or soliciting the sale for export of any commodities or technical data, the communication indicates that the proposed seller of such commodities or technical data holds or will furnish a license or other export control document for the export of such commodities or technical data;

(iii) Where, in offering or soliciting the purchase for export of any commodities or technical data, that communication is addressed by the proposed buyer directly or indirectly to any person on the condition that such person as a seller then holds or will furnish a license or other export control document for the export of those commodities or technical data.

(4) *Other unlawful practices.* Sections 387.10, 387.11, and 387.12 among other things, make it unlawful:

(i) For a licensee or other person holding an export control document to sell or offer to sell, or for any person to purchase or to offer to purchase, the commodities or technical data described in such document with the understanding that the document may be used by or for the benefit of the purchaser to effect export of those commodities or technical data;

(ii) For any person to effect the export of the commodities referred to in § 387.11(a)(4)(i) for the benefit of or "for the account" of any person other than the licensee, regardless of the device, means, or fiction employed;

(iii) For the licensee to act fictitiously as principal or agent of another person who actually is effecting the export, or for such other person to act fictitiously as the licensee's principal or agent for the same purpose;

(iv) For the named consignee to act "for the account" of a new unlicensed consignee, or

(v) For any person to use a license, originally issued for a specified transaction which was not effected, for any other transaction without the specific written authorization of the Office of Export Administration.

(b) *Transfer of dock receipts, bills of lading, or liens.* (1) *Use of certain export control documents.* Section 387.12(a) is

not to be construed as affecting the transfer and other use of dock receipts, bills of lading, or other commercial documents necessary to complete a transaction authorized by the export license, or impairing the validity of liens or other security titles or interests created in good faith with respect to commodities or technical data or documents in the course of financing, warehousing, forwarding, or transporting commodities or technical data.

(2) *Disposition of export.* A person who is entitled to foreclose on any lien or other security title or interest, or who may exercise any rights as holder of the lien or other security title or interest, who contemplates an export under the license by someone other than the licensee or to someone other than the purchaser or ultimate consignee designated in the license, must apply for a new license in accordance with the provisions of Part 372.

§ 387.12 Transactions with persons subject to denial orders.

(a) *Prohibited activities.* Without prior disclosure of the facts to and specific authorization of the Office of Export Administration, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity:

(1) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the International Trade Administration; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate (i) in any transaction which may involve any commodity or technical data exported or to be exported from the United States, (ii) in any reexport thereof, or (iii) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

(b) *Definition of "Person Denied Export Privileges".* For the purpose of this section, the term "person denied export privileges" means:

(1) Any person, firm, corporation, or other business organization whose export privileges are revoked or denied by any order or who is excluded by such order from practice before the International Trade Administration; and

(2) Any other person, firm, corporation, or other business organization also denied export privileges or excluded from practice before the International Trade Administration because of a relationship to any person denied export privileges through affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services during the period of such order.

(c) *Applicability of orders.* Orders which revoke or deny the export privileges of any person or which exclude any person from practice before the International Trade Administration may provide that the terms and prohibitions of such orders apply not only to the persons expressly named therein but also, for the purpose of preventing evasion, to any other person, firm, corporation, or other business organization with which that person may then or thereafter (during the term of the order) be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services. The Table of Denial Orders (*see* Supplement No. 1 to Part 388 and §§ 388.3 and 390.2) contains all orders which currently deny export privileges in whole or in part. The table also lists the names and addresses of such persons, the effective and expiration dates of the orders, a brief summary of the export privileges affected, and the citations to the volumes and pages of the **Federal Register** where complete texts of the orders are published. The publication of such orders in the **Federal Register** constitutes legal notice of the terms thereof to all persons.

§ 387.13 Recordkeeping.

(a) *Transactions subject to this regulation.* This section applies to (1) transactions involving restrictive trade practice or boycott requirements or requests (OMB No. 0625–0036), (2) exports of commodities or technical data from the United States and any known reexports, transshipments, or diversions of commodities or technical data originally exported from the United States (OMB No. 0625–0104), or (3) any other transactions subject to these Regulations, regardless of whether the export or reexport is made, or proposed to be made, by any person with or without authorization by a validated license, a general license, or any other export authorization. This section also applies to all negotiations connected with those transactions, except that for export control matters a mere preliminary inquiry or offer to do business and negative response thereto shall not constitute negotiations, unless the inquiry or offer to do business proposes a transaction which a reasonably prudent exporter would believe likely to lead to a violation of export orders or regulations. It also applies to any exports to Canada, if, at any stage in the transaction, it appears that a person in a country other than the United States or Canada has an interest therein or that the commodity or technical data involved is to be reexported, transshipped, or diverted from Canada to another foreign country.

(b) *Persons subject to this regulation.* Any person subject to the jurisdiction of the United States who, as principal or agent (including a forwarding agent), participates in any transaction described in § 387.13(a), and any person in the United States or abroad who is required to make and keep records under any provisions of the Export Administration Regulations, shall keep all the records described in § 387.13(c), which are made or obtained by that person, and shall produce them in the manner provided in paragraph (f) of this section.

(c) *Records to be kept.* The records to kept under this § 387.13 shall include export control documents, as defined in §370.2, memoranda, notes, correspondence, contracts, invitations to bid, books of account, financial records, restrictive trade practice or boycott documents, and reports, and other written matter pertaining to the transactions described in § 387.13(a), which are made or obtained by a person described in § 387.13(b). In addition to the records required to be kept by this section, other sections of the Regulations require the retention of records, including §§ 368.2, 369.6, 371.9, 371.10, 371.12, 371.22, 372.1, 372.5, 372.6, 372.13, 373.3, 373.4, 373.7, 373.8, 374.7, 376.5, 376.8, 376.10, 376.15, 377.5, 378.5, 378.6, 379.4, 386.3, and 386.6. The revocation or revision of any provision of the Export Administration Regulations which requires the making and keeping of records shall not be retroactive in effect unless specifically provided and shall not affect the original requirement to keep these records for the prescribed period.

(d) *Reproduction of records.* (1) *Definition.* "Reproduction" for the purpose of this § 387.13(d) is defined to include any photographic, photostatic, micrographic, miniature photographic or other process which completely, accurately and durably reproduces the original record.

(2) *Use of reproductions.* Reproductions may not be substituted for original documents with respect to

all categories of records required to be retained under any provision of the Export Administration Regulations or of any order, until all of the following conditions are met:

(i) The original documents have been retained for twelve months after the beginning of the retention period set forth in § 387.13(e) *or* an exception has been granted under the provisions of § 387.13(g).

(ii) All significant information, marks and/or other characteristics on the original document must be clearly visible and legibly reproduced.

(iii) Appropriate facilities must be provided and maintained for the preservation of the reproduced records during the retention period and for the ready location and inspection of the records, including a projector for viewing films, if needed.

(e) *Period of retention.* (1) Except for records relating to restrictive trade practice or boycott requests, which must be kept for three years (*see* § 369.6(b)(8)), records required under this section shall be kept for a period of two years from the latest of the following times:

(i) The export from the United States; or

(ii) Any known reexport, transshipment, or diversion; or

(iii) Any other termination of the transaction, whether formally in writing or by any other means. It may be advisable to maintain records longer than the mandatory two-year retention period because the statute of limitations for criminal actions brought under the Export Administration Act of 1979 and its predecessor Acts is five years (18 U.S.C. 3282). The statute of limitations for administrative compliance proceedings is also five years (28 U.S.C. 2462).

(2) If the Department of Commerce or any other Government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the agency concerned.

(f) *Producing and inspecting records.* (1) Persons within the United States may be requested to produce records which are required to be kept by any provision of the Export Administration Regulations or by any order, and to make them available for inspection and copying by any authorized agent, official or employee of the International Trade Administration, the U.S. Customs Service, or the U.S. Government, without any charge or expense to such agent, official or employee. The Office of Export Enforcement and the Office of Antiboycott Compliance encourage voluntary cooperation with such requests. When voluntary cooperation is not forthcoming the Office of Export Enforcement and the Office of Antiboycott Compliance are authorized to issue subpoenas for books, records, and other writings. In instances where a person does not comply with a subpoena, the Department of Commerce may petition the appropriate district court to have the subpoena enforced.

(2) Every person abroad, required to keep records by any provision of the Export Administration Regulations or by any order, shall produce all records or reproductions of records required to be kept, and make them available for inspection and copying upon request by an authorized agent, official, or employee of the International Trade Administration, the U.S. Customs Service, or a U.S. Foreign Service post, or by any other accredited representative of the U.S. Government, without any charge of expense to such agent, official or employee. Persons located outside the United States who fail to comply with certain requests, including requests to produce documents, may be subject to orders denying export privileges. (*See* § 387.8.)

(g) *Requests for exceptions to recordkeeping requirements.* (1) *Effect of exception.* Recordkeeping entities (as defined in § 387.13(b) wishing to maintain records on micrographic systems prior to the second year of the retention period may request an exception to the recordkeeping requirements. An exception, if granted, permits the recordkeeping entity to substitute micrographic records for original documents for the full retention period.

(2) *Basis for consideration.* When reviewing requests for exceptions, the Office of Export Administration, in consultation with the Office of Export Enforcement, and the Office of Antiboycott Compliance will take into consideration the requestor's previous performance with respect to general export control matters and antiboycott matters respectively.

(3) *Guidelines for micrographic systems.* To maintain records under this exception, a micrographic system shall have the following minimum requirements:

(i) The system shall provide commercial permanence of all records.

(ii) The system shall provide for frequent quality control inspection to ensure readability of all records.

(iii) Micrographed records must have a degree of legibility and readability, when displayed on a viewer and when reproduced on paper, equal to that of the original records. (*See* section 5 or IRS Revenue Procedure No. 81–46, 1981–40 C.B. 6 concerning technical standards of micrographed records.)

(iv) A detailed index of all micrographic data shall be maintained, and arranged in such a manner as to permit the immediate location of any particular record, location of all documents relating to a given transaction, and determination of disposition of corresponding original documents.

(4) *Submission of requests for exception.*

(i) The recordkeeping entity shall submit requests for exceptions involving general export matters to:

Office of Export Administration, P.O. Box 273, Washington, D.C. 20044

(ii) The recordkeeping entity shall submit requests for exceptions involving antiboycott matters to:

Office of Antiboycott Compliance, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Room 3886, Washington, D.C. 20230

(iii) The requesting firm shall include in the request—

(A) Data on the proposed micrographic system, including specific information as to how the system conforms to requirements set forth in § 387.13(g)(3);

(B) A statement concerning intended disposition of corresponding original documents; and

(C) Samples of records to be kept on the system.

(5) *Micrographing records under an exception.* Upon receiving written notice that an exception has been granted under this § 387.13(g), the recordkeeping entity may substitute micrographic reproductions for only those records *already* in the retention period and approved under the exception. Originals of records that have not entered the retention period must be kept until the retention period begins (as set forth in §§ 369.6(b)(8) and 387.13(e)) and micrographed records may then be substituted for the originals.

(6) *Disposition of original documents.* The recordkeeping entity shall include with micrographed records a signed document indicating final disposition of original documents, and the date of final disposition.

(7) *Revocation of exception.* The Department of Commerce may revoke an individual exception at any time if it determines that the firm has acted improperly, or for other good cause. A decision to revoke this exception may be appealed under the provisions of Part 389 of these Regulations.

(h) *Records exempt from recordkeeping requirements.* The

following kinds of records have been determined to be exempt from recordkeeping requirements:

—Export Information Page
—Special Export Price List
—Vessel Log from Freight Forwarder
—Inspection Certificate
—Warranty Certificate
—Guarantee Certificate
—Packing Material Certificate
—Goods Quality Certificate
—Notification to Customer of Advance Mailings
—Letter of Indemnity
—Financial Release Form
—Financial Hold Form
—Export Parts Shipment Problem Form
—Draft Number Log
—Expense Invoice Mailing Log
—Financial Status Report
—Bank Release of Guarantees
—Cash Sheet
—Monthly Customer Statement
—Sales Run
—Commission Payment Back-up
—Commissions Payable Worksheet
—Commissions Payable Control
—Check Request Forms
—Accounts Receivable Correction Form
—Check Request Register
—Commission Payment Printout
—Engineering Fees Invoice
—Foreign Tax Receipt
—Individual Customer Credit Status
—Request for Export Customer Code Forms
—Acknowledgement for Receipt of Funds
—Escalation Development Form
—Summary Quote
—Purchase Order Review Form
—Proposal Extensions
—Financial Proposal to Export Customers
—Sales Summaries

§ 387.14 Where to report violations.

(a) *Notification.* The Office of Export Enforcement has the primary responsibility for enforcing these Regulations except that the Office of Antiboycott Compliance has the responsibility for enforcing the Restrictive Trade Practices or Boycott Regulations in particular.

(1) If a person obtains knowledge that a violation of these Regulations has occurred or will occur, that person may notify: Office of Export Enforcement, P.O. Box 7138, Washington, D.C. 20044, telephone (202) 377–3461, or Office of Antiboycott Compliance, U.S. Department of Commerce, 14th Street and Constitution Ave. N.W., Room 3886, Washington, D.C. 20230, telephone (202) 377–2381, as appropriate.

(2) Any federal, state, or local government agency obtaining knowledge of a potential violation under these Regulations should immediately report such potential violation to: (i) Office of Export Enforcement, P.O. Box 7138, Washington, D.C. 20044, telephone (202) 377–4608. Failure to report such potential violations may result in the unwarranted issuance of validated export licenses or unlicensed exports to the detriment of the national security, foreign policy or short supply interests of the United States; (ii) Office of Antiboycott Compliance, U.S. Department of Commerce, 14th Street and Constitution Ave. N.W., Room 3886, Washington, D.C. 20230, telephone (202) 377–2381.

(b) *Reporting requirement distinguished.* The notification provisions set forth in paragraph (a) of this section are not "reporting requirements" within the meaning of § 387.7.

PART 368—[AMENDED]

2. Section 368.4(b) is revised to read as follows:

§ 368.4 Penalties and sanctions for violations.

* * * * *

(b) *Criminal.* The False Statements Act makes it a criminal offense to make a willfully false statement or conceal a material fact, or knowingly use a document containing a false statement, in any matter within the jurisdiction of a U.S. department or agency. Maximum penalties under this provision are $10,000 fine or imprisonment for five years, or both. In addition, a knowing violation of the Export Administration Act or any regulation, order, or license issued under the Act generally is punishable by a fine of not more than five times the value of the exports involved or $50,000, whichever is greater, or by imprisonment for not more than 5 years, or both. Willful violations are punishable by fines or imprisonment, or both. (*See* also § 387.1(a).)

PART 369—[AMENDED]

3. Section 369.6(b) (5) and (8) are revised to read as follows:

§ 369.6 Reporting requirements.

* * * * *

(b) * * *

(5) At the reporting person's option, reports may be submitted on either a single transaction form (Form ITA–621P, Report of Restrictive Trade Practice or Boycott Request Single Transaction (revised 7–79) OMB No. 0625–0036) or on a multiple transaction form (Form ITA–6051P, Report of Request for Restrictive Trade Practice or Boycott Multiple Transactions (revised 7–79) OMB No. 41–R2305). Use of the multiple transaction form permits the reporting person to provide on one form all required information relating to as many as 75 reportable requests received within any single reporting period.

* * * * *

(8) Records containing information relating to a reportable boycott request, including a copy of any document(s) in which the request appears, must be maintained by the recipient for a three-year period after the receipt of the request. The Department may require that these materials be submitted to it or that it have access to them at any time within that period. (*See* § 387.13 for additional recordkeeping requirements.)

* * * * *

Supplement 1—[Removed]

4. Supplement No. 1 to Part 369 and the heading above it reading "Interpretation of Part 369" are removed.

Appendix—[Redesignated as Supplement 1]

5. The material titled "Appendix—Interpretations" is redesignated as Supplement No. 1 to Part 369, "Interpretations."

Supplement 2—[Amended]

6. A new heading "Interpretations" is added to Supplement No. 2 to Part 369.

Supplement 3—[Amended]

7. Supplement No. 3 to Part 369, "Appendix—Interpretations," is amended by removing "Appendix" from the heading.

Supplement 4—[Amended]

8. Supplement No. 4 to Part 369 is amended by removing "Appendix" from the heading.

Supplement 5—[Amended]

9. Supplement No. 5 to Part 369, "Appendix—Interpretation," is amended by removing "Appendix" from heading.

PART 370—[AMENDED]

10. Section 370.2 is amended by adding the following after the definitions of "Commodity Control List (CCL)" and "Net Value", respectively.

§ 370.2 Definitions of terms.

* * * * *

Controlled Country. Any country described in Section 620(f) of the Foreign Assistance Act of 1961.

* * * * *

Office of Export Enforcement. Pursuant to the Export Administration Act of 1979 (Pub. L. 96–72), the Office of Export Enforcement enforces the Export Administration Act and the Regulations thereunder and among other things, directs the investigation of suspected export control violations and prepares

cases on violations for referral for administrative proceedings by the Department of Commerce and criminal prosecution by the Department of Justice.

* * * * *

11. The first sentence of paragraph (b) of § 370.3 is revised to read as follows:

§ 370.3 Prohibited exports.

* * * * *

(b) *Revocation of Export Licenses and Other Authorizations.* All export licenses and other authorizations to export or reexport are subject to revision, suspension, or revocation, in whole or in part, without notice. * * *

* * * * *

PART 372—[AMENDED]

12. Paragraph (d)(4) of § 372.9 is revised to read as follows:

§ 372.9 Issuance of validated licenses.

* * * * *

(d) * * *

(4) *Revocation, suspensions, or revisions.* Outstanding licenses may be revised, suspended, or revoked, in whole or in part, or the validity periods thereof may be extended or reduced by appropriate orders or regulations.

* * * * *

PART 373—[AMENDED]

§ 373.7 [Amended]

13. Paragraph (m) of § 373.7 is removed.

14. Paragraph (n) of § 373.7 is redesignated as (m).

15. Paragraph (o) of § 373.7 is redesignated as (n).

PART 388—[AMENDED]

16. Section 388.1, first sentence, is revised to read as follows:

§388.1 Purpose and limitations.

The regulations in this part set forth the procedures for imposing administrative sanctions for violation of the Export Administration Act of 1979, as amended (Pub. L. 97–145, 50 U.S.C. app. 2401, *et seq.)* or its predecessor statute, the Export Administration Act of 1969, as amended (50 U.S.C. app. 2401, *et seq.* (1976 & Supp. III 1979)) (hereinafter collectively referred to as the "Act," although citations to particular sections of the Act will be to the 1979 Act), or of any regulation, order, license or other authorization issued thereunder. * * *

17. Section 388.2 is revised to read as follows:

§ 388.2 Definitions.

As used in this part:

Department. The Office of Export Administration, the Office of Export Enforcement or the Office of Antiboycott Compliance, International Trade Administration, U.S. Department of Commerce.

Party. The Department and any person named as a respondent, in a charging letter or order proposed or issued under this part.

Presiding Official. The person authorized to conduct hearings in administrative proceedings. For proceedings brought under § 8 of the Export Administration Act, the presiding official shall be an administrative law judge who may impose sanctions only after notice and opportunity for an agency hearing on the record. Other proceedings may be referred by the Director, Office of Export Enforcement, to either an Administrative Law Judge or the Hearing Commissioner who shall serve as presiding official.

Regulations. The Export Administration Regulations (15 CFR Parts 368 through 399), including the regulations concerning Restrictive Trade Practices or Boycotts (15 CFR Part 369).

Respondent. Any person named in a charging letter, temporary denial order, or order to show cause proposed or issued under this part.

18. Section 388.3(a)(4) is revised to read as follows:

§ 388.3 Denial of export privileges and imposition of civil penalties.

(a) * * *

(4) *Civil penalty.* In addition to or instead of any or all of the administrative sanctions described in (a) (1), (2) and (3) of this section, a civil penalty not to exceed $10,000 for each violation may be imposed, except that a civil penalty not to exceed $100,000 may be imposed for each violation involving national security controls imposed under § 5 of the Act.

* * * * *

19. The first sentence of § 388.4(a) is revised to read as follows:

§ 388.4 Institution of administrative proceedings.

(a) *Charging letters.* The Director of the Office of Export Enforcement [1] or the Director of the Office of Antiboycott Compliance, as appropriate, may begin administrative proceedings under this Part by issuing a charging letter in the name of the Department. * * *

* * * * *

20. The first sentence of § 388.6(a) is revised to read as follows:

§ 388.6 Filing and service of papers other than charging letter.

(a) *Filing.* All papers to be filed shall be delivered or mailed to "EAR Administrative Proceedings," U.S. Department of Commerce, Room 6716, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, or such other place as the presiding official may designate. * * *

* * * * *

21. Section 388.17(b) is revised to read as follows:

§ 388.17 Consent proceedings.

(a) * * *

(b) Cases may also be settled prior to the service of a charging letter. In such event, a proposed charging letter shall be prepared, and a consent agreement and order shall be submitted for approval and signature to the Deputy Assistant Secretary of Commerce for Export Enforcement. The consent proposal shall include a consent agreement and a proposed order. If the Deputy Assistant Secretary does not approve the proposal, he will notify the parties and the case will proceed as though no consent proposal had been made. If the Deputy Assistant Secretary approves the proposal he will issue an order, and no action by the presiding official shall be required. The Deputy Assistant Secretary may order that any administrative sanction imposed shall be suspended in whole or in part upon such terms of probation or other conditions as he deems appropriate. Any such suspension may be modified or revoked by the Deputy Assistant Secretary, or on appeal, by the Assistant Secretary of Commerce for Trade Administration, as provided in § 388.16(c).

* * * * *

§ 388.19 [Amended]

22. Section 388.19(a)(1) is amended to remove "Office of Export Administration" and insert "Office of Export Enforcement" in the first (and only) sentence.

[1] By agreement with the Director of the Office of Industrial Resource Administration, the Director of the Office of Export Enforcement enforces short supply controls imposed under section 7 of the Export Administration Act.

23. Section 388.20(c)(1)(i) is revised to read as follows:

§ 388.20 Record for decision and availability of documents.

* * * * *

(c) *Availability of documents.*—(1) *Scope.*

(i) For proceedings started on or after October 12, 1979, all charging letters, answers, decisions, and orders disposing of a case shall be made available for public inspection in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce. The complete record for decision, as defined in § 388.20 (a) and (b), shall be made available on request. In addition, all decisions on appeal and those final orders providing for denial, suspension or revocation of export licensing privileges shall be published in the **Federal Register.**

* * * * *

24. Section 388.22(b) is revised to read as follows:

§ 388.22 Appeals.

* * * * *

(b) *Filing of appeal.* An appeal of an order must be filed with the Office of the Assistant Secretary for Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 3898–B, Washington, D.C. 20230, within 30 days after service of the order appealed from. If the Assistant Secretary cannot act on an appeal for any reason, the Under Secretary for International Trade may designate another Department of Commerce official to receive and act on the appeal.

* * * * *

(Secs. 8, 13, 15, and 21, Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. 2401 et seq. (Supp. III 1979); Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10–3 (unpublished) as reissued February 15, 1982; International Trade Administration Organization and Function Orders 41–1 of February 15, 1982 and 41–4 (47 FR 29582, July 7, 1982)

Date: December 10, 1982.

Bohdan Denysyk,

Deputy Assistant Secretary for Export Administration.

Dated: December 10, 1982.

Theodore Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 82–35174 Filed 12–27–82; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–19336; S7–933]

Pro Rata Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission announces the adoption of revised Rule 14d–8 to govern the acceptance of securities deposited in response to a partial tender offer if a greater number of securities are deposited than the bidder is bound or willing to purchase and rescission of current Rule 14d–8. Pursuant to revised Rule 14d–8, a bidder in an oversubscribed partial tender offer is required to accept securities on a pro rata basis according to the number of securities deposited by each depositor during the period such offer remains open.

DATE: Revised Rule 14d–8 shall be effective with respect to any tender offer subject to Section 14(d) of the Exchange Act that is commenced within the meaning of Rule 14d–2 under that Act after December 28, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph G. Connolly, Jr., (202) 272–3097, Office of Tender Offers, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission announces the adoption of revised Rule 14d–8 under Sections 14(e) and 23(a) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a *et seq.*). The revised rule requires a bidder in an oversubscribed partial tender offer to accept securities on a pro rata basis according to the number of securities deposited by each security holder during the period such offer remains open.

I. General

After consideration of the comments received on proposed Rule 14d–8,[1] published in Release No. 34–18761 (May 25, 1982) (47 FR 24338) (the "Proposing Release"), and its continuing experience with the ten calendar day proration period in recent partial tender offers, the Commission has determined to adopt revised Rule 14d–8, as proposed, and to rescind current Rule 14d–8 (17 CFR 240.14d–8).[2] The Commission believes that, as stated in the Proposing Release, extension of proration rights throughout the term of the offer is essential to assure security holders the time necessary to consider the merits of an offer and to obtain sufficient information upon which to base their investment decisions and to minimize the potential security holder confusion and misunderstanding generated by changing proration periods and multiple proration pools.

In the Proposing Release, the Commission discussed at length the problems associated with the current ten calendar day proration period and requested comments on its proposal to extend the proration period for the duration of the offer. Concurring in the Commission's assessment that, as used in recent partial tender offers, the minimum ten calendar day proration period denies security holders an adequate opportunity to make informed investment decisions and leads to security holder confusion and misunderstanding, the majority of the commentators supported the Commission's proposal to extend the proration period beyond the current ten calendar day period.

A number of commentators related specific experiences in which they had problems receiving tender offer materials and effecting their investment decisions within the ten calendar day proration period. These experiences included receiving tender offer materials after the expiration of a bidder's proration period or so close to the end of the period that they could not tender before the expiration of the proration period. As a result, these commentators stated that they were foreclosed from participating in the offer and were likely to receive a lesser amount for their securities in a proposed second-step merger. In addition, these commentators highlighted the problems that individual security holders experience trying to understand the varying legal consequences of the deadlines contained in a partial tender offer, appreciating the importance of deciding

[1] Pursuant to the Commission's request for comment on the Proposing Release, 41 commentators submitted 42 letters. The commentators may be categorized as follows: corporations (7); law firms and associations (7); securities industry (6); banks and depositories (2); state governmental agencies (1); academicians (4); and individuals (14). The comment letters are available for public inspection and copying at the Commission's Public Reference Room (*see* File No. S7–933). The Commission also has placed in the files a copy of the summary of public comments prepared by the Division of Corporation Finance.

[2] Having considered the comments received regarding its authority to adopt revised Rule 14d–8, the Commission continues to believe that Sections 14(e) and 23(a) provide such authority.

before the expiration of the proration period whether to tender, sell or hold their stock, and comprehending the effect of multiple proration pools.

Some commentators, while favoring extension of the ten day proration period, suggested modifications to the Commission's specific proposal that were designed principally to make the proration period co-extensive with the withdrawal period. These alternatives were proposed as a result of the commentators' concern that the Commission's proposal would preclude any "early pay" in partial tender offers, since bidders in such offers no longer would be able to begin purchasing tendered securities upon the expiration of the withdrawal period but would have to wait until the expiration of the offer.[3] These commentators expressed concern that the Commission's proposal would tip the balance of advantage in favor of any and all offers and would preclude parity between the two types of offers, because bidders in any and all offers generally could still begin purchasing tendered securities upon the expiration of the withdrawal period.

After reviewing these proposed alternatives, the Commission has concluded that such revisions would continue to deny security holders in a partial tender offer the minimum time prescribed under the tender offer regulations for security holders to make their investment decision, which minimum time is, in fact, assured security holders in an any and all offer. Moreover, the commentators' suggested alternatives fail to eliminate the possibility of multiple proration pools and therefore would permit the current complexity and confusion generated in these partial offers to continue unabated.[4]

[3] Currently, a bidder in a partial offer generally can choose to accept shares for payment upon the expiration of the withdrawal period so long as the shares to be accepted for purchase are not in an open proration pool. In an any and all offer, a bidder generally may choose to accept shares for payment as soon as the withdrawal period expires. In either case, acceptance of securities for payment may be further delayed by, among other things, waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 [15 U.S.C. 12 *et seq.*] and required regulatory and shareholders' approvals

[4] Two other proposed alternatives designed to provide some parity between "any and all" and "partial offers" included a suggestion that in addition to extending the proration period for the duration of the offer, the Commission should extend the withdrawal period for the duration of the offer. The other suggestion was to make the proration period co-extensive with the offering period, but allow a bidder to elect to purchase a portion of the shares tendered by each security holder at the time that it would be entitled to purchase securities tendered if the offer were for all the securities. Under this alternative, a bidder at such time could purchase from each security holder a number of shares equal to the percentage of securities of the class sought. The Commission does not believe that achieving time of payment parity between the two types of offers justifies the additional regulation embodied in the first proposal or the increased complexity that would result in the second proposal (particularly in view of the limited utility of such "early pay" option).

II. Certain Findings

As required by Section 23(a)(2) of the Exchange Act, the Commission has specifically considered the impact that the rule will have on competition. The Commission finds that compliance with the rule will not impose a significant burden on competition which is not necessary and appropriate to achieve the purposes of the Exchange Act.

The Commission for good cause finds, in accordance with the Administrative Procedure Act (5 U.S.C. 553(d)), that, in view of the pressing need to address the problems caused by the current ten calendar day proration period, revised Rule 14d–8 should be effective with respect to any tender offer subject to Section 14(d) of the Exchange Act commenced within the meaning of Rule 14d–2 under that Act after the date of publication of revised Rule 14d–8 in the **Federal Register.**

List of Subjects in 17 CFR Part 240

Reporting requirements, Securities.

III. Text of Rule

In accordance with the foregoing, Title 17, Chapter 2, of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By revising Rule 14d–8, § 240.14d–8, to read as follows:

§ 240.14d–8 Exemption from statutory pro rata requirements.

Notwithstanding the pro rata provisions of Section 14(d)(6) of the Act, if any person makes a tender offer or request or invitation for tenders, for less than all of the outstanding equity securities of a class, and if a greater number of securities are deposited pursuant thereto than such person is bound or willing to take up and pay for, the securities taken up and paid for shall be taken up and paid for as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositor during the period such offer, request or invitation remains open.

Authority: This rule is amended pursuant to Sections 14(e) and 23(a) of the Securities Exchange Act of 1934.

(Sec. 23, 48 Stat. 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 580; sec. 3, 82 Stat. 455; secs. 3–5, 84 Stat. 1497; sec. 18, 89 Stat. 155; 15 U.S.C. 78n(e), 78w(a))

By the Commission (Commissioners Evans, Thomas and Longstreth concurring; Chairman Shad and Commissioner Treadway dissenting).

George A. Fitzsimmons,

Secretary.

December 15, 1982.

Dissent by Chairman Shad:

On December 15th the Commission adopted Rule 14d–8 by a three-to-two vote. This rule extends the minimum proration period for the life of tender offers—from 10 calendar to 20 business days (26 to 28 calendar days). It is intended to reduce public shareholders' confusion and afford them more time to consider and act upon tender offers.

I share the majority's concerns for public shareholders, but dissented briefly for the following reasons.

I. Authority

The Commission's legal authority to extend the statutory proration period is not clear. In addition to the reasons cited by Commissioner Treadway in his dissent, when Congress adopted Section 14(d)(6) of the Securities Exchange Act in 1968, it considered and explicity rejected the proration scheme the new Rule 14d–8 implements.[1] The Supreme Court has held that where the provisions of an Act are unambiguous and its directions specific, there is no power to amend it by regulation[2]; and that if the passage of time indicates changes are needed in a congressionally established regulatory scheme, an agency must go to Congress, rather than implement changes by regulation.[3]

II. Merits

The minimum time periods of the old rule (Section 14(d)(6)) and the new Rule 14d–8 are as follows:

	Minimum business (calendar) days		
	Proration	Withdrawal	Termination
Old rule	6–8 (10)	15 (19–21)	20 (26–28)
New rule	20 (26–28)	15 (19–21)	20 (26–28)

Changes in a tender offer and competitive offers may extend certain of the above time periods, which would compound the problems discussed below.

The new rule increases the proration uncertainty (i.e., risk) to all shareholders, bidder and target companies from 10 to 26–28 calendar days.

Under the old rule, after the 10th calendar day shareholders could redeploy the shares not accepted or sell them and reinvest the

[1] S. Rep. No. 550, 90th Cong., 1st Sess. 4–5 (1967).

[2] *Koshland* v. *Helvering*, 298 U.S. 441, 447 (1936).

[3] *H.K. Porter Co., Inc.* v. *National Labor Relations Board*, 397 U.S. 99, 109 (1970); *Addison* v. *Holly Hill Co.* 322 U.S. 607, 617 (1944).

proceeds in more attractive securities. Under the new rule, they must wait 26–28 calendar days to learn the proration. Such a 16 to 18 day delay circumscribes shareholders' options.

Under the old rule, after the 15 business day withdrawal period, the bidder could purchase the shares tendered. Under the new rule, the bidder must wait an additional week, which increases the bidder's exposure to target defensive tactics, "white knights" and competitive bidders.

Under the old rule, shareholders had 9–11 calendar days after learning the proration to decide whether to withdraw all or any portion of their shares in order to: (a) Tender them to a competitive bidder; (b) sell them and reinvest the proceeds in more attractive securities; or (c) avoid an over-subscription.[4] Under the new rule, the withdrawal period expires five business days *before* shareholders know the proration.

Extending the proration period five business days *beyond* the withdrawal period largely nullifies the benefit of the withdrawal period to shareholders. It also locks-in those who do not withdraw their shares by the 15th business day or who tender thereafter. Therefore, sophisticated shareholders will maximize their options by not tendering until the 20th business day, since there is no advantage in tendering earlier. Unsophisticated shareholders who tender earlier will be locked-in upon expiration of the withdrawal period. In addition, a large volume of last minute tenders will further compound the uncertainty for all shareholders, bidder and target companies.

The new rule does not address dilatory tactics by target companies in forwarding tender offer materials to their shareholders, nor so-called "golder parachutes", nor does it inhibit multiple tenders and proration polls, two-tier offers or legal and financial maneuvers by bidder and target companies. To the contrary, the longer proration period and last minute tenders will facilitate such activities and tend to compound unsophisticated investors' confusion, which will work to the advantage of sophisticated traders.

For example, the much longer proration period, greater uncertainty as to the ultimate proration, increased likelihood of a smaller percentage of the shares tendered being accepted and the increased risk of blocking legal actions by the participants can be expected to result in lower bids in the open market for the public's shares during the longer proration period (nearly a month). This will afford risk arbitrageurs over two extra weeks to accumulate more shares from the public in the open market at lower relative prices than heretofore. The net result may prove to be no greater (if not less) public shareholder participation in proration pools,[5] and lower aggregate price realizations by public shareholders.

The longer proration period and greater uncertainty also increase the risks to first bidders. All other things being equal, this will result in fewer tender offers, to the detriment of public shareholders. Also, if first bidders raise or extend their offers, they will afford more time for competitive bidders and defensive tactics by target companies.

For the foregoing reasons, the new rule also increases potential bidders incentive to accumulate more shares in the open market, prior to announcement of tender offers at higher prices.

III. Study

At the December 15th meeting, the Commission also unanimously approved a study of the foregoing and other aspects or tender offers. Such a study should help clarify these complex issues.

Dissent by Commissioner Treadway:

I respectively dissent from the adoption of Rule 14d–8 under the Securities Exchange Act of 1934. My dissent is based upon my analysis and belief that, as a matter of sound statutory construction, the Commission lacks the authority to adopt the rule.

Rule 14d–8 would modify Section 14(d)(6) of the Securities Exchange Act, which contains an express, unambiguous 10 day proration period. Section 14(d)(6) does not—expressly or implicity—authorize the Commission to modify the 10 day period by rulemaking or order. By way of contrast, the immediately preceding subsection, Section 14(d)(5), which deals with withdrawal rights, expressly confers upon the Commission the authority to modify by rule, regulation or order the time period defined in that subsection. In 1968 Congress specifically considered and rejected conferring upon the Commission such authority in Section 14(d)(6). The difference between the two sections demonstrates that Congress is quite capable of clearly granting us authority to modify expressly stated time frames when that is the intent of Congress.

In 1970, subsequent to the original adoption of Section 14(d)(6), the Congress adopted Section 14(e) under the Securities Exchange Act of 1934. That section provides that the Commission "shall for purposes of this subsection (Section 14(e)), by rules and regulation define and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative." The legislative history of Section 14(e) does not address specifically its effect on or relation to Section 14(d)(6) and the express, unambiguous 10 day period contained therein. To conclude that Section 14(e), adopted in 1970, permits the Commission to adopt Rule 14d–8 and thereby override by regulation the statutory 10 day period of Section 14(d)(6), requires that the Commission make a determination that compliance with the express 10 day period of Section 14(d)(6) either is, or is at least closely akin to, "fraudulent, deceptive or manipulative" activity. Confusion and activities which have been characterized as "gamesmenship" in connection with tender offers may not be desirable, but such activities do not, in my view, rise to a level of "fraudulent, deceptive or manipulative" activity, the activities which Section 14(e) is intended to address.

On the basis of the foregoing, I dissent from the Commission's adoption of Rule 14d–8.

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[4] As a result of having hedge tendered (i.e., tendered all the shares they owned and sold additional shares short in the open market).

[5] There is no empirical evidence as to the extent to which public shareholders have been precluded from participating in proration pools under the old rule. The examples cited have been a negligible fraction of the shareholders involved.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 82N–0378]

D&C Red No. 6 and D&C Red No. 7

AGENCY: Food and Drug Administration.

ACTION: Final rules.

SUMMARY: The Food and Drug Administration (FDA) is "permanently" listing D&C Red No. 6 and D&C Red No. 7 for general use in drugs and cosmetics, except for use in the area of the eye. This action is in response to a petition filed by the Cosmetic, Toiletry and Fragrance Association, Inc. This rule will remove D&C Red No. 6 and D&C Red No. 7 from the provisional list of color additives for use in drugs and cosmetics. Published elsewhere in this issue of the **Federal Register** is an order extending the closing date for the provisional listing of D&C Red No. 6 and D&C Red No. 7 until March 29, 1983.

DATES: Effective January 28, 1983; objections by January 27, 1983.

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

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 6, 1973 (38 FR 21199), FDA announced that a petition (CAP 5C0040) for the permanent listing of D&C Red No. 6 and D&C Red No. 7 as color additives for use in drugs and cosmetics had been filed by the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA), 1110 Vermont Ave. NW., Washington, DC 20005.

The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376). A later notice in the **Federal Register** of March 5, 1976 (41 FR 9584), amended the notice of filing of the petition to include the use of D&C Red No. 7 in cosmetics intended for use in the area of the eye.

D&C Red No. 6 is principally the disodium salt of 3-hydroxy-4-[(4-methyl-2-sulfophenyl)azo]-2-naphthalenecarboxylic acid. D&C Red No. 7 is the calcium salt of the same compound.

I. Toxicological Testing of D&C Red No. 6 and D&C Red No. 7

The provisional regulations published in the **Federal Register** of February 4, 1977 (42 FR 6992) required new chronic toxicity studies of D&C Red No. 6 and D&C Red No. 7 as a condition for their continued provisional listing. FDA placed these requirements on 32 color additives, including D&C Red No. 6 and D&C Red No. 7, because the toxicity studies the petitioners had submitted to support the safe use of these color additives were deficient in several respects. FDA described these deficiencies in the **Federal Register** of September 23, 1976 (41 FR 41863; Docket No. 76N–0366):

1. Many of the studies were conducted using groups of animals, i.e., control and those fed the color additive, that are too small to permit conclusions to be drawn on the chronic toxicity or carcinogenic potential of the color additive. The small number of animals used does not, in and of itself, cause this result, but when considered together with the other deficiencies in this listing, does do so. By and large, the studies used 25 animals in each group; today FDA recommends using at least 50 animals per group.
2. In a number of the studies, the number of animals surviving to a meaningful age was inadequate to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color additives tested.
3. In a number of the studies, an insufficient number of animals was reviewed histologically.
4. In a number of the studies, an insufficient number of tissues was examined in those animals selected for pathology.
5. In a number of the studies, lesions or tumors detected under gross examination were not examined microscopically.

FDA postponed the closing date for the provisional listing of the color additives until January 31, 1981, for the completion of required toxicity studies. FDA later extended the closing date for completing these studies and for submitting data. In a proposal published in the **Federal Register** of November 14, 1980 (45 FR 75226), the agency outlined the reasons for postponing the closing dates for 23 provisionally listed color additives under test, including D&C Red No. 6 and D&C Red No. 7, beyond January 31, 1981.

In the **Federal Register** of March 27, 1981 (46 FR 18954), the agency established a new closing date of December 31, 1982, for the complete evaluation of D&C Red No. 6 and D&C Red No. 7. When the order set forth below becomes effective, it will remove D&C Red No. 6 and D&C Red No. 7 from the provisional list. Published elsewhere in this issue of the **Federal Register** is an order extending the closing date for the provisional listing of D&C Red No. 6 and D&C Red No. 7 until March 29, 1983, to provide an opportunity for filing objections to this order.

II. Chemistry Concerns

The provisional regulations of February 4, 1977, also established a closing date of October 31, 1977, for developing the chemistry data and analytical methods necessary for defining chemical specifications for certifying batches of D&C Red No. 6 and D&C Red No. 7. FDA requires chemical specifications, based on appropriate analytical methods, that are sufficiently precise that the agency can certify that batches of each color additive are equivalent to the batches of the color additive used in the animal studies that established the safety of the color additive.

The petitioner has been actively engaged in efforts to provide the chemistry information needed to establish specifications since submitting the petition to the agency. By 1977 experimental data showed that both D&C Red No. 6 and D&C Red No. 7 contained unidentified material, but the agency did not have sufficient information to establish appropriate specifications. FDA expected that the chemical nature and amount of this unidentified material, which is soluble in ether, could be established before October 31, 1977. However, this task proved to be more difficult to complete than expected and could not be completed during the short postponement period. FDA, therefore, extended the closing date to October 31, 1978, under § 81.27(c) (21 CFR 81.27(c)), for the development of the necessary chemistry data and analytical methods for the color additives (43 FR 14642; April 7, 1978).

III. Resolution of Concerns Relating to Unidentified Material

FDA has evaluated the scientific data regarding the chemical characterization of D&C Red No. 6 and D&C Red No. 7. Although the petitioner was unable to determine the chemical identity of the material in the ether layer, spectrophotometric analysis provides a means of measuring the total amount of this component that may be present in each batch of these color additives. FDA concludes that samples submitted for certification can be compared spectrophotometrically with samples of the batches tested toxicologically. By this procedure, the agency can assure that certified batches, on average, will not contain a higher percentage of the unknown material than those tested for safety in the chronic toxicity studies. The feeding studies establish that the color additives are safe when the ether-soluble material is present at this level. Therefore, a test specification for ether-soluble matter is included in the regulations. The method for this test is published as an Appendix A to this final rule.

IV. Potential Impurities in D&C Red No. 6 and D&C Red No. 7

The principal starting materials for the manufacture of D&C Red No. 6 and D&C Red No. 7 are *p*-toluidine *m*-sulfonic acid (PTMSA) and 3-hydroxy-2-naphthoic acid. PTMSA may contain small amounts of *p*-toluidine and even smaller amounts of *o*-toluidine. FDA became concerned about these potential impurities when *o*-toluidine (Ref. 1) and *p*-toluidine (Ref. 2) were reported to be animal carcinogens.

FDA and CTFA have concentrated their efforts on finding suitable methods to measure *p*-toluidine rather than *o*-toluidine because *o*-toluidine is present only as a contaminant of *p*-toluidine. *o*-Toluidine would thus be present in the color additive at levels that are vanishingly small. In fact, *o*-toluidine has never been detected in either color additive.

CTFA has submitted to FDA a report containing a method prepared by Shiseido Laboratories (Yokohama, Japan) for determining residual *p*-toluidine in D&C Red No. 6. The method submitted by Shiseido Laboratories uses high performance liquid chromatography separation with fluorescence detection. The reported limit of detection for this method is 0.2 part per million (ppm). FDA considers that this method is a valid analytical method for determining residual *p*-toluidine levels in D&C Red No. 6 at least to 1.5 ppm and probably lower. In addition, FDA has developed a high performance liquid chromatography method for detecting *p*-toluidine in D&C Red No. 6 and D&C Red No. 7 with a reliable sensitivity of less than 5 ppm.

Using the high performance liquid chromatography method that it developed, Shiseido Laboratories analyzed the residual *p*-toluidine in samples of two commercial batches of D&C Red No. 6 sold in the United States. Shiseido Laboratories reported *p*-toluidine levels for these samples of 0.63 and 2.25 ppm. FDA has examined two additional batches of D&C Red No. 6 and one batch of D&C Red No. 7. The largest amount of *p*-toluidine present in

these samples appeared to be less than 2 ppm. Based on these analytical results, FDA expects that the average *p*-toluidine level in certified D&C Red No. 6 and D&C Red No. 7 prepared in accordance with current good manufacturing practice will not exceed 5 ppm.

To ensure that future batches of these color additives are produced in accordance with current good manufacturing practice, FDA is setting a specification of 15 ppm *p*-toluidine in these regulations. This level of *p*-toluidine can be readily detected by practical methods and thus will ensure that no batch will contain excessive amounts of *p*-toluidine. The agency also considers that this specification will provide adequate control for residual *o*-toluidine because, as a contaminant of *p*-toluidine, the amount of *o*-toluidine present is dependent on the amount of *p*-toluidine present. The agency's evaluation of the safety of D&C Red No. 6 and D&C Red No. 7 containing *p*-toluidine impurities is discussed in section V. below.

V. Evaluation of the Safety of D&C Red No. 6 and D&C Red No. 7 for Drug and Cosmetic Use

A. *Statutory Safety requirements.* Under section 706(b)(4) of the act (21 U.S.C. 376(b)(4)), the so-called "general safety clause" for color additives, a color additive cannot be listed for a particular use unless the data presented to FDA establish that the color is safe for that use. Although what is meant by "safe" is not explained in the general safety clause, the legislative history makes clear that this word is to have the same meaning for color additives as for food additives. (See H. Rep. No. 1761, "Color Additive Amendments of 1960," Committee on Interstate and Foreign Commerce, 86th Cong., 2d Sess. 11 (1960).) The Senate report on the Food Additives Amendment of 1958 states:

> The concept of safety used in this legislation involves the question of whether a substance is hazardous to the health of man or animal. Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances.
>
> This was emphasized particularly by the scientific panel which testified before the subcommittee. The scientists pointed out that it is impossible in the present state of scientific knowledge to establish with complete certainty the absolute harmlessness of any chemical substance.

S. Rep. No. 2422, "Food Additives Amendment of 1958," Committee on Labor and Public Welfare, 85th Cong., 2d Sess. 6 (1958).

FDA has incorporated this concept of safety into its color additive regulations. Under 21 CFR 70.3(i), a color additive is "safe" if "there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive." Therefore, the general safety clause prohibits approval of a color additive if doubts about the safety of the additive for a particular use are not resolved to an acceptable level in the minds of competent scientists.

The general safety clause is buttressed by the anticancer or Delaney Clause, section 706(b)(5)(B) of the act (21 U.S.C. 376(b)(5)(B)), which provides that a color additive shall be deemed to be unsafe "if the additive is found by the Secretary to induce cancer when ingested by man or animal" (21 U.S.C. 376(b)(5)(B)(i)).

B. *Results of toxicology studies.* The agency has completed its evaluation of the color additive petition for D&C Red No. 6 and D&C Red No. 7, including two new chronic toxicity studies on D&C Red No. 6 in rats and mice. These new long-term studies represent current state-of-the-art toxicological testing. The protocols for these studies have benefited from knowledge of deficiencies in previously conducted carcinogenesis bioassays and other chronic toxicity protocols. The use of large numbers of animals of both sexes, pilot studies to determine maximum tolerated dosages, two control groups (thereby effectively doubling the number of controls), and in utero exposure significantly increases the power of these tests to detect dose-related effects. The studies were designed and conducted in full compliance with the agency's good laboratory practice regulations and were subject to inspections by FDA officials during their course.

The test material in the recent chronic rat and mouse studies was D&C Red No. 6. Because D&C Red No. 6 and D&C Red No. 7 are the disodium and the calcium salts, respectively, of the same compound, the agency considers the two color additives to be toxicologically equivalent. Thus, any safety conclusion drawn from studies of either color additive applies equally to the other.

Before 1977, the petitioner had submitted reports on a number of animal toxicity studies with D&C Red No. 7. Among these studies were 2-year feeding studies in rats and dogs, a three-generation reproduction study in rats, a repeated dermal application study in rabbits, a lifetime skin-painting study in mice, teratology studies in rats and rabbits, subacute feeding studies in rats and dogs, and acute oral toxicity studies in rats and dogs. These studies did not produce any evidence that the use of these color additives for the petitioned uses would be unsafe.

However, FDA did note a treatment-related effect in the three-generation reproduction study in which rats received D&C Red No. 7 in the diet at dosage levels of 0.5, 5.0, 15.0, and 50.0 milligrams per kilogram (mg/kg). At the higher dose level, the second generation rats, but not the first or third generation, had decreased fertility. No treatment-related effects were observed at any other dose level. Accordingly, FDA set the no-adverse-effect level in this study at the next lower dose level, which was 15 milligrams D&C Red No. 7 per kilogram body weight per day (15 mg/kg/day).

As discussed above, in 1976, the agency concluded that new chronic toxicity feeding studies would be required to provide data to permit a final determination to be made on the listing of D&C Red No. 6 and D&C Red No. 7 (41 FR 41860; September 23, 1976). These new chronic studies revealed two treatment-related effects from ingestion of D&C Red No. 6.

In one new chronic feeding study, male and female CD–1 mice were fed diets containing D&C Red No. 6 at concentrations of 0.05, 1.0, and 5.0 percent of their diets. The only treatment-related effect in this study was decreased survival of high-dose male mice, compared to controls, during the last 6 months of the study. No carcinogenic effects or other changes that could be ascribed to treatment of mice with D&C Red No. 6 were observed.

In the other new chronic feeding study, which was with male and female Charles River CD rats, parental animals were fed diets containing D&C Red No. 6 at concentrations of 0.05, 0.30, and 2.0 percent continuously from before mating until weaning of their offspring. The offspring were fed diets containing these same concentrations of D&C Red No. 6 for 24 months in males and 31 months in females. The agency noted an increased incidence of kidney disease, listed as chronic nephritis by the testing laboratory, in both male and female rats at the high-dose level. To resolve questions about this kidney disease, FDA requested, by letter dated August 19, 1982, microslides from tissue sections of the kidneys of all rats from the two control groups and the three groups fed diets containing D&C Red No. 6.

The examination of slides by FDA pathologists revealed a treatment-related effect on a commonly occurring spontaneous disease of rats known as

chronic progressive nephrosis. The occurrence of chronic progressive nephrosis as observed in this study was graded by the agency pathologists as being minimal, mild, moderate, or severe. There was no significant difference between the control and treated groups, for both male and female rats, in the incidence of chronic progressive nephrosis that was of minimal to mild severity. However, there was an increased incidence of moderate to severe chronic progressive nephrosis among the male rats in the mid- and high-dose groups compared to the male rats in the low-dose or control groups. Similarly, the incidence of moderate to severe chronic progressive nephrosis was increased among high-dose group female rats compared to the incidence of this effect among other treated or control group female rats. Agency pathologists concluded that, although there were no carcinogenic renal changes in this study attributable to the administration of D&C Red No. 6, there appeared to be an exacerbation of a spontaneous renal disease of aged rats (chronic progressive nephrosis) in the mid- and high-dose group male rats and in the high-dose group female rats.

C. *Computation of acceptable daily intake.* FDA calculates the acceptable daily intake for a color additive by using the following process: The agency identifies the highest no-adverse-effect level in each study in which it observes a treatment-related effect. It then compares the no-adverse-effect levels from these studies and uses appropriate safety factors (see 21 CFR 70.40) to calculate the acceptable daily intake for the color additive using the study that leads to the lowest value.

In the chronic feeding study with mice, the mid-dose (1500 mg/kg/day) was the no-adverse-effect level, and in the chronic feeding study with rats, the low dose (25 mg/kg/day) was the no-adverse-effect level.

Of the effects noted in all the studies reviewed by the agency, the three-generation reproduction study in rats establishes the lowest acceptable daily intake for D&C Red No. 6 and D&C Red No. 7. The no-adverse-effect level for this study was 15 mg/kg/day. Reduced by the safety factor of 100, this study establishes an acceptable daily intake of 0.15 mg/kg/day, or 9 mg/day for a 60 kg human.

D. *Prior actions by FDA.* Even though appropriate testing of D&C Red No. 6 and D&C Red No. 7 did not show them to be carcinogens, the agency still had to consider whether to list these color additives in light of the fact that they contain carcinogenic impurities, *p*-toluidine and *o*-toluidine. In the past, FDA has terminated the provisional listings of several color additives that contained or were expected to contain a carcinogenic impurity or constituent. (See the D&C Green No. 5 final rule published in the **Federal Register** of June 4, 1982 (47 FR 24278, 24280).) However, the agency no longer believes that it must refuse to list a color additive simply because it contains or is expected to contain a carcinogenic impurity.

As explained in the D&C Green No. 6 final rule (47 FR 14138, 14141–2 (April 2, 1982)), the agency has concluded that even if a color additive contains a carcinogenic impurity, the Delaney Clause is not triggered unless the color additive as a whole is found to cause cancer. The agency is confident that it possesses the capacity (through the use of extrapolation procedures) to assess adequately the upper limit of risk presented by the use of a color additive that has not been shown to be a carcinogen but that does contain a carcinogenic impurity. The estimate of the risk may be exaggerated because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to conclude that a substance is safe under specific conditions of use. (FDA has also explained the basis for this approach in the advance notice of proposed rulemaking on its policy for regulating carcinogenic chemicals in food and color additives published in the **Federal Register** of April 2, 1982 (47 FR 14464).)

Recently, the agency has examined the risk associated with drug and cosmetic uses of D&C Green No. 6 and D&C Green No. 5, which contain minor amounts of *p*-toluidine. Neither color additive had been shown to be carcinogenic by appropriate bioassays. FDA concluded in both instances that the use of these color additives in drugs and cosmetics is safe. The agency is using the same method of analysis for D&C Red No. 6 and D&C Red No. 7.

E. *Use of D&C Red No. 6 and D&C Red No. 7.* Between 1970 and 1977, FDA did not certify any D&C Red No. 6 (straight color), but from 1978 through 1982, FDA certified an average of 560 pounds of this color additive per year. The agency did not certify any straight D&C Red No. 7 during the period of 1970 through 1982.

The use of D&C Red No. 6 and D&C Red No. 7 lakes increased during the second half of the 1970's. The average pounds per year certified for the period 1978 through 1982 was 44,800 pounds of D&C Red No. 6 lakes and 107,300 pounds of D&C Red No. 7 lakes.[1] Based on these average yearly certified poundage data and the trend of increasing use of these color additives, FDA expects that the average total certified poundage of D&C Red No. 6, D&C Red No. 6 lakes, and D&C Red No. 7 lakes might increase to roughly 600, 60,000, and 120,000 pounds per year, respectively. Although individual batches of lakes vary widely in content of primary colors, the average primary color content of the lakes of any specific color additive generally does not exceed 40 percent primary color. Assuming that the average primary color content of lakes is 40 percent, exposure to D&C Red No. 6 and D&C Red No. 7 from both straight color and lake uses would be roughly 72,600 pounds per year.

Many cosmetic manufacturers submit cosmetic product ingredient statements (formulations) to FDA under the voluntary cosmetic regulatory program (21 CFR Part 720). This program provides information on the specific types of cosmetic products in which D&C Red No. 6 and D&C Red No. 7 are used. Additionally, CTFA has provided data on maximum use levels in cosmetics based on a 1981 survey of manufacturers.

As of December 1981, FDA's voluntary cosmetic regulatory program computer file contained 9 formulations that listed D&C Red No. 6 as an ingredient, 598 formulations that listed D&C Red No. 6 lakes as ingredients, 45 formulations that listed D&C Red No. 7 as an ingredient, and 1,178 formulations that listed D&C Red No. 7 lakes as ingredients. (Apparently, for at least D&C Red No. 7, some companies reported use of the straight color when they used the lake.) The major uses of D&C Red No. 6 and D&C Red No. 7 and their lakes in cosmetics were in make-up preparations (57.6 percent) and in manicuring preparations (41.4 percent). Of the listed make-up preparations, 69 percent were lipsticks. The levels at which these color additives are used in

[1] This order does not permanently list D&C Red No. 6 and D&C Red No. 7 lakes. FDA published a notice of intent in the **Federal Register** of June 22, 1979 (44 FR 36411), which discussed the additional information that the agency believes is needed before final regulations on lakes can be issued. FDA intends to publish proposed regulations governing the use of color additives in lakes in the **Federal Register** in the near future and concludes that the listing of color additives for use in lakes can best be implemented by general regulations. D&C Red No. 6 and D&C Red No. 7 lakes will, therefore, continue to be provisionally listed for coloring drugs and cosmetics under Parts 81 and 82 (21 CFR Parts 81 and 82). The discussion of the lakes here is solely for the purpose of establishing the level of exposure to these color additives.

lipsticks range from 0.0013 percent to 6.0 percent (straight color).

In a 1965 Pharmaceutical Manufacturers Association survey, 7 companies reported use of D&C Red No. 7 in 19 drug preparations, all for internal administration. The maximum amount of the color additive used by a company was 4.4 milligrams per daily dose of drug, although most companies used much less. There was no reported use of D&C Red No. 6 in drug products.

Although the fraction of D&C Red No. 6 and D&C Red No. 7 used in ingested drugs apparently is minor at this time, use in ingested drugs without a limitation would represent the greatest potential intake for individuals to these color additives, especially over short periods of time. If no limitation were set, use could exceed the acceptable daily intake. FDA has therefore incorporated a limitation of 5 milligrams of D&C Red No. 6 and D&C Red No. 7 per daily dose of drug product under §§ 74.1306 and 74.1307, respectively. This limitation applies both to ingested and externally applied drug products. It will ensure safe use and is consistent with currently known use levels.

The agency has considered several factors in estimating daily intake from the amount of color additives used in drug or cosmetic products. These factors include, for short-term use, the amount of product likely to be used and the amount of product used that would enter the body by, e.g., ingestion of a drug; the fraction of applied lipstick that would be ingested; and the fraction of color additives likely to penetrate skin from external use. These factors vary with the individual product type. For lifetime average intake, the agency has considered the fact that conditions leading to maximum intake on a given day are not likely to exist every day of one's life. Frequency of use will also vary with individual products. Details of the agency's assumptions can be found in Reference 3.

Using these factors the agency estimates that short-term intake of D&C Red No. 6 and D&C Red No. 7 in drugs will not exceed 5 mg/day, and short-term intake to these color additives from cosmetic use will not exceed 3 mg/day, resulting in a cumulative dose of 8 mg/day. For lifetime-average use, the agency estimates 1 mg/day from drug use, 1 mg/day from ingested cosmetic use, and 4 mg/day from external cosmetic use (only a small fraction of which will be absorbed), leading to the agency's estimated lifetime average intake of approximately 2 mg/day. Details of the agency's estimates and calculations can be found in Reference 3.

F. *Application of risk assessment in this rulemaking.* Because *p*-toluidine may be present in D&C Red No. 6 and D&C Red No. 7 in minor amounts, use of these color additives as authorized by these regulations will likely result in exposure to very small amounts of *p*-toluidine. Any residual *p*-toluidine that might be present does not contribute any color to D&C Red No. 6 or D&C Red No. 7, nor does in impart any color to drugs, cosmetics, or the human body. Consequently, FDA concludes that, although a small amount of *p*-toluidine may be added to drugs and cosmetics with the addition of D&C Red No. 6 or D&C Red No. 7, this chemical is not a color additive within the meaning of section 201(t) of the act (21 U.S.C. 321(t)). [2] Instead, *p*-toluidine would be only an impurity in D&C Red No. 6 and D&C Red No. 7. Because D&C Red No. 6 (and hence D&C Red No. 7) has not been shown to be carcinogenic, the agency concludes, as in the D&C Green No. 6 and D&C Green No. 5 rulemaking proceedings, that it can use risk assessment procedures to provide a basis for deciding whether there is a reasonable certainty of no harm from the use of D&C Red No. 6 and D&C Red No. 7 in ingested and externally applied drugs and cosmetics.

The risk evaluation of *p*-toluidine consists of two parts: (1) Assessment of probable exposure to *p*-toluidine from the use of D&C Red No. 6 and D&C Red No. 7 in ingested and externally applied drugs and cosmetics, and (2) extrapolation of the risk from *p*-toluidine observed in the animal biassay to the conditions of probable exposure to humans.

1. *Exposure to p-toluidine.* Two measures of exposure to carcinogenic compounds that are relevant in assessing the public health hazard presented by *p*-toluidine are the maximum probable individual exposure and the total population exposure.

Of the two estimates, the total population exposure to *p*-toluidine can be more accurately calculated because the certified poundage of these color additives is known. If the average annual certification of D&C Red No. 6 and D&C Red No. 7 (assumed to contain 5 ppm of *p*-toluidine) is 72,600 pounds, then the average lifetime exposure to *p*-toluidine would be less than 2.0 nanograms (ng) per person per day, or if all of the products containing these color additives were consumed by only 10 percent of the population, 20 ng per person per day.

Although a measure of the total population exposure can be calculated quite simply, the maximum probable individual exposure depends on many factors, including the concentration of *p*-toluidine in products, the types of products used, the amount of product used per application, and the frequency of the application. In section V.E of this preamble, FDA discussed the principal types of products in which D&C Red No. 6 and D&C Red No. 7 are used. The agency estimates that the combined lifetime-average individual exposure to these color additives from the ingested and external applications permitted by these regulations would not likely exceed 6 milligrams per day (1 milligram per day from drugs and 5 milligrams per day from ingested and externally applied cosmetics (Ref. 3)). This level is higher than the lifetime-average intake value calculated earlier for the color additives because the 6 milligrams per day figure does not correct for limited penetration of these color additives. Thus, in the absence of adequate data regarding skin penetration by *p*-toluidine, the agency is assuming 100 percent skin penetration of *p*-toluidine from externally applied drugs and cosmetics containing these color additives. This estimate is clearly exaggerated, but the exaggeration does not affect the conclusions of the analysis. If 5 ppm *p*-toluidine is present in an average sample of D&C Red No. 6 or D&C Red No. 7, an individual exposed to 6 milligrams per day of these color additives would have a lifetime-average exposure of 30 ng per day *p*-toluidine.

FDA also recognizes the possibility that individuals will be exposed to minor amounts of *p*-toluidine impurities as a result of their use of products containing several related color additives. Regulations for four color additives now contain specifications on the amount of *p*-toluidine permitted in the additive: D&C Green No. 5 (21 CFR 74.1205, 74.2205, and 82.1205)—0.0015 percent *p*-toluidine; D&C Green No. 6 (21 CFR 74.1206, 74.2206, and 82.1206)—0.1 percent *p*-toluidine; Ext. D&C Violet No. 2 (21 CFR 74.2602a)—0.1 percent *p*-toluidine; and D&C Violet No. 2 (21 CFR 74.1602, 74.2602, and 82.1602)—0.2 percent *p*-toluidine. The latter three color additives are not permitted for use in ingested products. FDA believes that these are the only color additives that contain *p*-toluidine.

2. *Extrapolation of risk.* The second part of the evaluation of the risk presented by *p*-toluidine in D&C Red No. 6 and D&C Red No. 7 is an extrapolation from the actual compound-related incidence (risk) found in animal

[2] This statement is also true for *o*-toluidine

bioassays to the conditions of probable exposure for humans.

The final rules permanently listing D&C Green No. 5 and D&C Green No. 6 discussed the publication by Weisburger, et al. (Ref. 2), which reported the results of long-term feeding studies of *p*-toluidine in mice and rats. FDA has used the data from the Weisburger paper to estimate the upper level of human risk of exposure to *p*-toluidine from the use of D&C Green No. 5, D&C Green No. 6, and, in this case, D&C Red No. 6 and D&C Red No. 7. The agency used two quantitative risk assessment procedures to extrapolate from the dose in the animal experiment to the very low doses of possible human exposure. Both of these procedures are not likely to underestimate the actual risk from very low doses. They serve as a basis for the agency to determine to a reasonable certainty whether any harm will result from the probable exposure to *p*-toluidine from the use of these color additives.

One of the procedures FDA employed was the linear proportional model with dosage data expressed as a concentration of the total diet and using the upper 99 percent confidence interval of the observed tumor incidence as described in FDA's March 20, 1979, proposal, "Chemical Compounds in Food-Producing Animals" (44 FR 17070). Under this procedure, the upper limit individual lifetime risk from exposure to 30 ng per day *p*-toluidine is 1 in 50 million. The second procedure the agency used, also a linear proportional model, estimated the even smaller upper limit risk of lifetime tumor incidence of 1 in 500 million.

Because the lifetime-averaged individual exposure to *p*-toluidine from the use of D&C Red No. 6 and D&C Red No. 7 in drugs and cosmetics would not likely exceed a total of 30 ng per day, the agency concludes that there is a reasonable certainty of no harm from the exposure to *p*-toluidine that results from the use of these color additives.[3]

FDA has also considered the upper limit of risk from exposure to the several color additives that may contain *p*-toluidine to determine whether any harm will result from the probable cumulative exposure to *p*-toluidine from the intended use of all these color additives.

In the D&C Green No. 6 rulemaking proceeding, FDA assessed the upper limit of risk from exposure to *p*-toluidine as a result of use of D&C Green No. 6 to be less than 1 in 15 million to 1 in 150 million in a lifetime. Likewise, for D&C Green No. 5, FDA calculated that the upper limit lifetime risk from exposure to *p*-toluidine as a result of use of this color additive is less than 1 in 30 million to 1 in 300 million. In this document, FDA has calculated that the upper limit lifetime risk from exposure to *p*-toluidine as a result of D&C Red No. 6 and D&C Red No. 7 is less than 1 in 50 million to 1 in 500 million.

Detailed risk assessment analyses have not been performed for possible exposure to *p*-toluidine from the use of Ext. D&C Violet No. 2 (21 CFR 74.2602a) and D&C Violet No. 2 (21 CFR 74.1602, 74.2602, and 82.1602). However, FDA estimates that exposure to *p*-toluidine from the use of these color additives is in the same range as with D&C Green No. 6, because use limitations and specifications are similar, providing approximately the same level of risk. The agency finds that the upper limit of combined risk from the use of these color additives is so low that the exposure to *p*-toluidine from the use of these color additives is safe. The agency notes, however, that it is extremely unlikely that any one individual would use all these color additives at the same time and at the maximum levels.

VI. References

The following information has been placed on file at the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

1. National Cancer Institute, "Bioassay of *p*-Toluidine Hydrochloride for Possible Carcinogenicity," NCI Technical Report No. 153, NCI–CG–TR–153, U.S. Department of Health, Education, and Welfare, Public Health Service, National Institutes of Health, 1979.

2. Weisburger, E. K., et al., "Testing of Twenty-one Environmental Aromatic Amines or Derivatives for Long-term Toxicity or Carcinogenicity," *Journal of Environmental Patholgy and Toxicology*, 2:325–356, 1978.

3. Martin, R. L. and T. C. Troxell, Memorandum for the Record, Color Additive Petition 5C0040, December 20, 1982.

VII. Conclusion

Based upon the evaluation of the results of the two recently submitted chronic toxicity studies, the agency has determined that D&C Red No. 6 (and hence D&C Red No. 7) is not carcinogenic to Charles River Sprague-Dawley CD rats after dietary exposure as high as 2.0 percent or to CD–1 mice after dietary exposure as high as 5.0 percent under conditions of testing adequate to provide assurance for its safe use. FDA has calculated a combined total acceptable daily intake of 9 milligrams per day of D&C Red No. 6 and D&C Red No. 7 for a 60 kg human on the basis of all the toxicity studies it reviewed. The agency finds that short-term intake (8 milligrams per day) and lifetime-averaged intake (2 milligrams per day) from the listed drug and cosmetic uses of these color additives will be within this amount.

The agency has also completed its evaluation of other animal studies submitted by the petitioner for the purpose of establishing the safety of D&C Red No. 6 and D&C Red No. 7 for use in externally applied drugs and externally applied cosmetics. The data from these studies indicate that D&C Red No. 7 is nonirritating when applied daily to either intact or abraded skin. Furthermore, D&C Red No. 7 was not found to be carcinogenic upon twice-weekly application to the skin of mice over their lifetimes.

Therefore, FDA finds that it can conclude that no harm will result from the petitioned uses of D&C Red No. 6 and D&C Red No. 7, for general use in drugs and cosmetics excluding use in the area of the eye, and that certification is necessary for the protection of the public health. The final toxicity study reports, interim reports, and the agency's toxicology evaluations of these studies are on file at the Dockets Management Branch (address above) and may be reviewed there between 9 a.m. and 4 p.m., Monday through Friday.

FDA notified the petitioner by letters dated May 14, 1976, August 15, 1977, and August 4, 1978, of the need for data to support the use of D&C Red No. 7 in cosmetics intended for use in the area of the eye. In the latest letter, dated October 24, 1978, FDA advised the petitioner to consider withdrawing that portion of the petition that sought approval of use of D&C Red No. 7 in cosmetics intended for use in the area of the eye because it appeared that the required data from eye-area studies would not be readily available.

The petitioner has not submitted the data required to support eye-area use of D&C Red No. 7. Therefore, FDA now considers that portion of the petition that was amended by the filing on March 5, 1976 (Docket No. 76C–0044) to include the permanent listing of D&C Red No. 7 for eye-area use to be withdrawn without prejudice in accordance with the provisions of § 71.4 (21 CFR 71.4). Section 71.4 requires that such requested information be submitted within 180 days after filing of the petition, or the petition will be withdrawn without prejudice. Use of

[3] The presence of *o*-toluidine in the color additives would not alter this conclusion. At the levels at which a user of a product containing D&C Red No. 6 or D&C Red No. 7 would be exposed to *o*-toluidine, the presence of this impurity would have virtually no effect on the upper limit of risk.

D&C Red No. 7 in the area of the eye has never been covered by a provisional listing. Future consideration by FDA of the permanent listing of D&C Red No. 7 for eye-area use will require the submission of a new color additive petition for that use. The agency's listing of a color additive for general use in drugs and cosmetics does not encompass eye-area use (see § 70.5 *General restrictions on color additives* (21 CFR 70.5)).

The agency is establishing new chemical specifications that identify the color additives more precisely than those specifications currently in Part 82 (21 CFR Part 82). The agency concludes that it is necessary to include in the listing regulations for D&C Red No. 6 and D&C Red No. 7 a brief description of their manufacturing processes to ensure the safety of the color additives. The agency is concerned that the color additives may contain harmful impurities dependent upon the manufacturing processes used to produce the color additives. The agency is not able at this time to set specifications that would control the presence of these impurities. The agency has contracted with the National Academy of Sciences/National Research Council (NAS/NRC) to develop appropriate specifications for color additives for use in food as part of the Food Chemicals Codex. Similarly, appropriate specifications for color additives for use in drugs and cosmetics will be developed following the general guidelines used by the NAS/NRC in its evaluation of color additives used in food. The agency concludes that specifying, through a general description, the manufacturing process in the regulations for these color additives will provide an adequate assurance of safety until suitable specifications can be developed. Production of the color additives by the specified methods will assure qualitatively similar batches and thus adequately assure the absence of harmful impurities resulting from changes in the manufacturing process.

Also, the chemical names for the two color additives in new listings under 21 CFR Part 74 are different from the names currently listed under 21 CFR Part 82. The agency is listing the nomenclature designated in the Chemical Abstracts Index Guide (September 1982) because the agency believes that it gives the best description of the color additive. FDA is identifying D&C Red No. 6 as the disodium salt, rather than the monosodium salt, as it is currently described in § 82.1306 (21 CFR 82.1306), because analytical results confirm that hydrogens of the carboxylic and sulfonic acid groups are both replaced by sodium.

FDA is also removing § 81.27(c) from its regulations. The agency is making this editorial change because the color additives listed under § 81.27(c) have now been removed from the provisional list. Ferric ferrocyanide was permanently listed for use in drugs and cosmetics under 21 CFR 73.1299 and 73.2299 by a final rule published in the **Federal Register** of November 21, 1978 (43 FR 54235). D&C Red No. 30 was permanently listed for use in drugs and cosmetics under 21 CFR 74.1330 and 74.2330 by a final rule published in the **Federal Register** of May 25, 1982 (47 FR 22509).

The agency has determined under 21 CFR 25.24(b)(12) and (d)(5) (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 environment. Therefore, neither an evironmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 74

Color additives, Color additives subject to certification, Cosmetics, Drugs.

21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Color additive lakes, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 299–403 (21 U.S.C. 376 (b), (c), and (d))) and the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 74, 81, and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. Part 74 is amended:

a. By adding new § 74.1306 to Subpart B, to read as follows:

§ 74.1306 D&C Red No. 6.

(a) *Identity.* (1) The color additive D&C Red No. 6 is principally the disodium salt of 3-hydroxy-4-[(4-methyl-2-sulfophenyl)azo]-2-naphthalenecarboxylic acid (CAS Reg. No. 5858–81–1). To manufacture the additive, 2-amino-5-methylbenzenesulfonic acid is diazotized with hydrochloric acid and sodium nitrite. The diazo compound is coupled in alkaline medium with 3-hydroxy-2-naphthalenecarboxylic acid. The resulting dye precipitates as the disodium salt.

(2) Color additive mixtures for drug use made with D&C Red No. 6 may contain only those diluents that are suitable and that are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) *Specifications.* The color additive D&C Red No. 6 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

Sum of volatile matter (at 135° C) and chlorides and sulfates (calculated as sodium salts), not more than 10 percent.
Ether-soluble matter, passes test entitled "The Procedure for Determining Ether-Soluble Material in D&C Red Nos. 6 and 7," which is an Appendix A to Part 74.
2-Amino-5-methylbenzenesulfonic acid, sodium salt, not more than 0.2 percent.
3-Hydroxy-2-naphthalenecarboxylic acid, sodium salt, not more than 0.4 percent.
3-Hydroxy-4-[(4-methylphenyl)azo]-2-naphthalenecarboxylic acid, sodium salt, not more than 0.5 percent.
p-Toluidine, not more than 15 parts per million.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 90 percent.

(c) *Uses and restrictions.* The color additive D&C Red No. 6 may be safely used for coloring drugs such that the combined total of D&C Red No. 6 and D&C Red No. 7 does not exceed 5 milligrams per daily dose of the drug.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) *Certification.* All batches of D&C Red No. 6 shall be certified in accordance with regulations in Part 80 of this chapter.

b. By adding new § 74.1307 to Subpart B, to read as follows:

§ 74.1307 D&C Red No. 7.

(a) *Identity.* (1) The color additive D&C Red No. 7 is principally the calcium salt of 3-hydroxy-4-[(4-methyl-2-sulfophenyl)azo]-2-

naphthalenecarboxylic acid (CAS Reg. No. 5281–04–9). To manufacture the additive, 2-amino-5-methylbenzenesulfonic acid is diazotized with hydrochloric acid and sodium nitrite. The diazo compound is coupled in alkaline medium with 3-hydroxy-2-naphthalenecarboxylic acid and the resulting dye converted to the calcium salt with calcium chloride.

(2) Color additive mixtures for drug use made with D&C Red No. 7 may contain only those diluents that are suitable and that are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) *Specifications.* The color additive D&C Red No. 7 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

Sum of volatile matter (at 135° C) and chlorides and sulfates (calculated as sodium salts), not more than 10 percent.
Ether-soluble matter, passes test entitled "The Procedure for Determining Ether-soluble Material in D&C Red Nos. 6 and 7," which is an Appendix A to Part 74.
2-Amino-5-methylbenzenesulfonic acid, calcium salt, not more than 0.2 percent.
3-Hydroxy-2-naphthalenecarboxylic acid, calcium salt, not more than 0.4 percent.
3-Hydroxy-4-[(4-methylphenyl)azo]-2-naphthalenecarboxylic acid, calcium salt, not more than 0.5 percent.
p-Toluidine, not more than 15 parts per million.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 90 percent.

(c) *Uses and restrictions.* The color additive D&C Red No. 7 may be safely used for coloring drugs such that the combined total of D&C Red No. 6 and D&C Red No. 7 does not exceed 5 milligrams per daily dose of the drug.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) *Certification.* All batches of D&C Red No. 7 shall be certified in accordance with regulations in Part 80 of this chapter.

c. By adding new § 74.2306 to Subpart C, to read as follows:

§ 74.2306 D&C Red No. 6.

(a) *Identity and specifications.* The color additive D&C Red No. 6 shall conform in identity and specifications to the requirements of § 74.1306 (a)(1) and (b).

(b) *Uses and restrictions.* The color additive D&C Red No. 6 may be safely used for coloring cosmetics generally in amounts consistent with current good manufacturing practice.

(c) *Labeling requirements.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Certification.* All batches of D&C Red No. 6 shall be certified in accordance with regulations in Part 80 of this chapter.

d. By adding new § 74.2307 to Subpart C, to read as follows:

§ 74.2307 D&C Red No. 7

(a) *Identify and specifications.* The color additive D&C Red No. 7 shall conform in identity and specifications to the requirements of § 74.1307 (a)(1) and (b).

(b) *Uses and restrictions.* The color additive D&C Red No. 7 may be safely used for coloring cosmetics generally in amounts consistent with current good manufacturing practice.

(c) *Labeling requirements.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Certification.* All batches of D&C Red No. 7 shall be certified in accordance with regulations in Part 80 of this chapter.

e. By adding new Appendix A to Part 74 to read as follows:

Appendix A to Part 74—The Procedure for Determining Ether Soluble Material in D&C Red Nos. 6 and 7

The dye is dissolved in glacial acetic and 8 *N* hydrochloric acids (1.33 : 1) and extracted with diethyl ether. Sulfonated moieties, including the color additive, are discarded in subsequent aqueous extractions of the ether. Carboxylated moieties are removed from the ether by extraction with 2% (w/w) NaOH. The ether is evaporated to near dryness, ethanol (95%) is added, and the solution is analyzed spectrophotometrically in the visible range. The absorbance at each wavelength must not exceed 150% of the absorbance similarly obtained for D&C Red No. 6 Lot AA5169.

Apparatus

(A) Spectrophotometer (Cary 118 or equivalent).

(B) Separatory funnels—one 1000 mL and one 500 mL.

Reagents

Note.—Use *distilled* water when water is required.

(A) Glacial Acetic Acid (ACS grade).

(B) Diethyl ether (Anhydrous)—Note and follow safety precautions on container.

(C) 8 *N* HCl—Pour 165 mL H_2O into a 500 mL graduate. Place the graduate in hood, then add HCl conc. to bring to volume. Carefully pour this solution into a 500 mL Erlenmeyer flask, Stopper and shake. Label the flask.

(D) 2% (w/w) NaOH—Pour ca 190 mL H_2O into a 250 mL mixing graduate. Add 8 g. (5.23 mL) of 50% (w/w) NaOH, bring to 200 mL volume with water, stopper and mix. Pour this solution into a glass bottle, label and stopper with a teflon top.

(E) Ethanol (95%).

Procedure

Weigh a 250 mL beaker to tenths of a mg and add 100 mg of dye. Record weight to tenths of a mg.

Note.—The following work must be performed in the hood.

Add 75 mL of 8 *N* HC1 and 100 mL of glacial acetic acid to the beaker and stir.

Place the beaker on a hot plate and heat with stirring, until all of the dye is in solution.

Remove the beaker from the hot plate, cover with a watch glass and allow to cool to room temperature (1–2 hrs).

When the dye solution is at room temperature, transfer the solution to a 1000 mL separatory funnel.

Rinse the beaker three times with 50 mL portions of H_{20}, transferring each rinse to the 1000 mL funnel.

Add 150 mL of ether to the funnel, stopper and shake for 10 seconds, then invert funnel and open stopcock to remove gas buildup.

Shake the funnel for one minute, opening the stopcock a few times while the funnel in inverted to remove gas buildup. (Use this shake procedure throughout method.)

Allow the funnel to stand until the layers have separated.

Transfer the bottom (aqueous) layer to a 500 mL separatory funnel, add 100 mL of ether, stopper and shake for one minute.

When the layers have separated, drain off the bottom layer into a waste beaker.

Pour the ether layer in the 500 mL separatory funnel into the 1000 mL separatory funnel.

Rinse the 500 mL sep. funnel with 100 mL H_2O, then transfer it to the 1000 mL sep. funnel, stopper and shake for one minute.

When the layers have separated, drain off the bottom aqueous layer into the waste beaker.

Rinse the 500 mL funnel at least three times (total) and repeat the 100 mL water washes until no color is present in the aqueous layer. Discard the bottom aqueous layer to the waste beaker after each separation.

Shake the ether layer twice more with 100 mL portions of H_2O, discarding the bottom aqueous layer after each separation.

Remove the unsulfonated subsidiary color from the ether by shaking the ether layer for one minute with 20 mL of 2% (w/w) NaOH. *Appropriately label* a 100 mL beaker. After the layers separate, drain the aqueous alkaline layer into the beaker and save for the determination of 3-hydroxy-4-[(4-methylphenyl) azo]-2-naphthalenecarboxylic acid, sodium salt.

If there is any color left in the ether, shake for one minute with another 20 mL portion of 2% (w/w) NaHO. After the layers have separated, drain off the aqueous alkaline layer into the 100 mL beaker.

If color remains in the ether layer, repeat the above step for a total of three washes of the ether with 2% (w/w) NaOH. Note: Three washes is usually sufficient to remove the unsulfonated subsidiary.

With the stopper removed, *gently* swirl the ether layer in the sep. funnel twice to separate the remaining aqueous base. Drain this into the 100 mL beaker.

Appropriately label a 250 mL beaker. *Pour* the ether layer into the beaker. Allow the ether to evaporate to *near* dryness. Cool to room temperature. Add ca 8 mL ethanol (95%). Swirl beaker to mix contents. Quantitatively transfer to a 25 mL graduate using ethanol (95%) rinses. Add ethanol (95%) to bring volume to 12 mL.

Spectrophotometer Analysis

Spectrophotometric Parameters:

Scan Range: 400–700 nm
Scan 50 nm/in; 5.0 nm/sec.
Absorbance Range: 0–1 AUFS
Cell length: 1 cm (Note: Reference and Sample cells)

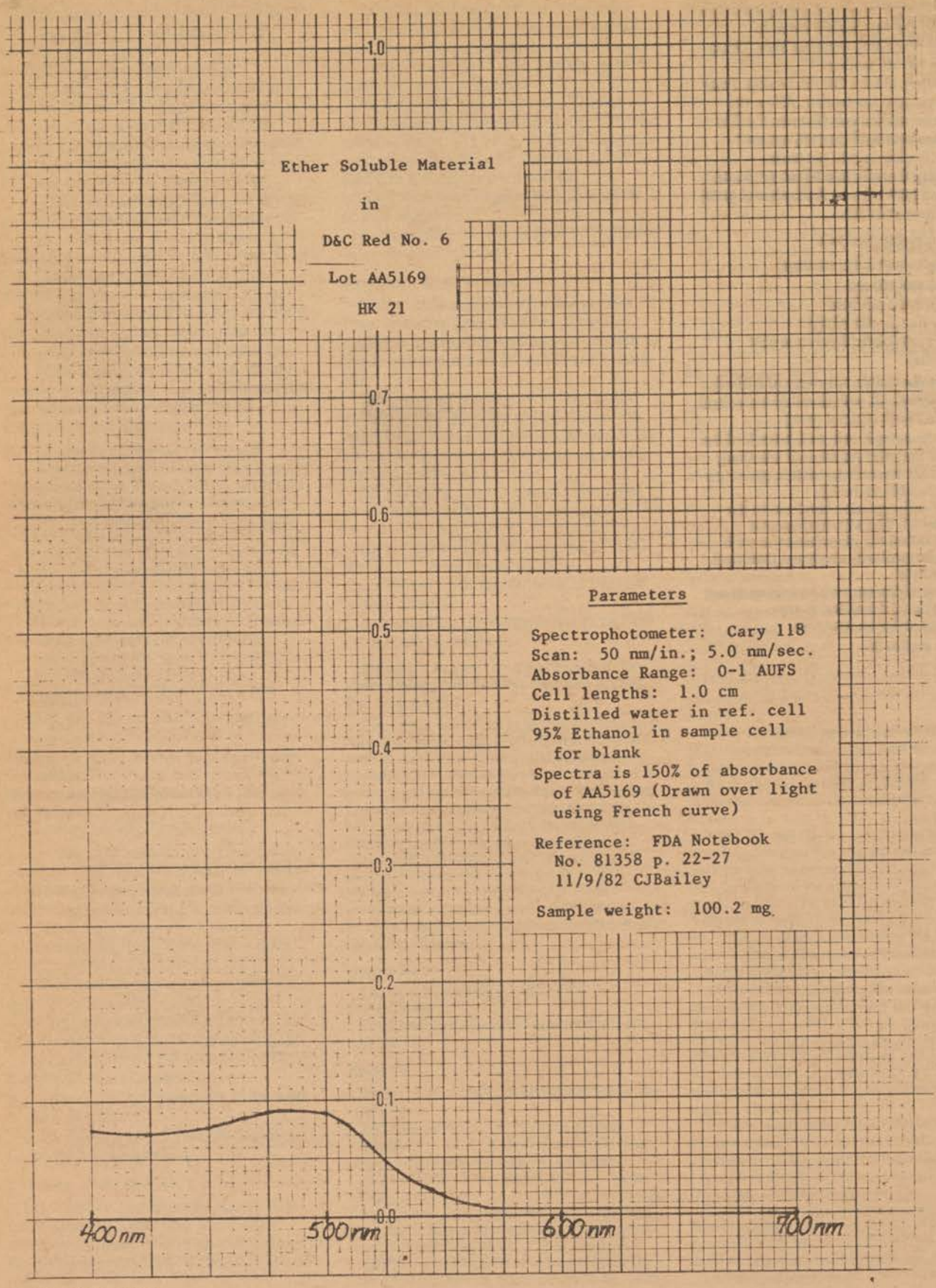
(1) Record the visible spectrum of a blank. Fill the reference cell with distilled water and the sampe cell with ethanol (95%)

(2) Rinse the sample cell with 2–3 mL of the ether soluble material (in ethanol solution); then fill the cell. Record the visible spectrum of the ether soluble material.

(3) Compare the spectra obtained to the spectra attached. The attached spectra represents 150% of the absorbance at each wavelength for similarly analyzed D&C Red No. 6 Lot AA5169.

The spectra of the current sample must not exceed the attached spectra at any wavelength in order to *pass test.*

BILLING CODE 4160-01-M



BILLING CODE 4160-01-C

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

2. Part 81 is amended:

§ 81.1 [Amended]

a. In § 81.1 *Provisional lists of color additives* in paragraph (b) by removing the entries for "D&C Red No. 6" and "D&C Red No. 7."

§ 81.27 [Amended]

b. In § 81.27 *Conditions of provisional listing,* by removing and reserving paragraph (c) and in paragraph (d) by removing the entries for "D&C Red No. 6" and "D&C Red No. 7."

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

3. Part 82 is amended:

a. By revising § 82.1306, to read as follows:

§ 82.1306 D&C Red No. 6.

(a) The color additive D&C Red No. 6 shall conform in identity and specifications to the requirements of § 74.1306 (a)(1) and (b) of this chapter.

(b) The color additive D&C Red No. 6 may be safely used for coloring drugs such that the combined total of D&C Red No. 6 and D&C Red No. 7 does not exceed 5 milligrams per daily dose of the drug.

b. By revising § 82.1307, to read as follows:

§ 82.1307 D&C Red No. 7.

(a) The color additive D&C Red No. 7 shall conform in identity and specifications to the requirements of § 74.1307 (a)(1) and (b) of this chapter.

(b) The color additive D&C Red No. 7 may be safely used for coloring drugs such that the combined total of D&C Red No. 6 and D&C Red No. 7 does not exceed 5 milligrams per daily dose of the drug.

Any person who will be adversely affected by the foregoing regulation may at any time on or before January 27, 1983 file with the Dockets Management Branch (address above) written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objections shall state the issues for the hearing and shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Three copies of all documents shall be filed and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective January 28, 1983; except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by pulbication in the **Federal Register**.

(Sec. 706 (b), (c), (d), 74 Stat. 399–403 (21 U.S.C. 376 (b), (c), (d)); sec. 203, Pub. L. 86–618, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated: December 21, 1982

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc 82-35102 Filed 12-27-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Red No. 6 and D&C Red No. 7; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 6 and D&C Red No. 7 for use as a color additive in drugs and cosmetics. The new closing date will be March 29, 1983. This brief postponement will provide time for the receipt and evaluation of any objections submitted in response to the final regulation (published elsewhere in this issue of the **Federal Register**) approving the petition for the listing of D&C Red No. 6 and D&C Red No. 7 for these uses.

DATES: Effective December 28, 1982, the new closing date for D&C Red No. 6 and D&C Red No. 7 will be March 29, 1983.

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

SUPPLEMENTARY INFORMATION: FDA established the current closing date of December 31, 1982, for the provisional listing of D&C Red No. 6 and D&C Red No. 7 by a rule published in the **Federal Register** of March 27, 1981 (46 FR 18954). The agency extended the closing date until December 31, 1982, to provide time for the completion of chronic toxicity studies and the review and evaluation of these studies by FDA.

After reviewing and evaluating the data, the agency has concluded that D&C Red No. 6 and D&C Red No. 7 are safe for use in drugs and cosmetics. Therefore, elsewhere is this issue of the **Federal Register,** FDA is publishing a regulation that lists D&C Red No. 6 and D&C Red No. 7 for these uses. The regulation set forth below will postpone the December 31, 1982 closing date for the provisional listing of these color additives until March 29, 1983. This postponement will provide sufficient time for receipt and evaluation of comments or objections submitted in response to the regulation that lists D&C Red No. 6 and D&C Red No. 7 for use in drugs and cosmetics.

Because of the shortness of time until the December 31, 1982 closing date, FDA concludes that notice and public procedure on these regulations are impracticable. Moreover, good cause exists for issuing this postponement as a final rule because the agency has concluded that D&C Red No. 6 and D&C Red No. 7 are safe for their intended uses under the Color Additive Amendments of 1960. This regulation will permit the uninterrupted use of this color additive until March 29, 1983. To prevent any interruption in the provisional lising of D&C Red No. 6 and D&C Red No. 7 and in accordance with 5 U.S.C. 553(d) (1) and (3), this regulation is being made effective on December 28, 1982.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives,* by revising the closing date for "D&C Red No. 6" and "D&C Red No.

7" in paragraph (b) to read "March 29, 1983."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing*, by revising the closing date for "D&C Red No. 6" and "D&C Red No. 7" in paragraph (d) to read "March 29, 1983."

Effective date. This final rule is effective December 28, 1982.

(Sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note))

Dated: December 3, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-35103 Filed 12-27-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 145

[Docket No. 78P-0147]

Canned Pears; Standards of Identity and Quality; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date for compliance with the provisions of the amended standards of identity and quality for canned pears to provide for "chunky" style.

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

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 21, 1982 (47 FR 41529), FDA issued a final regulation amending the standards of identity and quality for canned pears (21 CFR 145.175) to provide for a new optional "chunky" style and to define the styles already provided for in the standard of identity. Any person who would be adversely affected by the regulation could have, at any time on or before October 21, 1982, filed written objections to the final regulation and requested a hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received.

List of Subjects in 21 CFR Part 145

Canned fruit, Food standards, Fruits.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that the effective date for compliance with the standards of identity and quality for canned pears § 145.175 *Canned pears* (21 CFR 145.175) as amended in the **Federal Register** of September 21, 1982 (47 FR 41529) is July 1, 1985. Voluntary compliance may have begun November 22, 1982.

Dated: December 20, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-34944 Filed 12-27-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 146

[Docket No. 78N-0236]

Grapefruit Juice; Standard of Identity; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date for compliance with the provision of the amended standard of identity for grapefruit juice to provide for 10 percent minimum grapefruit soluble solids in grapefruit juice from concentrate.

DATES: Effective July 1, 1983, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may begin December 30, 1982.

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 1, 1982 (47 FR 43364), FDA issued a final regulation amending the standard of identity for grapefruit juice (21 CFR 146.132) to establish the minimum soluble solids for "grapefruit juice from concentrate" at 10 percent, by weight, exclusive of any added sweeteners (21 CFR 146.132(a)(1)). Any person who would be adversely affected by the regulation could have, at any time on or before November 1, 1982, filed written objections to the final regulation and requested a hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received. However, two parties requested that the July 1, 1985 effective date be changed to July 1, 1983, because the October 1, 1982 amendment did not change any labeling requirements, and therefore the later effective date is unnecessary. FDA agrees and is changing the effective date to July 1, 1983.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that the effective date for compliance with the standard of identity for grapefruit juice (21 CFR 146.132) as amended in the **Federal Register** of October 1, 1982 (47 FR 43364) is July 1, 1983. Voluntary compliance may begin December 30, 1982.

Dated: December 23, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-35204 Filed 12-27-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 178

[Docket No. 82F-0131]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Tetrakis[Methylene(3,5-Di-Tert-Butyl-4-Hydroxyhydrocinnamate)]Methane

Correction

In FR Doc. 82-28153 beginning on page 46077 in the issue for Friday, October 15, 1982, on page 46078, the middle column, in the table under § 178.3570(a)(3), the second line under "Substances", the "=" should read "-".

BILLING CODE 1505-01-M

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21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject To Certification; Nitrofurazone Solution

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 supplemental new animal drug application (NADA) providing revised labeling for use of nitrofurazone solution

for treating female equine genital tract infections and impaired fertility in addition to the existing approval for treating surface bacterial infections in dogs, cats, and horses. The application was filed by Biomed Laboratories.

EFFECTIVE DATE: December 28, 1982.

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

SUPPLEMENTARY INFORMATION: Biomed Laboratories, 4542 Denver St., Montclair, Calif. 91763, is sponsor for supplemental NADA 126–950 providing revised labeling for use of Fura-Vet (0.2 percent nitrofurazone solution) for treating female equine genital tract infections and impaired fertility. The firm has existing approval for use of the drug for treating surface bacterial infections in dogs, cats, and horses. The existing approval permits over-the-counter marketing of the drug, but addition of the genital tract and impaired fertility claims to a common label requires that the product now be restricted to veterinary prescription use. The nitrofurazone solution regulation provides that since all of the aforementioned conditions of use are NAS/NRC reviewed and found effective, applications for these uses need not include effectiveness data as specified by 21 CFR 514.111. The product is intended for topical use; therefore, the requirement for bioequivalency is waived under 21 CFR 320.22(b)(2). The application is approved, and the regulations are amended accordingly.

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

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

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

List of Subjects in 21 CFR Part 524

Animal drugs, topical.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 524 is amended in § 524.1580d by revising paragraph (b), to read as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 524.1580d Nitrofurazone solution.

* * * * *

(b) *Sponsor.* See 000857, 015562, 015579, and 051259 in § 510.600(c) of this chapter for use as in paragraph (d) (1) and (2) of this section.

* * * * *

Effective date: December 28, 1982.

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

Dated: December 20, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82–34943 Filed 12–27–82; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Placement of Triazolam Into Schedule IV

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Acting Administrator of the Drug Enforcement Administration (DEA) to place the substance, triazolam, into Schedule IV of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). This action is based on a finding that triazolam fits the statutory criteria for inclusion in Schedule IV of the CSA. As a result of this rule, the regulatory controls and criminal sanctions of Schedule IV of the CSA will be applicable to the manufacturing, distribution, importation and exportation of triazolam.

EFFECTIVE DATE: December 28, 1982.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, D.C. 20537; telephone (202) 633–1366.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** on Wednesday, April 29, 1981, (46 FR 23953–4), proposing that triazolam be placed into Schedule IV of the CSA if and when the triazolam New Drug Application (NDA) receives final approval from the Food and Drug Administration (FDA). All persons were given until June 29, 1981, to submit any comments or objections in writing regarding this proposal. One comment was received from the American Society for Hospital Pharmacists (ASHP), which supported the placement of triazolam into Schedule IV. No other comments or objections were received in response to this proposal nor were there any requests for a hearing.

By letter dated November 22, 1982, the FDA notified DEA of the final NDA approval for triazolam contingent upon the announcement of a final scheduling decision in the **Federal Register.** This final rule fulfills that scheduling condition for triazolam.

Triazolam is a member of the benzodiazepine class of drugs. It is a central nervous system depressant and has been clinically evaluated as a hypnotic.

Relying on the scientific and medical evaluation and recommendation of the Acting Assistant Secretary for Health and based on his independent evaluation in accordance with the provisions of 21 U.S.C. 811(c), the Acting Administrator of the Drug Enforcement Administration, pursuant to the provisions of 21 U.S.C. 811(a) and 811(b), finds that:

(1) Based on information now available, triazolam has a low potential for abuse relative to the drugs or other substances listed in Schedule III;

(2) Triazolam has a currently acceptable medical use in treatment in the United States; and

(3) Abuse of triazolam may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

The above findings are consistent with the placement of triazolam into Schedule IV of the Controlled Substances Act. In order to avoid delays in the initial marketing of triazolam, the control of triazolam in Schedule IV will be effective on December 28, 1982. In the event this imposes special hardships on any registrant, the Drug Enforcement Administration will entertain any justified request for an extension of time to comply with the Schedule IV regulations. The applicable regulations are as follows:

1. *Registration.* Any person who manufactures, distributes, delivers, imports or exports triazolam, or who engages in research or conducts instructional activities with respect to this substance, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. *Security.* Triazolam must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of triazolam must comply with the requirements of §§ 1302.03–1302.05 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. *Inventory.* Every registrant required to keep records who possesses any quantity of triazolam shall take inventories, pursuant to §§ 1304.11–1304.19 of Title 21 of the Code of Federal Regulations, of all stocks of triazolam on hand.

5. *Records.* All registrants required to keep records pursuant to §§ 1304.21–1304.27 of Title 21 of the Code of Federal Regulations shall do so regarding triazolam.

6. *Prescriptions.* All prescriptions for products containing triazolam shall comply with §§ 1306.01–1306.06 and §§ 1306.21–1306.25 of Title 21 of the Code of Federal Regulations.

7. *Importation and Exportation.* All importation and exportation of triazolam shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

8. *Criminal Liability.* The Acting Administrator, Drug Enforcement Administration, hereby orders that any activity with respect to triazolam not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act shall be unlawful.

Pursuant to 5 U.S.C. 605(b), the Acting Administrator certifies that the placement of triazolam into Schedule IV of the Controlled Substances Act will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). This action involves the initial control of a substance not previously approved for marketing in the United States.

In accordance with the provisions of 21 U.S.C. 811(a), this placement of triazolam into Schedule IV of the CSA is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557, and as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193, Feb. 19, 1981).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

PART 1308—[AMENDED]

Under the authority vested in the Attorney General by Section 201(a) of the CSA (21 U.S.C. 811(a)) and delegated to the Acting Administrator of the Drug Enforcement Administration by the Department of Justice regulations (28 CFR 0.100), the Acting Administrator hereby orders that § 1308.14(c) of Title 21 of the Code of Federal Regulations be amended by adding (c)(24) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(c) * * *

(24) Triazolam	2887

* * * * *

Dated: December 20, 1982.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82-34990 Filed 12-27-82; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-121; Ref: Notice No. 371]

California Shenandoah Valley Viticultural Area

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

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in portions of Amador and El Dorado Counties in California to be known as "Shenandoah Valley" qualified by the word "California." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes establishment of the California Shenandoah Valley as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will help consumers better identify the wines they may purchase.

EFFECTIVE DATE: January 27, 1983.

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

SUPPLEMENTARY INFORMATION:

Background

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

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grapegrowing region distinguishable by geographical features. Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape growing region as a viticultural area.

Petition

ATF received a petition from the Amador County Wine Grape Growers Association proposing an area in Amador County, California, as a viticultural area to be known as "Shenandoah Valley." The area consists of approximately 10,000 acres of which about 1,200 acres are vineyards. The petitioner asked for the Shenandoah Valley viticultural area to be situated to the north and west of Fiddletown, California, and to the north and east of Plymouth, California.

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 371, in the **Federal Register** on April 13, 1981, (46 FR 21623) with a 60 day comment period. This comment period was then extended for an additional 30 days. Several requests were received for public hearings by interested persons in California and Virginia. Hearings were held in California on December 7 and 8, 1981, and in Virginia on January 12 and 13, 1982.

Evidence Relating To the Name

Testimony at the hearings established that the area derived its name from settlers from Virginia drawn to the area during the gold rush. The petition states and witnesses testified, among other things, that:

(a) In 1881, J. D. Mason, in his "History of Amador County," mentions choice grapes being grown in the Shenandoah Valley;

(b) A 1927 book, "Amador County History" refers to this area as Shenandoah Valley;

(c) Soil survey maps of Amador County, California, prepared by the U.S. Department of Agriculture Soil Conservation Service and dated Series 1961, identify the area as the Shenandoah Valley;

(d) U.S.G.S. 7.5 minute quadrangle map, (topographic) titled Fiddletown Quadrangle California and dated 1949, identifies the area as the Shenandoah Valley;

(e) An area school, cemetery and road has "Shenandoah" included in their names; and

(f) Numerous articles, books and other materials dealing with wine refer to the Shenandoah Valley in California as a specific grape-growing area.

The major issue in most of the 300 written comments and in the testimony of over 80 persons at two public hearings was use of the name "Shenandoah Valley" for a viticultural area. About half of the commenters said that the Shenandoah Valley name is historically and geographically best known for a valley in Virginia and West Virginia. They claim the use of Shenandoah Valley on California wine labels would be confusing for consumers and would allow the California wine industry use of a name which has significance for the Virginia wine industry. The other half of the commenters stated that the Shenandoah Valley name in California has existed for over 100 years as have commercial vineyards and wine production in this area. They contend use of Shenandoah Valley on these wine labels would not confuse the consumer because such wines are nationally well known and distinctly different from wine produced from grapes grown in the Shenandoah Valley of Virginia and West Virginia.

After a careful review of the name issue, ATF has decided that the evidence shows that the name of the proposed viticultural area, "Shenandoah Valley," is locally known as referring to a specific area in California and this area is nationally known as a specific grape growing area. However, two geographic areas share the same name, one in California and one in Virginia and West Virginia and both grow grapes used in wine production. The record established that the Shenandoah Valley in Virginia and West Virginia is nationally well known, whereas the Shenandoah Valley in California is less well known. ATF believes there would be a potential for consumer confusion if the name "Shenandoah Valley" without qualification were displayed on a California wine label. Because the Shenandoah Valley in Virginia and West Virginia is so well known, ATF believes the consumer would consider a wine labeled with an unqualified Shenandoah Valley viticultural area as originating from grapes grown in this area. ATF further believes that the use of the name "Shenandoah Valley" in direct conjunction with the name of the State of California would eliminate the potential for consumer confusion and allows consumers to readily identify where the wine comes from. Therefore, this final rule allows the name Shenandoah Valley as a viticultural area in California provided that the name California appears in direct conjunction with the name Shenandoah Valley on the wine label.

Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), a viticultural area should possess geographical features which distinguish it from surrounding areas. The petition states and witnesses testified, among other things that the principal grape producing soil in the California Shenandoah Valley is the Sierra series. This series consists of well-drained deep and moderately deep soils formed of material from granitic rock. These soils are gently sloping to very steep. The surface soil primarily consists of various loams, particularly coarse sandy loam. The subsoil primarily consists of heavy loam or clay loam. The depth to weathered bedrock ranges from 20 inches to more than 60 inches. Witnesses stated that to the west of the area the soil is the Auburn-Exchaquer series which is rocky and shallow, to the east the soil is the Supan-Iron Mountain series which is a volcanic type rock, and to the south the soil is shallower range land.

Boundaries

Another issue with the proposed California Shenandoah Valley viticultural area was a petition from Twin Rivers Vineyards to extend the northern boundary of the Amador County Wine Grape Growers Association's petition to include 170 acres of grapes in El Dorado County. A number of commenters gave their opinion and belief that the Shenandoah Valley stopped at the Amador and El Dorado County line. However, there was evidence that while the proposed extension lay fallow for several years until recently, the early settlers living on the property were regarded as Shenandoah Valley residents. Other commenters gave economic reasons for limiting the Shenandoah Valley viticultural area to Amador County.

A viticultural area is defined as a delimited grape growing region distinguishable by geographical features. The similarity of environmental factors influencing the grapes in a region is far more important than real or imagined boundary lines or economic factors. The one geographical feature which separates the two Counties is a 400 foot wide river canyon. However, grapes are not planted in this river canyon. The evidence shows that the topography, soil type and microclimate on both sides of the river canyon are similar. Further, testimony at the hearing showed that north of the proposed extension the land was no longer Sierra soil series, and was implantable, steep, treed and rocky.

Based on the evidence, ATF believes that the environmental factors influencing the grapes in the petitioned-for Shenandoah Valley viticultural area in Amador County are the same as for the adjacent 170 acre-vineyard located in El Dorado County. Further, based on the evidence, ATF believes the proposed area, as extended, is geographically distinguishable from the surrounding areas. Therefore, the northern boundary of the Amador County Wine Grape Growers Association's petition was extended to include Twin Rivers Vineyards.

Other than the addition of the Twin Rivers Vineyard's property, ATF is approving the boundaries of the California Shenandoah Valley as proposed. This decision is based on the petition, the testimony presented at the hearing, and comments received.

Miscellaneous

Subsequent to the notice of proposed rulemaking on the California Shenandoah Valley petition, ATF received a petition from Shenandoah Vineyards in Edinburg, Virginia, proposing a viticultural area in Virginia and West Virginia to be known as Shenandoah Valley. A notice of proposed rulemaking concerning that petition was published in the **Federal Register** and most of the 80 comments received favored establishing a Shenandoah Valley viticultural area in Virginia and West Virginia.

Approval of the California Shenandoah Valley as a viticultural area does not preclude establishment of a Shenandoah Valley in Virginia and West Virginia as a viticultural area. Regulations do not preclude the use of the same name for two viticultural areas if both areas meet the established

guidelines and it is clear to consumers where the areas are located.

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

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Exective Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 27 CFR Part 9

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

Drafting Information

The principal author of this document is James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance: Accordingly, under the authority contained in Section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.37 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.37 California Shenandoah Valley.

Par. 2. Subpart C is amended by adding § 9.37 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.37 California Shenandoah Valley.

(a) *Name.* The name of the viticultural area described in this section is "Shenandoah Valley" qualified by the word "California" in direct conjunction with the name "Shenandoah Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the California Shenandoah Valley viticultural area are two 1962 U.S.G.S. maps. The maps are titled: "Fiddletown Quadrangle California" 7.5 minute series and "Amador City Quadrangle California-Amador Co." 7.5 minute series.

(c) *Boundaries.* The Shenandoah Valley viticultural area is located in portions of Amador and El Dorado Counties of California. The boundaries are as follows:

The line starts at the point where the Consumnes River meets Big Indian Creek. The line then proceeds south, following Big Indian Creek, until Big Indian Creek meets the boundary between Sections 1 and 2 of Township 7 North Range 10 East. The line then follows this boundary south until it meets the Oleta (Fiddletown) Road. The line then follows the Oleta Road east until it meets the boundary between Sections 6 and 5 of Township 7 North Range 11 East. The line follows that boundary north into Township 8 North Range 11 East, and continues north on the boundary between Sections 31 and 32 until this boundary meets Big Indian Creek. The line then follows Big Indian Creek in a northeasterly direction until Big Indian Creek meets the boundary between Sections 28 and 27 of Township 8 North Range 11 East. The line then follows this boundary north until it reaches the southeast corner of Section 21 of Township 8 North Range 11 East. The line then proceeds east, then north, then west along the boundary of the western half of Section 22 of Township 8 North Range 11 East to the intersection of Sections 16, 15, 21, and 22. The line then proceeds north along the boundary between Sections 16 and 15 of Township 8 North Range 11 East and continues north along the boundary of Sections 9 and 10 of Township 8 North Range 11 East to the intersection of Sections 9, 10, 3 and 4 of Township 8 North Range 11 East. The line then proceeds West along the boundary of Sections 9 and 4. The line then continues west along the boundary of Sections 5 and 8 of Township 8 North Range 11 East to the Consumnes River. The line then proceeds west along the Consumnes River to the point of beginning.

Signed: December 3, 1982.

Stephen E. Higgins,

Acting Director.

Approved: December 17, 1982.

David Q. Bates,

Deputy Assistant Secretary (Operations).

[FR Doc. 82-35069 Filed 12-23-82; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[T.D. ATF—120; Ref: Notice No. 419]

Shenandoah Valley Viticultural Area in Virginia and West Virginia

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

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Virginia and West Virginia to be known as "Shenandoah Valley." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes establishment of the Shenandoah Valley in Virginia and West Virginia as a viticultural area and its subsequent use as an appellation of origin on wine labels and in time advertisements will help consumers better identify the wines they may purchase.

EFFECTIVE DATE: January 27, 1983.

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

SUPPLEMENTARY INFORMATION:

Background

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

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2), outlines the procedure for proposing an American

viticultural area. Any interested person may petition ATF to establish a grape growing region as a viticultural area.

AFT received a petition from Amador County Wine Grape Growers Association in September 1980 proposing a viticultural area in California to be known as "Shenandoah Valley." A notice of proposed rulemaking was published in the **Federal Register** and public hearings were held in California and Virgina. The major issue in most of the 300 written comments and in the testimony of over 80 persons at the public hearings was the use of the name "Shenandoah Valley" as as viticultural area. About half of the commenters stated that the Shenandoah Valley name is historically and geographically best known for a valley in Virginia and West Virginia. They claimed that the use of Shenandoah Valley on California wine labels would be confusing for consumers and would allow the California wine industry use of a name which has significance for the Virginia wine industry. The other half of the commenters said that the Shenandoah Valley name in California has existed for over 100 years and the wine produced in this area is unique and well known. They stated that use of Shenandoah Valley on these labels would not confuse consumers because such wines are distinctly different from wine produced in the Shenandoah Valley of Virginia.

Petition

ATF received a petition in August 1981 from Shenandoah Vineyards in Edinburg, Virginia, proposing an area in the countries of Frederick, Clarke, Warren, Shenandoah, Page, Rockingham, Augusta, Rockbridge, Botetourt, and Amherst in Virginia, and the counties of Berkeley and Jefferson in West Virginia, as a viticultural area to be known as "Shenandoah Valley."

The petitioner submitted evidence stating the name is locally and nationally known and the area has geographical characteristics which distinguish the viticultural features from those found in surrounding areas. This evidence was presented in a notice of proposed rulemaking published in the **Federal Register** on August 20, 1982 (47 FR 36445), with a 45 day comment period.

Comments

During the commend period, 80 comments with 132 signatures were received. In addition, Congressman J. Kenneth Robinson, 7th District of Virginia, requested that all hearing testimony at Harrisonburg, Virginia, on January 12 and 13, 1982, pursuant to Notices 371 and 391 (notice of proposed rulemaking for the Shenandoah Valley in California), be considered as part of the comment letter. There were no requests for a public hearing during the comment period.

Most of the comments were in support of the Shenandoah Valley viticultural area in Virginia-West Virginia stating that the name Shenandoah Valley clearly is known as being the Virginia-West Virginia Valley. Comments in favor were also received from Federal, State and local government officials.

Five commenters were in opposition because they considered the proposed viticultural area too large when compared to the acres of vineyards.

A few commenters recommended both Virginia and California be allowed use of the name Shenandoah Valley with some way of identifying their respective locations on a label.

Except for the comments opposed to the proposal based on the size of the area, comments on the boundaries favored those stated by the petitioner and contained in the notice.

Name Issue

The major issue for the propose viticultural area in Virginia-West Virginia is use of the name "Shenandoah Valley." Two geographical areas share the same name, one in Virginia and West Virginia and one in California, and both grow grapes used in wine production. The petitions, written comments and testimony at the hearing clearly established that the Shenandoah Valley in Virginia-West Virginia in nationally well known. While not nearly as well known nationally , the Shenandoah Valley located in California is known as a specific area in California and the area is nationally known, especially to wine consumers, as a specific grape growing area.

Because the Virginia-West Virginia Shenandoah Valley is clearly well known, ATF believes the consumer would consider wine labeled with a Shenandoah Valley viticultural area as originating from grapes grown in this area. Therefore, this final rule allows use of the name "Shenandoah Valley" as a viticultural area in Virginia-West Virginia without the need for the qualifying name of a State.

Approval of Shenandoah Valley for Virginia-West Virginia as a viticultural area does not preclude establishment of a California Shenandoah Valley. Regulations do not preclude the use of the same name for two areas if both areas meet the established guidelines and it is clear to consumers where the areas are located. ATF believes that the use of the name "Shenandoah Valley" in direct conjunction with he name of the State of California would eliminate the potential for consumer confusion and would allow consumers to readily identify wher the wine comes from. Therefore, the Treasury decision approving the use of the name Shenandoah Valley in California, will require the name California to appear in direct conjunction with the name Shenandoah Valley.

Viticultural Area Size Issue

The viticultural area requested for Shenandoah Valley is approximately 2.4 million acres. The total commerical wine grape acreage is less than 300 acres. The possibility of reducing the size of the 2.4 million acre viticultural area was strongly opposed by several commenters, including the petitioner and Federal, State, and local officials. These commenters stated that a change in the boundary would also change the nationally recognized Shenandoah Valley boundary. They stated that evidence indicates the soil and climate are generally similar for the whole area. The commenters opposing the large area Shenandoah Valley suggested that several viticultural areas are found in the proposed area but no specific recommendations were made on proposing new boundaries.

On the surface it looks as though the entire area does not merit being included as an approved viticultural area. However, because vineyards have been planted or are planned in locations throughout the petitioned for viticultural area and the evidence shows the geographical influences are generally similar, ATF is approving the Shenandoah Valley boundaries as stated in the petition and the notices. In addition, approval of this large area does not preclude establishing smaller viticultural areas within the Shenandoah Valley in the future.

Geographical Characteristics

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

The record shows that the Shenandoah Valley is an example of a mountain landscape that has been formed by erosion during a long interval

of geologic time and that has reached a condition of dynamic equilibrium in which the adjustment between the landforms and the rocks beneath is nearly complete. It is an elongate area lying between the Blue Ridge Mountains on the Southeast and the North and Shenandoah Mountains (the beginning of the Allegheny complex) on the northwest.

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

The southern boundary is not quite as completely and sharply defined. The evidence indicates that conditions relevant to a viticultural area, such as soil and terrain, as well as the geographical features associated with the closing of the mountains and the cutting by the James River extends the southern boundary to the James River.

The record shows that the Shenandoah Valley viticultural area is distinguished from the surrounding areas geographically as follows:

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

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

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

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

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

(d) The climate features, including average temperature and precipitation, are relatively consistent throughout the valley. Data was cited from four weather stations of the U.S. Department of Commerce Weather Bureau, specifically the stations of Lexington and Staunton, Virginia, in the southern end and Winchester and Woodstock, Virginia, in the northern end of the valley. These stations show average temperatures ranging from 53.9°F to 55.7°F, precipitation from 33.8" to 37.7", heating degree days from 4344 to 4866 and cooling degree days from 851 to 1046. That data from the four stations to the east of the valley show average temperatures ranging from 47.8°F to 57°F, precipitation from 38.6" to 48.6", heating degree days from 4026 to 6463 and cooling degree days from 0 to 1263. Further, the record shows that to the west similar variations occur.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Miscellaneous

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

Drafting Information

The principal author of this document is James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

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

Authority: Accordingly, under the authority in 27 U.S.C. 205 (49 Stat. 981, as amended), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.60 to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.60 Shenandoah Valley.

Par. 2. Subpart C is amended by adding § 9.60 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.60 Shenandoah Valley.

(a) *Name.* The name of the viticultural area described in this section is "Shenandoah Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Shenandoah Valley viticultural area are four U.S.G.S. Eastern United States 1:250,000 scale maps. The maps are

titled: Roanoke (1971), Charlottesville (1956, with a revision in 1965), Cumberland (1956, revised 1969) and Baltimore (1957, revised 1978).

(c) *Boundaries.* The Shenandoah Valley viticultural area is located in Frederick, Clarke, Warren, Shenandoah, Page, Rockingham, Augusta, Rockbridge, Botetourt, and Amherst Counties in Virginia, and Berkeley and Jefferson Counties in West Virginia. The boundaries are as follows:

The boundary line starts at the point of the intersection of the Potomac River and the Virginia-West Virginia State line approximately eight miles east of Charlestown, West Virginia. The line then proceeds southwesterly approximately 14.8 miles along the State line, which essentially follows the crest of the Blue Ridge Mountains, to its intersection with the westerly border line of Clarke County, Virginia. The line continues approximately 13.8 miles southwesterly along the county line and the crest of the Blue Ridge to its intersection with the westerly boundary line of Warren County, Virginia. The line continues approximately 15 miles along the Warren County line to its intersection with the Skyline Drive. The line continues approximately 71 miles in a southwesterly direction along the Skyline Drive and the Blue Ridge to its intersection with the Blue Ridge Parkway. The line continues approximately 53 miles in a southwesterly direction along the Blue Ridge Parkway to its intersection with the James River. The line then proceeds approximately 44 miles along the James River in a west-northwesterly direction to its intersection with the northwest boundary line of the Jefferson National Forest near Eagle Rock. The line then proceeds approximately 10.5 miles in a northeasterly direction along the Jefferson National Forest line and along the crest of North Mountain to its intersection with the westerly boundary line of Rockbridge County. The line continues approximately 23 miles along the county line in the same northeasterly direction to its intersection with the Chesapeake and Ohio Railroad. The line continues approximately 23 miles along the railroad between the Great North Mountain and the Little North Mountain to its intersection with the southeastern boundary line of the George Washington National Forest at Buffalo Gap. The line continues approximately 81 miles northeasterly along the George Washington National Forest line to the Vertical Control Station, (elevation 1883), on the crest of Little North Mountain approximately 3 miles west of Van Buren Furnace. The line continues approximately 53 miles northeasterly along the crest of Little North Mountain to its intersection with the Potomac River in Fort Frederick State Park. The line then proceeds approximately 47.4 miles southeasterly along the Potomac River to the beginning point at that river's intersection with the boundary line between West Virginia and Virginia.

Signed: December 3, 1982.

Stephen E. Higgins,

Acting Director.

David Q. Bates,

Deputy Assistant Secretary (Operations).

[FR Doc. 82-35088 Filed 12-23-82; 8:45 am]

BILLING CODE 4510-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

Exemption From Requirements for Recording Occupational Injuries and Illnesses; Final Rule and Amendment

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Final rule.

SUMMARY: With this notice, OSHA is amending Part 1904 to exempt certain employer establishments from requirements to: (1) Maintain, retain and provide access to the log and summary of occupational injuries and illnesses (1904.2, 1904.6, and 1904.7); (2) maintain, retain and make available for inspection the supplementary record of occupational injuries and illnesses (1904.4, and 1904.6); and (3) post the annual summary of occupational injuries and illnesses for each establishment (1904.5).

The Agency is exempting employer establishments in the following Standard Industrial Classifications (SIC's):

SIC's 52–59 (Retail Trades, except SIC's 52–54);

SIC's 60–67 (Finance, Insurance and Real Estate);

SIC's 70–89 (Services, except SIC's 70, 75, 76, 79, 80).

This action is part of OSHA's continuing effort to reduce the recordkeeping burden on employers.

The primary value to OSHA of these records has been to help OSHA safety and heath officers to assess workplace safety conditions as part of OSHA's General Schedule (i.e. agency-initiated) inspection of establishments. Since 1977, however, OSHA has not included in its general inspection program those employer establishments that would be exempt under this rule.

Further, because of low incidence rates at affected establishments, and limited OSHA resources, and because needed inspections are made in response to employee complaints about specific hazards, there is little likelihood that these establishments would be included in any future targeting scheme. For these establishments, the primary agency use of these records no longer exists, and OHSA, therefore, exempts these employers establishments from the requirements to keep these records. The exemption thus relieves a large number of employers of a paperwork burden that is unnecessary from the agency's point of view, without lessening on-the-job safety protection for workers.

EFFECTIVE DATE: This rule becomes effective January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Raymond E. Donnelly, Occupational Safety and Health Administration, Room N3622, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523–8076.

A. Background

1. *History of the Regulation.* The regulations concerning OSHA's occupational injury and illness recordkeeping system (29 CFR Part 1904) were adopted in 1971. Their purpose is to:

> Implement section 8(c) (1), (2), 8(g)(2) and 24 (a) and (e) of the Occupational Safety and Health Act of 1970. These sections provide for recordkeeping and reporting by employers covered by the Act as necessary or appropriate for enforcement of the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation and analysis of occupational safety and health statistics (29 CFR 1904.1).

On July 29, 1977, OSHA amended these regulations to exempt small employers with 10 or fewer employees from the recordkeeping requirements of Part 1904 (42 FR 38567). OSHA then stated that the amendment would continue the Congressional intent, expressed in previous appropriations acts (Pub. L. 93–517 and Pub. L. 94–206) generally to exempt employers with 10 or fewer employees from the recordkeeping requirements but not from the requirement in § 1904.8 to report accidents resulting in a fatality or multiple hospitalization nor from the requirement in § 1904.21 to participate in the Bureau of Labor Statistics' (BLS) annual statistical survey, if such an employer is selected to participate. OSHA also stated that the small employer exemption would carry out the mandate of section 8(d) of the Act which requires that information obtained under the Act be obtained with a minimum burden on employers (29 U.S.C. 657(d)).

On June 4, 1982, OSHA proposed a comparable exemption for establishments which are classified in

the Office of Management and Budget's Standard Industrial Classification (SIC) Manual as retail trade, finance, insurance, real estate and services—SIC's 52–89 (excluding 52–54, 70, 75, 76, 79 and 80) (47 FR 24346).

The scope of the proposed exemption was confined to establishments in the Major Industry Groups within SICs 52–89, which met two criteria. The first was that the establishments fall within SIC's not targeted for general schedule inspections. Since 1977 all establishments in SIC's 52–89 have not been targeted for such inspections. The second criterion was that the establishments fall within Major Industry Groups in SIC's whose average lost workday case injury rate (LWCIR), as published by the Bureau of Labor Statistics, for 1978–80 was at or below 75 percent of the private sector average. Major Industry Groups in SIC's 52–89 which had LWCIR averages above 75 percent of the private sector average and thus were not included in the proposed exemption are: building materials and garden supplies (SIC 52); general merchandise and food stores (SIC's 53, 54); hotels and other lodging places (SIC 70); repair (SIC's 75, 76); amusement and recreation services (SIC 79); and health services (SIC 80).

The purpose of the proposal was to further OSHA's continuing effort under section 8(d) of the Act to reduce the paperwork burden on employers without compromising worker safety and health. In the proposal OSHA identified the three main functions which making and keeping the OSHA prescribed records were intended to serve. OSHA also set forth why it believed that for the industry groups proposed for exemption, these requirements had outlived their usefulness. The following discussion reiterates these points.

The requirements to maintain, retain and provide access to the OSHA prescribed log, summary of occupational injuries and illnesses and supplemental record were intended to serve three main purposes.

First, these requirements were designed to aid OSHA's safety and health officers to identify hazardous operations when conducting general schedule inspections. Establishments in SIC's 52–89, however, have not been targeted for general schedule inspections since 1977 because these establishments fall within less-hazardous industrial divisions. For the same reason, coupled with limited OSHA resources, it is highly unlikely that such firms would be included in any future targeting plan. Thus, for the exempted establishments, OSHA concludes that the requirements have outlived their original purpose as a necessary component of general schedule inspection activity.

It should be emphasized that inspections in these establishments will continue to be made in response to employee complaints, and as part of OSHA's investigation of fatalities, multiple hospitalization incidents, and imminent danger situations. In these cases, however, the hazard information is usually provided by the complaint itself or through prompt investigation.

The second purpose of these regulations was to provide employers and employees with useful information about conditions at their workplaces. Eliminating the requirement to maintain the OSHA log and supplemental record for the establishments affected by this exemption would not result in the loss of useful information. Approximately 94 percent of all establishments in SIC's 52–89 (excluding 52–54, 70, 75, 76, 79 and 80) according to BLS data, are expected to have fewer than two injuries per establishment on an annual basis.

The third purpose of these regulations was to ensure the gathering of uniform, reliable safety and health statistics. OSHA did not propose to exempt affected employers from participating in the Bureau of Labor Statistics' annual survey of occupational injuries and illnesses. Currently, only a small percentage of these employers are asked to participate. In the future, these selected employers will be notified in advance by BLS of the requirement to participate in the survey and to maintain the OSHA log and make reports for the survey as requested by BLS.

Substantial public interest was generated by the proposal. Trade associations, unions, firms and individuals responded within the comment period which ended on July 6, 1982.

The Final Rule

OSHA is issuing the final rule as proposed. The Agency believes that substantial support for both the general concept of recordkeeping relief and the scope of this exemption was demonstrated by the response to the proposal.

Some commenters expressed objections to either the exclusion from or the inclusion of certain industries in the proposed exemption. OSHA has reviewed its proposed two-fold criteria for exemption and has concluded that these criteria are both rational and workable. In addition no alternative criteria which the Agency considers workable and appropriate were suggested. Additional discussion of these objections is found later in this document.

The Rulemaking

First, many of the comments received in response to the proposal generally supported the concept of an exemption from recordkeeping requirements for the industry groups included in the proposal. For example, the Shoe Corp. of America stated that the "requirement to maintain the OSHA 200 for each of the stores (in a 700 store chain) at the location is an exercise in costly paper work. The vast majority go out with all zeros typed in". (2–20; see also the comments of the Society of Independent Gasoline Marketers of America, 2–22; American Bankers Association, 2–23; American Retail Federation (ARF), 2–13A; First Bank Ceredo, 2–6; Arby's Inc. 2–8; RTM. 2–14). Several commenters from the "fast food" industry also wrote in support of their industry's inclusion in the exemption. Arby's stated that the "fast food environment is free from recognizable hazards, due to training and layout," and contended that there is no benefit from the paperwork burden associated with these forms (i.e., recording and posting of accident data). The company also noted it is using alternative recordkeeping systems to capture and store this same data.

The Society of Independent Gasoline Marketers of America (SIGMA) similarly stated that it "would relieve SIGMA members of an unnecessary paperwork burden and would not adversely affect workplace safety for this retail gasoline outlet employees (2–22). Also supporting the proposal was the American Bankers Association which characterized the proposed exemption as "justified and necessary" (2–23).

The ARF also supported the "concept embodied in the (proposed) rule as "consistent with both Section 8(d) of the Act which requires that information sought under the Act be obtained with a minimum burden on employers (29 U.S.C. 657 (d)) and this Administration's goal of reducing unnecessary paperwork burden on employers without lessening on-the-job safety protection for workers".

However, objections to the proposed exemptions were raised by several commenters. California's Department of Industrial Relations stated that OSHA has ignored uses of record keeping information in proposing this exemption. The Department argued that the log is a necessary component of any inspection, that the log contains information important to employees and that summary information is important to

gather for research purposes (2–21). OSHA believes these objections overstate the usefulness of the records involved in this exemption. OSHA inspectors depend on many sources of information. Certainly in the case of complaint inspections, complaining employees themselves are sources of available detailed health and safety information as are prompt investigations. Also most workplace injury and illness data are recorded in workers' compensation reports, which are typically more detailed than the OSHA log. Nor does the exemption ignore research needs. As stated above, this exemption does not affect the reporting requirements needed to complete the BLS Survey. In addition, no other research needs have been identified which would be affected by this exemption. OSHA does not believe that employees will be deprived of important information. Employees, either individually, or through safety and health committees have access to worker's compensation first reports of injury, and other records kept by employers in the form best designed for a particular firm's needs.

Other objections where similar in nature. For example, OSHA agrees with the Michigan Department of Public Health, which stated that the recordkeeping requirements constitute a consistent, uniform way of recording injuries for individual establishments and industry wide (2–26). However, Michigan's claim that such records are the basis for joint labor-management efforts to improve safety and health is, in OSHA's opinion, a vast overstatement. Certainly for the exempted establishments, the minimal information recorded on and communicated by the required forms, could only be of peripheral value to such labor-management efforts. The uniformity of the forms, likewise, is irrelevant to joint labor-management efforts in any one firm, and of minimal significance to industry-wide efforts since the categories of recorded information are unambiguous. Michigan was also concerned that the adoption of this exemption could cause confusion in states operating their own health and safety plans pursuant to section 18 of the Act. However, any such confusion can be obviated by the states' adoption of similar exemptions. In sum, OSHA concludes that most general objections to the proposed exemption were based on theoretical uses for required records, which in fact, are either unproved or of minimal value.

Specific criticism of the proposal centered around OSHA's choice of industry groups for inclusion in the exemption, and/or the criteria themselves. Some commenters argued that additional industry groups or subgroups should be exempt because they meet OSHA's criteria in the proposal. For example OSHA was asked to broaden the exemption to include SIC 48, "Communications", because that industry's LWCIR has been below the criterion level of 75% of the private sector (AT&T) (2–15). OSHA limited its proposal to certain major groups within the broad industrial divisions of retail trade and services (SIC 52–89) because, by far, most of the hazardous major groups are contained in these divisions. OSHA realizes that other major groups also may have relatively low LWCIR's, or using other definitions, may be characterized as less hazardous.

Because statistics and concepts defining "hazardous" are changeable, OSHA is hesitant, however, to frame any exemption in the broadest way at this time. Therefore the Agency will continue to examine non-exempt industry groups for possible inclusion in future exemptions, based on the criteria applied here, or on equally rational criteria. It should also be noted that the record is not complete concerning whether other specified major groups, not included in the proposal, such as "Communications" (SIC 48) should also be exempt. For example, although industry comments supported extending the exemption to "Communications," no comments were received from affected unions, employees and other interested persons on the issue.

Various objections were made to OSHA's using 2-digit SIC codes to designate exempt industry groups. For instance, the AFL–CIO argued that two digit SIC codes are too broad to use for exemption purposes because they incorporate hazardous SIC's within them (2–10).

OSHA agrees with the AFL–CIO that using the 2-digit SIC code to designate less hazardous industries may "hide" less safe industries, firms, or in "safe" firms, unsafe operations. This flaw, however, is simply a consequence of the process of aggregation. OSHA does not agree with the AFL–CIO, however, that the 2-digit code is too "broad" for designating less hazardous industries. As stated above, little purpose would be served to continue to require 3 or 4 digit SIC codes groups or industries to keep records when OSHA is not using general schedule inspections in those industries. OSHA also believes that designating exempt categories down to the 3 or 4 digit level would be confusing to the public and administratively difficult for OSHA.

OSHA also agrees with commenters who stated that any definition which aggregates safety and health records of different firms and/or industries may "hide" high or low performers. In fact, even a firm-by-firm qualification test will aggregate operations with varying safety records with a given firm. Because of this fact, Inco Ltd. recommended that offices within larger establishments should be exempt, because offices are assumed to have very low workplace injury and illness rates. To the extent that office work results in very few recordable illnesses and injuries, the recording of such infrequent incidents would be a very slight additional burden for non-exempt establishments. Further, segregating data on an operation-by-operation basis may be beyond the normal operating procedures of many establishments and may thus create additional paperwork for such establishments. Even for those offices that may be considered separate establishments because the primary activity of their firms does not fall within the exempt SICs, OSHA does not believe that the continued making and keeping of the OSHA log and supplementary record will be unduly burdensome. Many of these offices are responsible for keeping OSHA-mandated records for other divisions of their firms. The additional making and keeping of these records for their own "office establishments" would appear to impose only a slight additional burden.

Other comments requested that OSHA revise its criteria for exemption to include certain SIC's. For instance, the ARF objected to the proposal's exclusion of SIC's 52,53 and 54 from the recordkeeping exemption, even though it acknowledged that these industries' LWCIR's were higher than 75% of the private sector average. The ARF characterized OSHA's criteria as "irrational and improper", in part because they allegedly implied a "casual relationship" between recordkeeping and the lost workday case rate. The ARF also accused OSHA of "punishing" SICs 52, 53 and 54, because they were not included in this exemption.

OSHA disagrees with this analysis. As stated above, the main reason for proposing these exemptions was OSHA's belief that in industries with above average safety and health experience little purpose is served by documenting low injury and illness rates on the forms and at the frequencies now required.

In addition, although this exemption is in keeping with OSHA's practice of

recognizing good performance by employers, OSHA does not expect that this exemption by itself, will provide sufficient incentive to change employer behavior to improve workplace health and safety. Neither does OSHA believe, as ARF suggested, that conforming to reporting requirements, by itself, improves workplace safety and health. Certainly, if data existed which supported such a causal relationship, OSHA would be amiss in issuing this exemption. It is because OSHA believes that the requirements affected by this exemption no longer serve their original purposes, that this exemption is being issued.

In conclusion, OSHA believes that its criteria for choosing industrial groups for exemption from certain recordkeeping requirements are both rational and fair. In addition, and just as importantly, OSHA believes that adopting this exemption will help employers, employees and the Agency to concentrate their respective resources on affirmative actions to improve workplace safety and health.

OSHA finds, in accordance with Executive Order 12291 (46 FR 13193), that this is not a "major rule" since its effect will not meet any of the definitional elements in § 1(b) of the Executive Order. As stated above, the effect of this rule will be to reduce many employers' paperwork burden, and accordingly results in lower costs to them. The Secretary also finds that no regulatory flexibility analysis is required under the Regulatory Flexibility Act (Pub. L. 96–354; 94 Stat. 1164) because this action will not have a significant economic impact on a substantial number of small entities, in that no increased reporting requirements are imposed and that competition within affected industries is not altered. A certification to this effect has been made by the Secretary to Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act

Information collection requirements contained in this regulation are in the process of being submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). Once the requirements have been assigned an OMB control number, the public will be notified to that effect.

Authority

This document was prepared under the direction and supervision of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health.

Accordingly, pursuant to Section 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 29 U.S.C. 657(g), 1593, 1600), Section 4 of the Administrative Procedures Act (45 U.S.C. 553), and Secretary of Labor's Order 8–76, Part 1904 of Title 29 of the Code of Federal Regulations is hereby amended as set forth below.

List of Subjects in 29 CFR Part 1904.

Health records, Health statistics, Occupational safety and health.

Signed at Washington, D.C., this 20th day of December, 1982.

Thorne G. Auchter,

Assistant Secretary of Labor.

PART 1904—[Amended]

Part 1904 of Title 29, Code of Federal Regulations is amended as follows:

1. By adding a new paragraph (h) to § 1904.12, to read as follows:

§ 1904.12 Definitions.

* * * * *

(h) *Establishments Classified in Standard Industrial Classification Codes (SIC) 52–89.* (1) Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52–89.

(2) Retail trades are classified as SIC's 52–59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

(3) Finance, insurance and real estate are classified as SIC's 60–67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance, and real estate.

(4) Services are classified as SIC's 70–89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, education, social, and cultural; and membership organizations.

(5) The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of the normal basis for determining the primary activity.

2. By adding a new § 1904.16 to read as follows:

§ 1904.16 Establishments Classified in Standard Industrial Classification Codes (SIC) 52–89, (except 52–54, 70, 75, 76, 79 and 80).

An employer whose establishment is classified in SIC's 52–89, (excluding 52–54, 70, 75, 76, 79 and 80) need not comply, for such establishment, with any of the requirements of this part except the following:

(a) Obligation to report under § 1904.8 concerning fatalities or multiple hospitalization accidents; and (b) obligation to maintain a log of occupational injuries and illnesses under § 1904.21, upon being notified in writing by the Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

[FR Doc. 82-34938 Filed 12-27-82; 8:45 am]

BILLING CODE 4510-26-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2621

Limitation on Guaranteed Benefits; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: On December 13, 1982, the Pension Benefit Guaranty Corporation published in the **Federal Register** at 47 FR 55672, FR Doc. 82–33789, an amendment to its Limitation on Guaranteed Benefits regulation. This document corrects the authority citation for 29 CFR Part 2621 and a typographical error in Appendix A to Part 2621.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel, Code 210, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, D.C. 20006, 202–254–4895. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 82–33789 appearing at page 55672 in the issue of December 13, 1982:

1. On page 55672 in column 3, in the "Authority", "4022(B)" is corrected to

read "4022B" and "1322B" is corrected to read "1322b".

2. On page 55672 in Column 3, Appendix A, in the table "1982" is corrected to read "1983".

Edwin M. Jones,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 82-35041 Filed 12-27-82; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers; Department of the Army

36 CFR Part 331

Falls of Ohio National Wildlife Conservation Area

AGENCY: U.S. Army Corps of Engineers, Defense.

ACTION: Interim rule with request for comments.

SUMMARY: The Secretary of the Army, acting through the Chief of Engineers, is issuing an interim rule to govern the protection, use and management of the Falls of the Ohio National Wildlife Conservation Area (WCA). The WCA was authorized by Title II of Pub L. 97-137 and established pursuant to Section 204 of the Act by the Secretary of the Interior concurrent with publication of Notice and the WCA boundaries in the **Federal Register** of August 12, 1982 at 47 FR 35043. Section 206 of the Act mandates publication of regulations to carry out Title II within one year of enactment or not later than December 29, 1982.

DATE: This interim rule is effective upon publication and comments will be received on or before February 28, 1983.

ADDRESS: Written comments should be sent to: Office of the Chief of Engineers, ATTN: DAEN-CWP-V, Washington, DC 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Leverty, Environmental Resources Branch, telephone number (202) 272-0130.

SUPPLEMENTARY INFORMATION: These interim regulations place certain restrictions, prohibitions and limitations on use of the lands and waters within the Falls of the Ohio National Wildlife Conservation Area (WCA), in order to protect, preserve and provide for the proper management of the significant physical and biological features for which the WCA was designated and to prevent interference with commercial and recreational navigation on the Ohio River.

The WCA was authorized by Title II of Pub. L. 97-137, in order to:

(1) Protect wildlife populations and habitats in their natural diversity, including but not limited to, bald eagle, peregrine falcon, Canada geese, mallard, gadwall, blue-winged teal, black duck, American widgeon, and wood duck;

(2) Conserve fish populations in their natural diversity including, but not limited to, shad, shiner, crappie, largemouth bass, striped bass, and channel catfish;

(3) Ensure to the maximum extent practicable the necessary water quantity within the WCA;

(4) Protect the fossilized coral reef; and

(5) Provide opportunities for scientific research and interpretive and environmental uses and fish and wildlife oriented recreational uses.

Responsibility for the administration of the WCA and for promulgation of these regulations rests with the Secretary of the Army, acting through the U.S. Army Corps of Engineers. Within the boundary, lands, waters and interests therein will be acquired by the Corps of Engineers as may be necessary to insure that the WCA can be effectively managed for the purpose for which it was established. The authorizing law requires that these regulations include prohibitions on all hunting, vandalism (including the removal of fossils), and the dumping of refuse within the boundaries of the WCA.

These regulations were developed in consultation with appropriate agencies of the Department of the Interior.

The Corps of Engineers has determined that it is impractical to publish these rules in draft form because the statutory requirement for their promulgation by December 29, 1982.

Regulation Changes: The interim rule amends Title 36 of the Code of Federal Regulations by adding a new part 331 which governs the protection, use and management of the Falls of the Ohio National Wildlife Conservation Area. As noted above, comments will be considered in finalizing these interim rules if received by February 28, 1983.

Impact Analysis: The Department of the Army has determined that this document is not a major rule requiring preparation of a Regulatory Impact Analysis under Executive Order 12291. The Department of the Army has also determined that the interim rule will not have a significant economic impact on a substantial number of small entities and, therefore, does not require a small entity flexibility analysis under Pub. L. 96-354. The interim rule merely sets forth certain restrictions, prohibitions and limitations on use of the Falls of the Ohio National Wildlife Conservation Area in order to properly manage and protect its unique resources and thus to carry out the purposes for which the WCA was authorized and established.

List of Subjects in 36 CFR Part 331

Recreation areas, Waterways, Hunting and fishing, Administrative practice and procedure, Public lands.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

Accordingly, 36 CFR is amended by adding a new interim Part 331 to read as set forth below.

PART 331—REGULATIONS GOVERNING THE PROTECTION, USE AND MANAGEMENT OF THE FALLS OF THE OHIO NATIONAL WILDLIFE CONSERVATION AREA

Sec.

331.1 Applicability and scope.
331.2 Policy.
331.3 Hunting and trapping.
331.4 Fishing.
331.5 Explosives and fireworks.
331.6 Public property.
331.7 Sanitation.
331.8 Picnicking.
331.9 Camping.
331.10 Swimming.
331.11 Special events.
331.12 Vehicles.
331.13 Vessels.
331.14 Aircraft.
331.15 Fires.
331.16 Interference with government employees.
331.17 Minerals.
331.18 Restrictions.
331.19 Commercial activities.
331.20 Advertisement.
331.21 Unauthorized structures.
331.22 Abandonment of personal property.
331.23 Control of animals.
331.24 Permits.
331.25 Violation of regulations.

Authority: Pub. L. 97-137.

§ 331.1 Applicability and scope.

(a) The regulations contained in this part apply to those lands and waters within the established boundary of the Falls of the Ohio National Wildlife Conservation Area (WCA). Included in this boundary, which was published in the **Federal Register** of August 12, 1982, are publicly and privately owned lands, waters and improvements. The Federal Government, acting through the Corps of Engineers, will acquire such rights to privately-owned properties in the WCA as are necessary to carry out the purposes of Title II, Pub. L. 97-137. The regulations prescribed herein are for the use, management and protection of the resources of the WCA and all persons

entering, using or visiting within the boundaries of the WCA are subject to these regulations. All other applicable Federal, State and local laws and regulations remain in full force and effect. The District Engineer, US Army Corps of Engineers, exercises non-exclusive jurisdiction over the lands and waters of the WCA and enforces these regulations.

(b) The WCA boundary encompasses an existing hydroelectric generating station and the McAlpine Locks and Dam, operating navigation structures which are part of the authorized Ohio River Navigation System. The continued operation and maintenance of this system take precedence over the purposes of the WCA, except that such operation and maintenance will be consistent with the basic purpose of the WCA as regards prohibition of hunting, vandalism, and dumping of refuse. Management of the WCA to achieve its intended purposes, will, to the extent practicable, be accomplished in a manner consistent and compatible with continued generation of electricity and navigation on the Ohio River, including operation and maintenance of the McAlpine Locks and Dam and the Louisville Repair Station and material storage areas located on Shippingport Island.

§ 331.2 Policy.

(a) It is the policy of the Secretary of the Army, acting through the Chief of Engineers, to manage the natural and cultural resources of the WCA in the public interest, providing the public with safe and healthful recreational opportunities while protecting and enhancing these resources.

(b) Unless otherwise indicated herein, the term "District Engineer" shall include the authorized representatives of the District Engineer.

(c) The WCA shall be available to the public without regard to sex, race, color, creed, or national origin. No lessee, licensee, or concessionaire providing a service to the public shall discriminate against any person because of sex, race, creed, color, or national origin in the conduct of the operations under the lease, license, or concession contract.

§ 331.3 Hunting and trapping.

(a) The hunting, trapping, catching, molesting, killing, or having in possession any wild animal or bird, or taking the eggs of any such bird, is prohibited.

(b) Possession of equipment (including, but not limited to, firearms, ammunition, traps, projectile firing devices including bow and arrow) which could be used for hunting, trapping, or the taking of wildlife, is prohibited.

§ 331.4 Fishing.

Unless otherwise authorized in writing by the District Engineer:

(a) Fishing is only permitted in accordance with the laws and regulations of the State within whose exterior boundaries that portion of the WCA is located, and such laws and regulations which are now or may hereafter be in effect are hereby adopted as part of these regulations.

(b) Fishing by means of the use of drugs, poisons, explosives, bow and arrow or electricity is prohibited.

(c) Commercial fishing and fishing with gill nets, trammel nets, hoop nets, bow and arrow or trot lines is prohibited.

§ 331.5 Explosives and fireworks.

Unless otherwise authorized in writing by the District Engineer:

(a) The possession or use of fireworks is prohibited.

(b) The possession or use of explosives is prohibited.

§ 331.6 Public property.

Unless otherwise authorized in writing by the District Engineer, the destruction, injury, defacement, removal, or any alteration of public property including, but not limited to natural formations, paleontological features, historical and archeological features and vegetative growth is prohibited. Any such destruction, removal, or alteration of public property shall be in accordance with the conditions of any permission granted.

§ 331.7 Sanitation.

(a) Garbage, trash, rubbish, litter, or any other waste material or waste liquid generated on the WCA shall be removed from the area or deposited in receptacles provided for that purpose. The improper disposal of such wastes on the project is prohibited.

(b) The use of refuse containers for the disposal of refuse not generated on the WCA is prohibited.

(c) It is a violation to bring any material onto the WCA for the purpose of disposal.

(d) The discharge or placing of sewage, galley waste, garbage, refuse, or pollutants into the WCA waters from any vessel or watercraft is prohibited.

§ 331.8 Picnicking.

(a) Picnicking is permitted only in designated areas.

(b) Picnickers shall remove all personal equipment and clean their sites upon departure.

§ 331.9 Camping.

Camping is not permitted within the WCA.

§ 331.10 Swimming.

Swimming is prohibited unless authorized in writing by the District Engineer.

§ 331.11 Special events.

(a) Special events including, but not limited to, water carnivals, boat regattas, music festivals, dramatic presentations, or other special recreation programs are prohibited unless written permission has been granted by the District Engineer.

(b) The public shall not be charged any fee by the sponsor of such permitted event unless the District Engineer has approved in writing the proposed schedule of fees. The District Engineer shall have authority to revoke permission and require removal of any equipment upon failure of the sponsor to comply with terms and conditions of the permit/permission. Any violation shall constitute a separate violation for each calendar day in which it occurs.

§ 331.12 Vehicles.

(a) The use of a vehicle off roadways is prohibited except as may be authorized by the District Engineer.

(b) Vehicles shall not be parked in violation of any posted restrictions, or in such a manner as to endanger any Federal property to include natural features. The owner of any vehicle parked in violation of this section shall be presumed to have parked it, and unless rebutted such presumption will be sufficient to sustain a conviction as provided for in § 331.25.

(c) Vehicles shall be operated in accordance with all posted regulations.

(d) Driving or operating any vehicle in a careless, negligent, or reckless manner, heedlessly or in willful disregard for the safety of other persons, or in such manner as to endanger any property or environmental feature, or without due care or at a speed greater than is reasonable and prudent under prevailing conditions with regard to traffic, weather, road, light and surface conditions, is prohibited.

(e) This section pertains to all vehicles, including, but not limited to, automobiles, trucks, motorcycles, mini-bikes, trail bikes, snowmobiles, dune buggies, all terrain vehicles, bicycles, trailers, campers, or any other such equipment.

(f) Except as authorized by the District Engineer no person shall operate any motorized vehicle without a proper and effective exhaust muffler, or with an

exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

§ 331.13 Vessels.

(a) Vessels or other watercraft may be operated in the WCA waters except in prohibited or restricted areas in accordance with posted regulations and applicable Federal, States, and local laws.

(b) All vessels when not in actual use shall be removed from the WCA unless securely moored at mooring facilities approved by the District Engineer. The placing of floating or stationary mooring facilities to, or interfering with, a buoy, channel marker, or other navigational aid is prohibited.

(c) The operation of vessels or other watercraft in a careless, negligent, or reckless manner so as to endanger any property (including the operator and/or user(s) of the vessel or watercraft) is prohibited.

§ 331.14 Aircraft.

(a) The operation of aircraft on WCA lands and waters is prohibited, unless authorized in writing by the District Engineer.

(b) Except in extreme emergencies threatening human life or serious property loss, the air delivery of any person or thing by parachute, helicopter, or other means onto project lands or waters without written permission of the District Engineer is prohibited.

(c) The provisions of this section shall not be applicable to aircraft engaged on official business of the Federal Government or used in emergency rescue in accordance with the directions of the District Engineer.

§ 331.15 Fires.

Open fires are prohibited unless confined to fireplaces, grills, or other facilities designed for this purpose as designated by the District Engineer. Fires shall not be left unattended and must be completely extinguished prior to departure.

§ 331.16 Interference with government employees.

Interference with any Government employee in the conduct of his or her official duties pertaining to the administration of these regulations is prohibited. It is a violation to fail to comply with a lawful order directed by any Government employee or to knowingly give any false, fictitious, or fraudulent report or other information to any Government employee in the performance of his or her official duties pertaining to the administration of these regulations.

§ 331.17 Minerals.

All activities in connection with prospecting, exploration, development, mining or other removal or the processing of mineral resources and all uses reasonably incident thereto are prohibited.

§ 331.18 Restrictions.

The District Engineer may establish and post a schedule of visiting hours and/or restrictions on the public use of a portion or portions of the WCA. The District Engineer may close or restrict the use of the WCA or portion of the WCA when necessitated by reason of public health, public safety, security, maintenance, or other reasons in the public interest. Entering or using the project in a manner which is contrary to the schedule of visiting hours, closure or restrictions is prohibited.

§ 331.19 Commercial activities.

Unless otherwise authorized in writing by the District Engineer, the engaging in or solicitation of business or money is prohibited.

§ 331.20 Advertisement.

Unless otherwise authorized in writing by the District Engineer, advertising by the use of billboards, signs, markers, audio devices, or any other means whatsoever including handbills, circulars, and posters is prohibited. Vessels or vehicles with semipermanent or permanently installed signs are exempt if being used for authorized recreational activities and in compliance with all other rules and regulations pertaining to vessels and vehicles.

§ 331.21 Unauthorized structures.

The construction, placing, or continued existence of any structure of any kind under, upon, in, or over WCA lands or waters is prohibited unless a permit, lease, license, or other appropriate written agreement therefor has been issued by the District Engineer. Structures not so authorized are subject to summary removal or impoundment by the District Engineer. The design, construction, placing, existence, or use of structures in violation of the terms of the permit, lease, license, or other written agreement therefor is prohibited.

§ 331.22 Abandonment of personal property.

(a) Personal property of any kind left unattended upon WCA lands or waters for a period of 24 hours shall be considered abandoned and may be impounded and stored at a storage point designated by the District Engineer who may assess a reasonable impoundment fee. Such fee shall be paid before the impounded property is returned to its owner.

(b) If abandoned property is not claimed by its owner within 3 months after the date it is received at the storage point designated by the District Engineer, it may be disposed of by public or private sale or by other means determined by the District Engineer. Any net proceeds from the sale of property shall be covered into the Treasury of the United States as miscellaneous receipts.

§ 331.23 Control of animals.

(a) No person shall bring or allow horses, cattle, or other livestock in the WCA.

(b) No person shall bring dogs, cats, or other pets into the WCA unless penned, caged, on a leash under 6 feet in length, or otherwise under physical restraint at all times. Unclaimed or unattended animals are subject to immediate impoundment and removal in accordance with State and local laws.

§ 331.24 Permits.

It shall be a violation of these regulations to refuse to or fail to comply with the terms or conditions of any permit issued by the District Engineer.

§ 331.25 Violation of regulations.

Anyone violating the provisions of this regulation shall be subject to a fine of not more than $500 or imprisonment for not more than 6 months, or both. All persons designated by the Chief of Engineers, U.S. Army Corps of Engineers, for that purpose shall have the authority to issue a citation for the violation of these regulations, requiring the appearance of any person charged with violation to appear before the U.S. Magistrate within whose jurisdiction the violation occurred.

[FR Doc. 82-35051 Filed 12-27-82; 8:45 am]
BILLING CODE 3710-92-M

VETERANS ADMINISTATION

38 CFR Part 17

Alcohol and Drug Dependence or Abuse Treatment and Rehabilitation

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is publishing final regulations on its implementation of the "Veterans Health Care Amendments of 1979" (Pub. L. 96-22) as amended. The purpose of that Act was to authorize the VA to conduct a five-year pilot program for care, treatment and rehabilitation

services on a contract basis in halfway houses, therapeutic communities, psychiatric residential treatment centers and other community-based treatment facilities, for eligible veterans suffering from alcohol or drug dependence or abuse disabilities. These regulations are necessary in order to provide the authority to VA medical centers for authorizing needed treatment for eligible veterans, who are in need of and request alcohol or drug abuse treatment and rehabiliation.

EFFECTIVE DATE: April 28, 1980.

The incorporation by reference in this regulation is approved by the Director of the office of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Robert L. Murphy, Mental Health and Behavioral Sciences Service (116C), Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389–5195.

SUPPLEMENTARY INFORMATION: On pages 55716 through 55720 of the **Federal Register** of August 21, 1980, an Interim Final Regulation was published for §17.960, title 38 Code of Federal Regulations. Interested persons were given 30 days to submit comments. Two comments were received. One was a question relating to establishing halfway houses for veterans only or using existing facilities where veterans and nonveterans would be treated together with the VA sponsoring the veterans *only*. Contracts will be negotiated with existing facilities that are able to meet quality and effectiveness standards established by the VA. No attempt will be made to establish facilities for veterans only or start new program activities where none currently exists. The other comments involved additional treatment and transitional assistance required by veterans being discharged from institutional care. Extensive treatment programs are presently available to veterans being release from institutional care to promote adjustment to noninstitutional life. An additional item that has been added involves contract care on an outpatient basis in addition to treatment in residential facilities, and additional standards that must be met to qualify for an award of a contract. The quality and effectiveness standards contained in these regulations are required to be set forth in regulations by law. (See 38 U.S.C. 620A(a)(2)).

These rules are not major rules within the meaning of Executive Order 12291, Federal Regulation, because they will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for any persons or entities, and will not have significant adverse effects on any element of our economy. These rules are exempt from the requirement for initial and final regulatory flexibility analyses of sections 603 and 604 of the Regulatory Flexibility Act (Pub. L. 96–354) because those sections are not effective prior to January 1, 1981. These rules were effective, on an interim basis, as of April 30, 1980, and, with minor modifications, will remain effective. In any event, these regulations will not have a significant impact on a substantial number of small entities. The pilot program encompassed by these rules involves only a small number of these entities. Moreover, these rules do not impose any requirements that these entities have not previously been required to meet, none of which are economically significant.

Procedural data included in the publication of Interim Final Regulation §17.960 have been omitted leaving only regulatory matters for final publication and inclusion in Title 38 CFR. The section number of this regulation has been changed from §17.960 to §§ 17.53a through 17.53d. Accordingly, § 17.960 is removed from Title 38, CFR. The final regulations are hereby adopted as set forth below.

The Catalog of Federal Domestic Assistance Program number is 64.019.

List of subjects in 38 CFR Part 17

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

Approved: November 24, 1982.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 17—MEDICAL

1. 38 CFR Part 17 is amended by adding new §§ 17.53a, 17.53b, 17.53c, and 17.53d to read as follows:

§ 17.53a Alcohol and drug dependence or abuse treatment and rehabilitation in residential and nonresidential facilities by contract.

(a) Alcohol and drug dependence or abuse treatment and rehabilitation may be authorized by contract in nonresidential facilities and in residential facilities provided by halfway houses, therapeutic communities, psychiatric residential treatment centers and other community-based treatment facilities, when considered to be medically advantageous and cost effective for the following:

(1) Veterans who have been furnished hospital care in facilities over which the Administrator has direct jurisdiction and such transitional care is reasonably necessary to complete treatment incident to such hospital care,

(2) Persons in the Armed Forces who, upon discharge therefrom will become eligible veterans, when duly referred with authorization for Veterans Administration medical center hospital care in preparation for treatment and rehabilitation in this program under the following limitations:

(i) Such persons may be accepted by transfer only during the last 30 days of such person's enlistment or tour of duty,

(ii) The person requests transfer in writing for treatment for a specified period of time during the last 30 days of such person's enlistment period or tour of duty,

(iii) Treatment does not extend beyond the period of time specified in the request unless such person requests in writing an extension for a further specified period of time and such request is approved by the Veterans Administration Medical Center Director authorizing treatment and rehabilitation,

(iv) Such care and treatment will be provided as if the person were a veteran, subject to reimbursement by the respective military service for the costs of hospital care and control treatment provided while the person is an active duty member.

(b) The maximum period for one treatment episode is limited to 60 days. The Veterans Administration Medical Center Director may authorize one 30-day extension.

(c) Any person who has been discharged or released from active military, naval or air service, and who, upon application for treatment and rehabilitative services under the authority of this section is determined to be legally ineligible for such treatment or rehabilitation services shall be:

(1) Provided referral services to assist the person, to the maximum extent possible, in obtaining treatment and rehabilitation services from sources outside the Veterans Administration, not at Veterans Administration expense and,

(2) If pertinent, advised of the right to apply to the appropriate military, naval or air service and the Veterans Administration for review of such person's discharge or release from such service. (Pub. L. 96–22, 38 U.S.C. 620A)

§ 17.53b Contracts for residential treatment services for veterans with alcohol or drug dependence or abuse disabilities.

(a) Contracts for treatment services authorized under § 17.53a(a) may be awarded in accordance with applicable Veterans Administration and Federal procurement procedures. Such contracts will be awarded only after the quality and effectiveness, including adequate protection for the safety of the residents of the contractor's program, has been determined and then only to contractors, determined by the Chief Medical Director or designee to meet the following requirements.

(1) Meet fire safety requirements as follows:

(i) The building must meet the requirements of the applicable residential occupancy chapters and the general requirement chapters (1–7, 31) of the Life Safety Code (NFPA 101) published by the National Fire Protection Association (NFPA), Batterymarch Park, Quincy, Massachusetts 02269, 1981 edition. The 1981 edition of the Life Safety Code is hereby incorporated by reference into this section as though set forth in full herein. This code is available for inspection at the Office of the Federal Register, 1100 L Street, NW, Washington, DC 20408. Any equivalences or variances to Veterans Administration requirements must be approved by the Director, Facility Engineering, Planning, and Construction Office, Veterans Administration Central Office, 810 Vermont Avenue, NW. Washington, DC 20420.

(ii) Where applicable, the home must have a current occupancy permit issued by the local and state governments in the jurisdiction where the home is located.

(iii) All Veterans Administration sponsored residents will be mentally and physically capable of leaving the building, unaided, in the event of an emergency. Halfway house, therapeutic community and other residential program management must agree that all the other residents in any building housing veterans will also have such capability.

(iv) There must be at least one staff member on duty 24 hours a day.

(v) Fire exit drills must be held at least quarterly. Residents must be instructed in evacuation procedures when the primary and/or secondary exits are blocked. A written fire plan for evacuation in the event of fire shall be developed and reviewed annually. The plan shall outline the duties, responsibilities and actions to be taken by the staff and residents in the event of a fire emergency. This plan shall be implemented during fire exit drills.

(vi) A written policy regarding tobacco smoking in the facility shall be established and enforced.

(vii) Portable fire extinguishers shall be installed at the facility. Use NFPA 10, *Portable Fire Extinguishers*, as guidance in selection and location requirements of extingushers.

(viii) Requirements for fire protection equipment and systems shall be in accordance with NFPA 101. Where installed, maintenance and testing of these systems/equipment shall include the following:

(A) The fire alarm system shall be test operated at least semi-annually.

(B) All smoke detectors shall be test operated, by activation of the smoke detector, at least semi-annually.

(C) The monthly and annual inspections and the maintenance of the extinguishers shall be in accordance with NFPA 10.

(D) All fire protection systems and equipment, such as the fire alarm system, smoke detectors, and portable extinguishers, shall be inspected, tested and maintained in accordance with the applicable NFPA fire codes and the results documented.

(ix) An annual fire and safety inspection shall be conducted at the halfway house or residential facility by qualified Veterans Administration personnel. If a review of past Veterans Administration inspections or inspections made by the local authorities indicates that a fire and safety inspection would not be necessary, then the visit to the facility may be waived.

(2) Be in compliance with existing standards of State safety codes and local, and/or State health and sanitation codes.

(3) Be licensed under State or local authority.

(4) Where applicable, be accredited by the State.

(5) Comply with the requirements of the "Confidentiality of Alcohol and Drug Abuse Patient Records" (42 CFR Part II) and the "Confidentiality of Certain Medical Records" (38 U.S.C. 4132), which shall be part of the contract.

(6) Demonstrate an existing capability to furnish the following:

(i) A supervised alcohol and drug free environment, including active affiliation with Alcoholics Anonymous (AA) programs.

(ii) Staff sufficient in numbers and position qualifications to carry out the policies, responsibilities, and programs of the facility.

(iii) Board and room.

(iv) Laundry facilities for residents to do their own laundry.

(v) Structured activities.

(vi) Appropriate group activities, including physical activities.

(vii) Health and personal hygiene maintenance.

(viii) Monitoring administration of medications.

(ix) Supportive social service.

(x) Individual counseling as appropriate.

(xi) Opportunities for learning/development of skills and habits which will enable Veterans Administration sponsored residents to adjust to and maintain freedom from dependence on or involvement with alcohol or drug abuse or dependence during or subsequent to leaving the facility.

(xii) Support for the individual desire for sobriety (alcohol/drug abuse-free life style).

(xiii) Opportunities for learning, testing, and internalizing knowledge of illness/recovery process, and for upgrading skills and improving personal relationships.

(7) Data normally maintained and included in a medical record as a function of compliance with State or community licensing standards will be accessible.

(b) Representatives of the Veterans Administration will inspect the facility prior to award of a contract to assure that prescribed requirements can be met. Inspections may also be carried out at such other times as deemed necessary by the Veterans Administration.

(c) All requirements in this rule, and Veterans Administration reports of inspection of residential facilities furnishing treatment and rehabilitation services to eligible veterans shall to the extent possible, be made available to all government agencies charged with the responsibility of licensing or otherwise regulating or inspecting such institutions.

(d) An individual case record will be created for each client which shall be maintained in security and confidence as required by the "Confidentiality of Alcohol and Drug Abuse Patient Records" (42 CFR Part 2) and the "Confidentiality of Certain Medical Records" (38 U.S.C. 4132), and will be made available on a need to know basis to appropriate Veterans Administration staff members involved with the treatment program of the veterans concerned.

(e) Contractors under this section shall provide reports of budget and case load experience upon request from a

Veterans Administration official. (Pub. L. 96–22, 38 U.S.C. 620A)

§ 17.53c Contracts for outpatient services for veterans with alcohol or drug dependence or abuse disabilities.

(a) Contracts for treatment services authorized under § 17.53a may be awarded in accordance with applicable Veterans Administration and Federal procurement procedures. Such contracts will be awarded only after the quality and effectiveness, including adequate protection for the safety of the participants of the contractor's program, has been determined and then only to contractors determined by the Chief Medical Director or designee to be fully capable of meeting the following standards:

(1) The following minimum fire safety requirements must be met:

(i) The building must meet the requirements of the applicable business occupancy chapters and the general requirement chapters (1–7, 31) of the Life Safety Code (NFPA 101) published by the National Fire Protection Association (NFPA), Batterymarch Park, Quincy, Massachusetts 02269, 1981 edition. The 1981 edition of the Life Safety Code (NFPA 101) is hereby incorporated by reference into this section as though set forth in full herein. This code is available for inspection at the Office of the Federal Register, 1100 L Street, NW., Washington, D.C. 20408. Any equivalencies or variances to Veterans Administration requirements must be approved by the Director, Facility Engineering, Planning, and Construction Office, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, D.C. 20420.

(ii) Where applicable, the facility must have a current occupancy permit issued by the local and state governments in the jurisdiction where the home is located.

(iii) All Veterans Administration sponsored patients will be mentally and physically capable of leaving the building, unaided, in the event of an emergency.

(iv) Fire exit drills must be held at least quarterly. A written plan for evacuation in the event of fire shall be developed and reviewed annually. The plan shall outline the duties, responsibilities and actions to be taken by the staff in the event of a fire emergency. This plan shall be implemented during fire exit drills.

(v) Portable fire extinguishers shall be installed at the facility. Use NFPA 10, *Portable Fire Extinguishers*, as guidance in selection and location requirements of extinguishers.

(vi) Requirements for fire protection equipment and systems shall be in accordance with NFPA 101. Where installed, maintenance and testing of these systems/equipment shall include the following:

(A) The fire alarm system shall be test operated at least semi-annually.

(B) All smoke detectors shall be test operated, by activation of the smoke detector, at least sem-annually.

(C) The monthly and annual inspections and the maintenance of the extinguishers shall be in accordance with NFPA 10.

(D) All fire protection systems and equipment, such as the fire alarm system, smoke detectors, and portable extinguishers, shall be inspected, tested and maintained in accordance with the applicable NFPA fire codes and the results documented.

(vii) An annual fire and safety inspection shall be conducted at the facility by qualified Veterans Administration personnel. If a review of past Veterans Administration inspections or inspections made by the local authorities indicates that a fire and safety inspection would not be necessary, then the visit to the facility may be waived.

(2) Conform to existing standards of State safety codes and local and/or State health and sanitation codes.

(3) Be licensed under State or local authority.

(4) Where applicable, be accredited by the State.

(5) Comply with the requirements of the "Confidentiality of Alcohol and Drug Abuse Patient Records" (42 CFR Part 2) and the "Confidentiality of Certain Medical Records" (38 U.S.C. 4132), which shall be part of the contract.

(6) Demonstrate an existing capability to furnish the following:

(i) A supervised, alcohol and drug free environment, including active affiliation with Alcoholics Anonymous (AA) programs.

(ii) Staff sufficient in numbers and position qualifications to carry out the policies, responsibilities, and programs of the facility.

(iii) Structured activities.

(iv) Appropriate group activities.

(v) Monitoring medications.

(vi) Supportive social service.

(vii) Individual counseling as appropriate.

(viii) Opportunities for learning/development of skills and habits which will enable Veterans Administration sponsored residents to adjust to and maintain freedom from dependence on or involvement with alcohol or drug abuse or dependence during or subsequent to leaving the facility.

(ix) Support for the individual desire for sobriety (alcohol/drug abuse-free life style).

(x) Opportunities for learning, testing, and internalizing knowledge of illness/recovery process, and to upgrade skills and improve personal relationships.

(7) Data normally maintained and included in a medical record as a function of compliance with State or community licensing standards will be accessible.

(b) Representatives of the Veterans Administration will inspect the facility prior to award of a contract to assure that prescribed requirements can be met. Inspections may also be carried out at such other times as deemed necessary by the Veterans Administration.

(c) All requirements in this rule and Veterans Administration reports of inspection of residential facilities furnishing treatment and rehabilitation services to eligible veterans shall, to the extent possible, be made available to all government agencies charged with the responsibility of licensing or otherwise regulating or inspecting such institutions.

(d) An individual case record will be created for each client which shall be maintained in security and confidence as required by the "Confidentiality of Alcohol and Drug Abuse Patient Records" (42 CFR Part 2) and the "Confidentiality of Certain Medical Records" (38 U.S.C. 4132), and will be made available on a need to know basis to appropriate Veterans Administration staff members involved with the treatment program of the veterans concerned. (Pub. L. 96–22, 38 U.S.C. 620A)

§ 17.53d Limitations on payment for alcohol and drug dependence or abuse treatment and rehabilitation.

The authority to enter into contracts shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation acts, and payments shall not exceed these amounts. (Pub. L. 96–22, 38 U.S.C. 620A)

§ 17.960 [Removed]

2. 38 CFR Part 17 is amended by removing § 17.960 in its entirety.

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

[FR Doc. 82–35059 Filed 12–27–82; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 204, 205 and 211

[N-FRL 2202-1]

Noise Emission Standards for Portable Air Compressors, Medium and Heavy Trucks, Motorcycles and Motorcycle Replacement Exhaust Systems, Truck Mounted Solid Waste Compactors, and Noise Labeling Requirements for Hearing Protectors; Final Rule; Revocation of Product Verification Testing, Reporting and Recordkeeping Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency hereby revokes product verification testing and the attendant reporting and recordkeeping requirements for:

(1) Noise Emission Standards for Portable Air Compressors;

(2) Noise Emission Standards for Medium and Heavy Trucks;

(3) Noise Labeling Requirements for Hearing Protectors.

(4) Noise Emission Standards for Truck Mounted Solid Waste Compactors;

(5) Noise Emission Standards for Motorcycles and Motorcycle Replacement Exhaust Systems;

This action stems from the Administrations budget for fiscal year 1982 which did not contain funding for the Noise Enforcement Division to accept or act on the product verification reports after fiscal year 1981. Also, based on the comments received, EPA is revoking the production verification testing provisions.

EFFECTIVE DATE: January 27, 1983.

FOR FURTHER INFORMATION CONTACT: Louise Giersch, (202) 382-2935

SUPPLEMENTARY INFORMATION: EPA promulgated noise regulations which established noise emission standards or labeling requirements for the following:

1. Portable Air Compressors, 40 CFR 204.50 *et seq.*, January 14, 1976 (41 FR 2162)

2. Medium and Heavy Trucks, 40 CFR 205.50 *et seq.*, April 13, 1976 (41 FR 15538)

3. Noise Labeling Requirements for Hearing Protectors, 40 CFR 211.203 *et seq.*, September 27, 1980 (44 FR 56130)

4. Truck Mounted Solid Waste Compactors, 40 CFR 205.200 *et seq.*, October 1, 1980 (44 FR 56526)

5. Motorcycles and Motorcycle Replacement Exhaust Systems, 40 CFR 205.150 *et seq.*, and 205.165 *et seq.*, December 31, 1980 (45 FR 86694).

Each of the noise regulations, listed above, imposes certain recordkeeping and reporting requirements on manufactuers of the regulated products. Contained within these regulations there are specific provisions for (1) Production Verification Testing, (2) Testing by the Administrator, and (3) Selective Enforcement Auditing. The provisions encompassing "Production Verification (PV) Testing" describe highly structured requirements to test products on an annual basis for their compliance with applicable noise emission standards in accordance with certain specified procedures. Provisions authorizing "Testing by the Administrator" describe the discretionary basis upon which the Administrator may require the testing of products to determine compliance with applicable noise emission standards as well as to determine the appropriateness of a manufacturer's test facility to conduct such product testing. The provisions related to "Selective Enforcement Auditing" (SEA) authorize the Administrator, on a discretionary basis, to require manufacturers to conduct assembly-line testing of products upon formal request. The latter two provisions apply only when an issue arises concerning product compliance with the applicable noise emission standard, while the former (PV Testing) provisions are required to be met on an annual basis.

Among these provisions there are various recordkeeping and reporting requirements, including the development and submission of PV testing reports and retention of test data supporting such reports.

On August 14, 1981, EPA suspended enforcement of reporting and recordkeeping requirements (46 FR 41057) and simultaneously proposed revocation of the reporting and recordkeeping provisions for each of these regulations (46 FR 41104). The action stemmed from that portion of the Administration's budget for Fiscal Year 1982, subsequently enacted by Congress, which did not contain funding for the Noise Enforcement Division to accept or act on the product verification reports after fiscal year 1981.

A 30 day comment period was established to allow interested parties to comment on the notice of proposed rulemaking. Fourteen written comments were received.

For the reasons discussed in the proposal and summarized below, this final action revokes the reporting and recordkeeping requirements, as proposed. Additionally, in response to the comments received, EPA is revoking the production verification testing provisions of these regulations.

1. Public Comments

Of the fourteen written comments received, seven were from six different manufacturers, three from trade associations, two from State agencies, one from a public interest legal foundation and one from a private citizen.

Four manufacturers commented on the substance of the proposed action and voiced their support. Two of the four also recommended revocation of the product verification and selective enforcement audit requirements to give them additional flexibility to comply with applicable Federal noise emission standards. Other comments by the manufacturers were on miscellaneous information and/or typographical errors.

The three trade associations supported the proposed action, but also requested that additional steps be taken to reduce regulatory burdens on industry. One association suggested the elimination of product verification and selective enforcement audit provisions to allow manufacturers additional flexibility to comply with applicable Federal standards.

One State agency supported the proposed action, while the other stated that if EPA did not intend to enforce its regulations, they should be recinded. The notice of proposed rulemaking announced that EPA was considering the revocation of reporting and recordkeeping provisions of its noise emission regulations. EPA retains the statutory and regulatory tools to enforce its noise emission regulations both under the Agency's general authority in Section 13 of the Noise Control Act and under selective enforcement auditing and testing by the Administrator provisions within the regulations. EPA intends to use these tools as appropriate.

The public interest legal foundation supported the proposed action and also suggested elimination of product verification, selective enforcement auditing, and testing by the Administrator provisions of the regulations.

The private citizen provided general comments on noise produced by trucks and motorcycles.

2. Agency Action

EPA has considered current and proposed future Agency resources, the President's policy to reduce the burdens of federal regulation, and public comments where appropriate and has decided to revoke the reporting and

recordkeeping requirements as proposed. Additionally, EPA has considered carefully the comments requesting that the Agency revoke additional regulatory provisions. In light of those comments, EPA is revoking the product verification testing requirements; as discussed below, it does not appear that this burden is necessary in view of the rescission of reporting and recordkeeping requirements.

With elimination of the reporting and recordkeeping requirements, the regulations become in part self-enforcing, since manufacturers no longer report their compliance efforts. Elimination of product verification is consistent with these changes, since without active monitoring by EPA of pre-production compliance, there is no reason to bind manufacturers to a formal program. This action will allow regulated manufacturers to structure their own testing programs to assure their products will meet applicable standards. However, the manufacturers must still comply with applicable standards, and must label each product and warrant that they conform to those standards. Moreover, EPA retains the right to require manufacturers to conduct noise tests, where warranted by the circumstances, both under the regulatory provisions discussed below and under the Agency's general authority in Section 13 of the Noise Control Act.

EPA has decided to retain the selective enforcement auditing and testing by the Administrator provisions in their present form. EPA believes these provisions are both necessary and adequate to determine whether a product or a manufacturer's test facility conforms to applicable specifications and/or standards. Without such provisions, there would be no federal mechanism by which questionable products could be adequately tested for compliance. In instances where there is reason to believe non-complying products have been introduced into commerce, the Administrator could require manufacturers to verify that products are meeting standards. For purposes of such verification, the Administrator could require the manufacturer to perform a selective enforcement audit of production models of the products in question and/or review the manufacturer's files for those products. Additionally, manufacturers remain subject to various penalties and administrative actions where noncomplying products have been distributed.

Retaining these provisions should not burden the regulated manufacturers. Both the selective enforcement auditing and testing by the Administrator provisions are discretionary. Unlike product verification, recordkeeping, and reporting requirements, they do not require manufacturers to take actions or expend resources except where the Administrator determines the facts so warrant.

This action affects only the product verification testing and the reporting and recordkeeping requirements of the regulations. All other provisions of the existing regulations remain in effect. Regulated products remain subject to the noise emission standards, labeling, and warranty requirements of the regulations. Moreover, although EPA will not directly monitor compliance with these regulations, states, localities and individuals can still initiate actions under Section 12 of the Noise Control Act [42 U.S.C. 4911] which provides for citizens' suits to enforce noise control standards. States and localities can also continue to exercise their powers to establish in-use controls for federally regulated products, as provided in Section 6(e) of the Act.

3. Regulatory Review

EPA has determined that this final rulemaking is not a major rule under Executive Order 12291, and therefore does not require a Regulatory Impact Analysis. EPA does not anticipate any significant adverse effects on competition, employment, investment, productivity, or innovation in the regulated industries. This action will result in a significant reduction in mandatory testing, reporting and recordkeeping burdens for the regulated industries and is directly translated into cost savings to those industries.

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

Under the provisions of the Regulatory Flexibility Act, 5 U.S.C. Section 601 *et seq.*, I hereby certify that this final action will not have a significant economic impact on a substantial number of small entities. The final rule affects only the product verification testing and attendant recordkeeping and reporting requirements of the regulation; other portions of the regulations are unchanged. Reduced testing, reporting and recordkeeping will ease the economic burdens of the affected manufacturers and should cause no adverse economic effects.

Lists of subjects

40 CFR Part 204

Construction industry, Noise control, Reporting requirements.

40 CFR Part 205

Labeling, Motor vehicles, Noise control, Reporting requirements.

40 CFR Part 211

Labeling, Noise control.

4. Authority

This action is being taken under the authority of Sections 6, 10, and 13 of the Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978, 42 U.S.C. 4905, 4909, and 4912.

Dated: November 22, 1982.

Anne M. Gorsuch,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 204 is revised and Parts 205 and 211 are amended.

Portable Air Compressors

1. The table of contents for Part 204 is revised to read as follows:

PART 204—NOISE EMISSION STANDARDS FOR CONSTRUCTION EQUIPMENT

Subpart A—General Provisions

Sec.
204.1 General applicability.
204.2 Definitions.
204.3 Number and gender.
204.4 Inspection and monitoring.
204.5 Exemptions.
204.5–1 Testing exemption.
204.5–2 National security exemptions.
204.5–3 Export exemptions.

Subpart B—Portable Air Compressors

204.50 Applicability.
204.51 Definitions.
204.52 Portable air compressor noise emission standards.
204.54 Test procedures.
204.55 Requirements.
204.55–1 General requirements.
204.55–2 Compliance with Standards.
204.55–3 Labeling.
204.56 Testing by the Administrator.
204.57 Selective enforcement auditing.
204.57–1 Test request.
204.57–2 Test compressor sample selection.
204.57–3 Test compressor preparation.
204.57–4 Testing.
204.57–5 Reporting of test results.
204.57–6 Acceptance and rejection of batches.
204.57–7 Acceptance and rejection of batch sequence.
204.57–8 Continued testing.
204.57–9 Prohibition of distribution in commerce; manufacturer's remedy.
204.58 In-use requirements.
204.58–1 Warranty.

Sec.
204.58–2 Tampering.
204.58–3 Instructions for maintenance, use, and repair.
204.59 Recall of noncomplying compressors.
Authority: (42 U.S.C. 4905), 86 Stat. 1237.

§ 204.2 [Amended]

2. In § 204.2, paragraph (a) (6), is removed.

3. In § 204.4, paragraph (a) is revised to read as follows:

§ 204.4 Inspection and monitoring.

(a) Any inspection or monitoring activities conducted under this section shall be for the purpose of determining (1) whether test products are being selected and prepared for testing in accordance with the provisions of these regulations, (2) whether test product testing is being conducted in accordance with these regulations, and (3) whether products being produced for distribution into commerce comply with these regulations.

* * * * *

4. In § 204.4, paragraph (b)(2), add the word "and" to the end of the statement.

5. In § 204.4, paragraph (b)(3), remove the word "and" at the end of the statement.

6. In § 204.4, paragraph (b)(4) is removed.

7. In § 204.4, paragraph (c)(1)(iii) is removed.

8. In § 204.4, paragraph (d)(3) is revised to read as follows:

* * * * *

(d) * * *

(3) Where facilities or areas other than those covered by paragraph (d)(2) of this section are concerned, "operating hours" shall mean all times during which product manufacture or assembly is in operation or all times during which product testing or maintenance, production, or compilation of records is taking place, or any other procedure or activity related to selective enforcement audit testing or to product manufacture or assembly is being carried out.

* * * * *

§ 204.5–1 [Removed]

9. Section 204.5–1 is removed.

10. Section 204.5–2 is redesignated § 204.5–1 and is revised to read as follows:

§ 204.5–1 Testing exemption.

(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of Sections 10(a)(1), (2), (3), and (5) of the Act.

(b) No request for a testing exemption is required.

(c) For purposes of Section 11(d) of the Act any testing exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

§ 204.5–3 [Removed]

11. Section 204.5–3 is removed.

12. Section 204.5–4 is redesignated § 204.5–2 and is revised to read as follows:

§ 204.5–2 National security exemptions.

(a) A new product which is produced to conform with specifications developed by a national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of Sections 10(a) (1), (2), (3), and (4) of the Act.

(b) No request for a national security exemption is required.

(c) For purposes of Section 11(d) of the Act, any national security exemption shall be void ab initio with respect to each new product, originally intended to be produced to conform with specifications developed by a national security agency but distributed in commerce for other uses.

(d) Any manufacturer or person subject to the liabilities of section 11(a) with respect to any product originally intended for a national security agency, but distributed in commerce for use in any State, may be excluded from the application of section 11(a) with respect to such product based upon a showing that such manufacturer:

(1) Had no knowledge of such product being distributed in commerce for use in any state; and

(2) Made reasonable efforts to ensure that such products would not be distributed in commerce for use in any State. Such reasonable efforts would include investigation, prior dealings, contract provisions, etc.

§ 204.5–5 [Redesignated as § 204.5–3]

13. Section 204.5–5 is redesignated § 204.5–3.

§ 204.5–6 [Removed]

14. Section 204.5–6 is removed.

§ 204.5–7 [Removed]

15. Section 204.5–7 is removed.

§ 204.51 [Amended]

16. In § 204.51, paragraph (f) is removed.

17. In § 204.51, paragraph (w) is revised to read as follows:

* * * * *

(w) "Test Compressor" means a compressor used to demonstrate compliance with the applicable noise emissions standard.

* * * * *

§ 204.53 [Removed]

18. Section 204.53 is removed.

§ 204.54 [Amended]

19. In § 204.54, paragraph (a) is revised to read as follows:

* * * * *

(a) *General.* This section prescribes the conditions under which noise emission standard compliance Selective Enforcement Auditing or Testing by the Administrator must be conducted and the measurement procedures that must be used to measure the sound level and to calculate the average sound level of portable air compressors on which the test is conducted.

* * * * *

20. In § 204.54, paragraph (i), the last sentence is revised to read as follows:

* * * * *

(i) * * * Tests conducted by manufacturers under approved alternate procedures may be accepted by the Administrator for all purposes.

21. Section 204.55 is retitled as follows:

§ 204.55 Requirements.

§ 204.55–1 [Amended]

22. In § 204.55–1, paragraphs (a) (1) and (2) are removed; paragraphs (a) (3) and (4) are redesignated paragraphs (a) (1) and (2); and new paragraph (a)(1) is revised to read as follows:

(a) * * *

(1) Shall be labeled in accordance with the requirements of Section 204.55–4.

* * * * *

23. Section 204.55–2 is retitled as follows:

§ 204.55–2 Requirements.

24. In § 204.55–2, paragraph (a)(1) is revised to read as follows:

(a)(1) Prior to distribution in commerce, compressors of a specific configuration must verify such configurations in accordance with this subpart.

* * * * *

25. In § 204.55–2, paragraph (a)(2) is removed and reserved.

26. In § 204.55–2, paragraph (b) is revised to read as follows:

* * * * *

(b) The requirements for purposes of Testing by the Administrator and Selective Enforcement Auditing consist of:

(1) Testing in accordance with § 204.54 of a compressor selected in accordance with § 204.57–2; and

(2) Compliance of the test compressor with the applicable standards when tested in accordance with § 204.54.

* * * * *

27. In § 204.55–2, paragraph (c)(1)(iii) is revised to read as follows:

* * * * *

(c) * * *

(1) * * *

(iii) Testing in accordance with § 204.54 selected in accordance with § 204.57–2 which must be a compressor of the configuration which is identified pursuant to paragraph (c)(1)(iii) of this section as having the highest sound level (estimated or actual) within the category.

* * * * *

28. In § 204.55–2, paragraph (c)(1)(iv), remove the word "and" at the end of the statement.

29. In § 204.55–2, paragraph (c)(1)(v) is removed.

30. In § 204.55–2, paragraph (c)(2) is revised to read as follows:

* * * * *

(c) * * *

(2) Where the requirements of paragraph (c)(1) of this section are complied with, all those configurations contained within a category are considered represented by the tested compressor.

31. In § 204.55–2, paragraph (c)(3) is revised to read as follows:

* * * * *

(c) * * *

(3) Where the manufacturer tests a compressor configuration which has not been determined as having the highest sound level of a category, but all other requirements of paragraph (c)(1) of this section are complied with, all those configurations contained within that category which are determined to have sound levels no greater than the tested compressor are considered to be represented by the tested compressor: however, a manufacturer must for purposes of Testing by the Administrator and Selective Enforcement Auditing verify according to the requirements of paragraph (b)(1) and/or (c)(1) of this section any configurations in the subject category which have a higher sound level than the compressor configuration tested.

* * * * *

32. In § 204.55–2, paragraph (d) is revised to read as follows:

* * * * *

(d) A manufacturer may elect for purposes of Testing by the Administrator and Selective Enforcement Auditing to use representative testing, pursuant to paragraph (c) of this section, all or part of his product line.

* * * * *

33. In § 204.55–2, paragraph (e)(1) and (2) are revised to read as follows:

* * * * *

(e)* * *

(1) In the case of representative testing, a new test compressor from another configuration must be selected according to the requirements of paragraph (c) of this section in order to verify the configurations represented by the non-compliant compressor.

(2) Modify the test compressor and demonstrate by testing that it meets applicable standards. The manufacturer must modify all production compressors of the same configuration in the same manner as the test compressor before distribution into commerce.

34. In § 204.55–2, paragraph (f) is removed.

§§ 204.55–4 through 204.55–7 [Removed]

35. Sections 204.55–4 through 204.55–7 are removed.

§ 204.55–8 [Redesignated as § 204.55–4]

36. Section 204.55–8 is redesignated § 204.55–4.

§§ 204.55–9 through 204.55–11 [Removed].

37. Sections 204.55–9 through 204.55–11 are removed.

38. Section 204.57–3 is revised to read as follows:

§ 204.57–3 Test compressor preparation.

(a) Prior to the official test, the test compressor selected in accordance with § 204.57–2 shall not be prepared, tested, modified, adjusted, or maintained in any manner unless such adjustments, preparations, modifications and/or tests are part of the manufacturer's prescribed manufacturing and inspection procedures and are documented in the manufacturer's internal compressor assembly and inspection procedures or unless such adjustments and/or tests are required or permitted under this subpart or are approved in advance by the Administrator. The manufacturer may perform adjustments, preparations, modifications and/or tests normally performed by a dealer to prepare the compressor for delivery to a customer or the adjustments, preparations, modifications and/or tests normally performed at the port-of-entry by the manufacturer to prepare the compressor for delivery to a dealer or customer.

(b) Equipment of fixtures necessary to conduct the test may be installed on the compressor: *Provided*, That such equipment of fixtures shall have no effect on the noise emissions of the compressor, as determined by the appropriate measurement methodology.

(c) In the event of compressor manfunction (i.e., failure to start, misfiring cylinder, etc.), the manufacturer may perform the maintenance necessary to enable the compressor to operate in a normal manner.

(d) No quality control, testing, assembly, or selection procedures shall be used on the completed test compressor or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other compressors of that category which will be distributed in commerce, unless such procedures are required or permitted under this subpart or are approved in advance by the Administrator.

39. In § 204.57–9, paragraph (a)(1) is revised to read as follows:

§ 204.57–9 Prohibition of distribution in commerce; manufacturer's remedy.

(a) * * *

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the compressors, describes the problem, and describes the proposed quality control and/or quality assurance remedies to be taken by the manufacturer to correct the problem or follows the requirements for an engineering change. Such requirements include the following:

(i) Any change to a configuration with respect to any of the parameters stated in § 204.55–3 shall constitute the addition of a new and separate configuration or category to the manufacturer's product line.

(ii) When a manufacturer introduces a new category or configuration to his product line, he shall proceed in accordance with §204.55–2.

(iii) If the configuration to be added can be grouped within a verified category and the new configuration is estimated to have a lower sound level than a previously verified configuration with the same category, the configuration shall be considered verified.

* * * * *

§ 204.57–1 [Amended]

40–41. In § 204.57–1, paragraph (b) is removed and reserved.

§ 204.58–1 [Amended]

42. In § 204.58–1, paragraph (a) is revised to read as follows:

(a) The portable air compressor manufacturer shall include in the

owner's manual or in other information supplied to the ultimate purchaser, the following statement.

43. In § 204.58–1, paragraphs (b), (c), and (d) are removed:

§ 204.58–2 [Amended]

44. In § 204.58–2, paragraph (a) is revised; paragraphs (b), (c), and (g) are removed; paragraphs (d) and (e) are revised; and paragraphs (d), (e), and (f) are redesignated paragraphs (b), (c), and (d) respectively.

The amended § 204.58–2 reads as follows:

§ 204.58–2 Tampering.

(a) For each configuration of air compressors covered by this part, the manufacturer shall develop a list of those acts which, in his judgment, might be done to the air compressor in use and which would constitute the removal or rendering inoperative of noise control devices or elements of design of the compressor.

(b) The manufacturer shall include in the owner's manual the following information:

(1) The statement:

Tampering With Noise Control System Prohibited

Federal law prohibits the following acts or the causing thereof:

(1) The removal or rendering inoperative by any persons, other than for purposes of maintenance, repair, or replacement, of any devices or element of design incorporated into any new compressor for the purpose of noise control prior to its sale or delivery to the ultimate purchaser or while it is in use; or (2) the use of the compressor after such device or element of design has been removed or rendered inoperative by any person.

(2) The statement:

Among those acts included in the prohibition against tampering are the acts listed below.

Immediately following this statement, the manufacturer shall include the list developed under paragraph (a) of this section.

(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a proscribed act has been committed and it can be shown that such act resulted in no increase in the sound level of the compressor or that the compressor still meets the noise emission standard of § 204.52, such set will not constitute tampering.

§ 204.58–3 [Amended]

45. In § 204.58–3, paragraphs (c), (d), and (e) are removed.

Medium and Heavy Trucks

PART 205—TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS

1. The table of contents for Part 205, Subparts A and B, are revised to read as follows:

Subpart A—General Provisions

Sec.
205.1 General applicability.
205.2 Definitions.
205.3 Number and gender.
205.4 Inspection and Monitoring.
205.5 Exemptions.
205.5–1 Testing exemption.
205.5–2 National security exemptions.
205.5–3 Export exemptions.

Subpart B—Medium and Heavy Trucks

205.50 Applicability.
205.51 Definitions.
205.52 Vehicle noise emission standards.
205.54 Test procedures.
205.54–1 Low speed sound emission test procedures.
205.54–2 Sound data acquisition system.
205.55 Requirements.
205.55–1 General requirements.
205.55–2 Compliance with standards.
205.55–3 Configuration identification.
205.55–4 Labeling-compliance.
205.55–5 Labeling-exterior.
205.55–6 Labeling.
205.56 Testing by the administrator.
205.57 Selective enforcement auditing requirements.
205.57–1 Test request.
205.57–2 Test vehicle sample selection.
205.57–3 Test vehicle preparation.
205.57–4 Testing procedures.
205.57–5 Reporting of the test results.
205.57–6 Acceptance and rejection of batches.
205.57–7 Acceptance and rejection of batch sequence.
205.57–8 Continued testing.
205.57–9 Prohibition on distribution in commerce; manufacturer's remedy.
205.58 In-use requirements.
205.58–1 Warranty.
205.58–2 Tampering.
205.58–3 Instruction for maintenance, use and repair.
205.59 Recall of noncomplying vehicles.
Appendix I

Authority: Sec. b, 10, 11, 13, Pub. L. 92–574, 86 Stat 1234 (42 U.S.C. 4905, 4909, 4910, 4912).

§ 205.2 [Amended]

2. In § 205.2, paragraph (a)(6) is removed.

§ 205.4 [Amended]

3. In § 205.4, paragraph (a) is revised to read as follows:

(a) Any inspection or monitoring activities conducted under this section shall be for the purpose of determining (1) whether test products are being selected and prepared for testing in accordance with the provisions of these regulations, (2) whether test product testing is being conducted in accordance with these regulations, and (3) whether products being produced for distribution into commerce comply with these regulations.

* * * * *

4. In § 205.4, paragraph (b)(2) add the word "and" at the end of the statement.

5. In § 205.4, paragraph (b)(3) remove the word "and" and the end of the statement.

6. In § 205.4, paragraph (b)(4) is removed.

7. In § 205.4, paragraph (c)(1)(iii) is removed, and paragraph (c)(1)(iv) is redesignated as paragraph (c)(1)(iii). Paragraph (c)(1)(iv) is reserved.

8. In § 205.4, paragraph (d)(3) is revised to read as follows:

* * * * *

(d) * * *

(3) Where facilities or areas other than those covered by paragraph (d)(2) of this section are concerned, "operating hours" shall mean all times during which product manufacture or assembly is in operation or all times during which product testing and maintenance is taking place and/or production or compilation of records is taking place, or any other procedure or activity related to selective enforcement audit testing or product manufacture or assembly being carried out in a facility.

§ 205.5–1 [Removed]

9. Section 205.5–1 is removed.

§ 205.5–2 [Redesignated as § 205.5–1]

10. Section 205.5–2 is redesignated § 205.5–1 and revised to read as follows:

§ 205.5–1 Testing exemption.

(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of section 10(a) (1), (2), (3), and (5) of the Act.

(b) No request for a testing exemption is required.

(c) For purposes of section 11(d) of the Act, any testing exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

§ 205.5–3 [Removed]

11. Section 205.5–3 is removed.

§ 205.5–4 [Redesignated as § 205.5–2]

12. Section 205.5–4 is redesignated § 205.5–2 and revised to read as follows:

§ 205.5-2 National security exemptions.

(a) A new product which is produced to conform with specifications developed by a national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of section 10(a) (1), (2), (3), and (5) of the Act.

(b) No request for a national security exemption is required.

(c) For purposes of section 11(d) of the Act, any national security exemption shall be void ab initio with respect to each new product, originally intended to be produced to conform with specifications developed by a national security agency, but distributed in commerce for other uses.

(d) Any manufacturer or person subject to the liabilities of section 11(a) with respect to any product originally intended for a national security agency, but distributed in commerce for use in any State, may be excluded from the application of section 11(a) with respect to such product based upon a showing that such manufacturer:

(1) Had no knowledge of such product being distributed in commerce for use in any state; and

(2) Made reasonable effort to ensure that such products would not be distributed in commerce for use in any State. Such reasonable efforts would include investigation, prior dealings, contract provisions, etc.

§ 205.5-5 [Redesignated as § 205.5-3]

13. Section 205.5-5 is redesignated § 205.5-3.

§ 205.5-6 [Removed]

14. Section 205.5-6 is removed.

§ 205.5-7 [Removed]

15. Section 205.5-7 is removed.

§ 205.51 [Amended]

16. In § 205.51, paragraph (a)(20) is removed and reserved.

17. In § 205.51, paragraph (a)(28) is revised to read as follows:

(a) * * *

(28) "Test vehicle" means a vehicle selected and used to demonstrate compliance with the applicable noise emission standards.

§ 205.53 [Removed]

18. Section 205.53 is removed.

19. Section 205.54 is revised to read as follows:

§ 205.54 Test procedures.

The procedures described in this and subsequent sections will be the test program to determine the conformity of vehicles with the standards set forth in § 205.52 for the purposes of Selective Enforcement Auditing and Testing by the Administrator.

§ 205.54-2 [Amended]

20. In § 205.54-2, paragraph (b), the last sentence is removed.

21. Section 205.55 is retitled as follows:

§ 205.55 Requirements.

§ 205.55-1 [Amended]

22. In § 205.55-1, paragraph (a)(1) and (2) are removed; paragraphs (a) (3) and (4) are redesignated paragraphs (a) (1) and (2); and new paragraph, (a) (1) is revised to read as follows:

(a) * * *

(1) Shall be labeled in accordance with the requirements of § 205.55-5 of this subpart.

23. In § 205.55-1, paragraph (c) is revised to read as follows:

* * * * *

(c) Subsequent manufacturers of a new product which conforms to the definition of vehicle in these regulations when received by them from a prior manufacturer, need not fulfill the requirements of paragraph (a)(1) where such requirements have already been complied with by a prior manufacturer.

24. Section 205.55-2, is retitled to read as follows:

§ 205.55-2 Compliance with standards.

* * * * *

25. In § 205.55-2, paragraph (a)(1) is revised to read as follows:

(a) (1) Prior to distribution in commerce of vehicles of a specific configuration, the first manufactures of such vehicles must verify such configurations in accordance with the requirements of this subpart.

* * * * *

26. In § 205.55-2, paragraph (a)(2) is removed and reserved.

27. In § 205.55-2, paragraph (b) is revised to read as follows:

* * * * *

(b) The requirements for purposes of testing by the Administrator and selective enforcement auditing with regard to each vehicle configuration consist of:

(1) Testing in accordance with § 205.54 of a vehicle selected in accordance with § 205.57-2, and

(2) Compliance of the test vehicle with the applicable standard when tested in accordance with § 205.54.

28. In § 205.55-2, paragraph (c)(1)(iii) is revised to read as follows:

* * * * *

(c) * * *

(1) * * *

(iii) Testing in accordance with § 205.54 of a vehicle selected in accordance with § 205.57-2 which must be a vehicle of the configuration which is identified pursuant to paragraph (c)(ii) of this paragraph as having the highest sound pressure level (estimated or actual) within the category.

* * * * *

29. In § 205.55-2, paragraph (c)(1)(iii) add "and" at the end of the statement.

30. In § 205.55-2, paragraph (c)(1)(iv) remove "and" at the end of the statement.

31. In § 205.55-2, paragraph (c)(1)(v) is removed.

32. In § 205.55-2, paragraph (c)(2) is revised to read as follows:

* * * * *

(c) * * *

(2) Where the requirements of paragraph (c)(1) are complied with, all those configurations contained within a category are considered represented by the tested vehicle.

* * * * *

33. In § 205.55-2, paragraph (c)(3) is revised to read as follows:

* * * * *

(c) * * *

(3) Where the manufacturer tests a vehicle configuration which has not been determined as having the highest sound pressure level of a category, but all other requirements of paragraph (c)(1) of this section are complied with all those configurations contained with that category which are determined to have sound pressure levels no greater than the tested vehicle are considered to be represented by the tested vehicle, however, a manufacturer must for purposes of Testing by the Administrator and Selective Enforcement Auditing verify according to the requirements of (b)(1) and/or (c)(1) of this section any configurations in the subject category which have a higher sound pressure level than the vehicle configuration tested.

* * * * *

34. In § 205.55-2, paragraph (d) is removed.

35. In § 205.55-2, paragraphs (e)(1) and (e)(2) are revised to read as follows:

* * * * *

(e) * * *

(1) In the case of representative testing a new test vehicle from another configuration must be selected according to the requirements of paragraph (c) of this section, in order to verify the configurations represented by the non-compliant vehicle.

(2) Modify the test vehicle and demonstrate by testing that it meets applicable standards. The manufacturer must modify all production vehicles of the same configuration in the same

manner as the test vehicle before distribution into commerce.

36. In § 205.55–2, paragraph (f) is removed.

§§ 205.55–4 through 205.55–10 [Removed]

37. Sections 205.55–4 through 205.55–10 are removed.

§ 205.55–11 [Redesignated as § 205.55–4]

38. Section 205.55–11 is redesignated § 205–55–4.

§ 205.55–12 [Redesignated as § 205.55–5]

39. Section 205.55–12 is redesignated § 205.55–5.

§ 205.56 [Amended]

40. In §205.56 remove and reserve subparagraph (c)(1)(i) and remove (c)(1)(v).

§ 205.56 [Amended]

41. In § 205.56 remove the word "; and" at the end of paragraph (c)(1)(iv).

42. In § 205.57–2, paragraph (a) is revised to read as follows:

§ 205.57–2 Test vehicle sample selection

(a) Vehicles comprising the batch sample which are required to be tested pursuant to a test request in accordance with this subpart will be selected in the manner specified in the test request from a batch of vehicles of the category or configuration specified in the test request. If the test request specifies that the vehicles comprising the batch sample must be selected randomly, the random selection will be achieved by sequentially numbering all of the vehicles in the batch and then using a table of random numbers to select the number of vehicles as specified in (c) of this section based on the batch size designated by the Administrator in the test request. An alternative random selection plan may be used by a manufacturer: *Provided,* That such a plan is approved by the Administrator. If the test request does not specify that test vehicles must be randomly selected, the manufacturer shall select test vehicles consecutively.

(1) Should a situation arise in which the configuration to be tested consists of only vehicles with automatic transmissions, they shall be tested in accordance with § 205.54–1(c)(2).

(2) If the configuration to be tested consists of both automatic transmission and standard transmission vehicles, the test vehicle shall be a standard transmission vehicle unless the manufacturer has reason to believe that the automatic transmission vehicle emits a greater sound level.

* * * * *

43. Section 205.57–3 is revised to read as follows:

§ 205.57–3 Test vehicle preparation.

(a) Prior to the official test, the test vehicle selected in accordance with § 205–57–2 shall not be prepared, tested, modified, adjusted, or maintained in any manner unless such adjustments, preparation, modification and/or tests are part of the manufacturer's prescribed manufacturing and inspection procedures, and are documented in the manufacturer's internal vehicle assembly and inspection procedures or unless such adjustments and/or tests are required or permitted under this subpart or are approved in advance by the Administrator. The manufacturer may perform adjustments, preparations, modification and/or tests normally performed at the port of entry by the manufacturer to prepare the vehicle for delivery to a dealer or customer.

(b) Equipment or fixtures necessary to conduct the test may be installed on the vehicle: *Provided,* That such equipment or fixtures shall have no effect on the noise emissions of the vehicle, as determined by measurement methodology.

(c) In the event of vehicle malfunction (i.e., failure to start, misfiring cylinder, etc.) the manufacturer may perform the maintenance that is necessary to enable the vehicle to operate in a normal manner.

(d) No quality control, testing, assembly or selection procedures shall be used on the completed vehicle or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other vehicles of the category which will be distributed in commerce, unless such procedures are required or permitted under this subpart.

§ 205.57–9 [Amended]

44. In § 205.57–9, paragraph (a)(1) is revised to read as follows:

(a) * * *

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the vehicles, describes the problem and describes the proposed quality control and/or quality assurance remedies to be taken by the manufacturer to correct the problem or follows the requirements for an engineering change. Such requirements include the following:

(i) Any change to a configuration with respect to any of the parameters stated in § 205.55–3 shall constitute the addition of a new and separate configuration or category to the manufacturer's product line.

(ii) When a manufacturer introduces a new category or configuration to his product line, he shall proceed in accordance with § 205.55–2.

(iii) If the configuration to be added can be grouped within a verified category and the new configuration is estimated to have a lower sound pressure level than a previously verified configuration within the same category, the configuration shall be considered verified.

* * * * *

§ 205.58–1 [Amended]

45. In § 205.58–1, paragraph (a) is revised to read as follows:

(a) The vehicle manufacturer shall include the owner's manual or in other information supplied to the ulitmate purchaser the following statement:

Noise Emissions Warranty

The manufacturer warrants to the first person who purchases this vehicle for purposes other than resale and to each subsequent purchaser that the vehicle was designed, built and equipped to conform at the time of sale to such first purchaser with all applicable U.S. EPA noise control regulations.

This warranty is not limited to any particular part, component or system of the vehicle. Defects in the design, assembly, or in any part, component, or system of the vehicle which, at the time of sale to such first purchaser, caused noise emission levels to exceed Federal standards are covered by this warranty for the life of the vehicle.

* * * * *

46. In § 205.58–1, paragraphs (b), (c), and (d) are removed.

47. In § 205.58–2, paragraph (a) is revised; paragraphs (b), (c), and (g) are removed; paragraphs (d) and (e) are revised and redesignated as paragraphs (b) and (c), respectively; paragraph (f) is redesignated as paragraph (d). The amended portions read as follows:

§ 205.58–2 Tampering.

(a) For each configuration of vehicles covered by this part, the manufacturer shall develop a list of those acts which, in his judgment, might be done to the vehicle in use and which would constitute the removal or rendering inoperative of noise control devices or elements of design of the vehicle.

(b) The manufacturer shall include in the owner's manual the following information:

(1) The statement:

Tampering With Noise Control System Prohibited

Federal law prohibits the following acts or the causing thereof:

(1) The removal or rendering inoperative by any person, other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any new vehicle for the purpose of noise

control prior to its sale or delivery to the ultimate purchaser or while it is in use; or (2) the use of the vehicle after such device or element of design has been removed or rendered inoperative by any person.

(2) The statement:

Among those acts presumed to constitute tampering are the acts listed below.

Immediately following this statement, the manufacturer shall include the list developed under paragraph (a) of this section.

(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a prescribed act has been committed and it can be shown that such act resulted in no increase in the noise level of the vehicle or that the vehicle still meets the noise emission standard of § 205.52, such act will not constitute tampering.

(d) * * *

§ 205.58-3 [Amended]

48. In § 205.58–3, paragraphs (c), (d), and (e) are removed.

Product Noise Labeling

PART 211—PRODUCT NOISE LABELING

1. The table of contents for Part 211, subpart A is revised to read as follows:

Subpart A—General Provisions

Sec.
211.101 Applicability.
211.102 Definitions.
211.103 Number and gender.
211.104 Label content.
211.105 Label format.
211.106 Graphical requirements.
211.107 Label type and location.
211.108 Sample label.
211.109 Inspection and monitoring.
211.110 Exemptions.
211.110–1 Testing exemption.
211.110–2 National security exemptions.
211.110–3 Export exemptions.
211.111 Testing by the Administrator.

Authority: Sec. 8, Noise Control Act of 1972, (42 U.S.C. 4907), and other authority as specified.

§ 212.109 [Amended]

2. In § 211.09, paragraph (a)(1), is removed and paragraphs (2), (3) and (4) are redesignated paragraphs (a)(1), (2), and (3).

3. In § 211.109, paragraph (b)(4) is removed.

4. In § 211.109, paragraph (d) is revised to read as follows:

* * * * *

(d) * * *

(3) Where other facilities or areas are concerned, "operating hours" means all times during which products are being manufactured or assembled; or all times during which products are being tested or maintained; or records are being compiled; or when any other procedure or activity related to labeling, selective enforcement auditing, or product manufacture or assembly being carried out.

5. Section 211.110–1 is revised to read as follows:

§ 211.110–1 Testing exemption.

(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the produce itself, shall be exempt from the prohibitions of sections 10(a), (1), (2), (3), and (5) of the Act.

(b) No request for a testing exemption is required.

(c) For purposes of section 11(d) of the Act, any testing exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

6. Section 211.110–2 is revised to read as follows:

§ 211.110–2 National security exemptions.

(a) A new product which is produced to conform with specifications developed by national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of sections 10(a), (1), (2), (3), and (5) of the Act.

(b) No request for a national security exemption is required.

(c) For purposes of section 11(d) of the Act, any national security exemption shall be void ab initio with respect to each new product, originally intended for a national security agency, but distributed in commerce for other uses.

§ 211.110–3 [Amended]

7. In § 211.110–3, paragraph (d) is removed.

§ 211.110–4 [Removed]

8. Section 211.110–4 is removed.

§ 211.110–5 [Removed]

9. Section 211.110–5 is removed.

§ 211.111 [Amended]

10. In § 211.111, paragraph (c)(1)(i), is removed and reserved.

Hearing Protective Devices

PART 211—PRODUCT NOISE LABELING

11. 40 CFR Part 211 is amended by revising the table of contents for Subpart B to read as follows:

Subpart B—Hearing Protective Devices

Sec.
211.201 Applicability.
211.202 Effective date.
211.203 Definitions.
211.204 Hearing protector labeling requirements.
211.204–1 Information content of primary label.
211.204–2 Primary label size, print and color.
211.204–3 Label location and type.
211.204–4 Supporting information.
211.205 Special claims.
211.206 Methods for measurement of sound attenuation.
211.206–1 Real ear method.
211.206–2 through 211.206–10 Alternative test methods [Reserved]
211.207 Computation of the noise reduction rating (NRR).
211.208 Export provisions.
211.210 Requirements.
211.210–1 General requirements.
211.210–2 Labeling requirements.
211.211 Compliance with labeling requirement.
211.212 Compliance audit testing.
211.212–1 Test request.
211.212–2 Test hearing protector selection.
211.212–3 Test hearing protector preparation.
211.212–4 Testing procedures.
211.212–5 Determination of compliance.
211.212–6 Continued compliance testing.
211.212–7 Relabeling requirements.
211.213 Remedial orders for violations of these regulations.
211.214 Removal of label.
APPENDIX A—Compliance Audit Testing Report.

Authority: Sec. 8, Pub. L. 92–574, 86 Stat. 1241 (42 U.S.C. 4907), and additional authority as specified.

12. § 211.205, the heading is revised and paragraphs (b) and (c) are removed.

§ 211.205 Special claims.

* * * * *

§ 211.209 [Removed]

13. Section 211.209 is removed.

14. Section 211.210 is retitled to read as follows:

§ 211.210 Requirements.

§ 211.210–1 [Amended]

15. In § 211.210–1, paragraph (a) (1) and (2) are removed; and paragraphs (a) (3) and (4) are redesignated paragraphs (a) (1) and (2).

16. Section 211.210–2 is retitled to read as follows:

§ 211.210–2 Labeling requirements.

* * * * *

17. In § 211.210–2, paragraph (a)(1) is revised to read as follows:

(a)(1) A manufacturer responsible for labeling must satisfy the requirements of this subpart for a category of hearing protectors before distributing that category of hearing protectors in commerce.

* * * * *

18. In § 211.210–2, paragraph (a)(2) is revised to read as follows:

(a)* * *

(2) A manufacturer may apply to the Administrator for an extension of time to comply with the labeling requirements for a category of protectors before he distributes any protectors in commerce. The Administrator may grant the manufacturer an extension of up to 20 days from the date of distribution. The manufacturer must provide reasonable assurance that the protectors equal or exceed their mean attenuation values, and that labeling requirements will be satisfied before the extension expires. Requests for extension should go to the Administrator, U.S. Environment Protection Agency, Washington, D.C. 20460. The Administrator must respond to a request within 2 business days. Responses may be either written or oral.

* * * * *

19. In § 211.210–2, paragraph (a)(3) is revised to read as follows:

(a) * * *

(3) A manufacturer, receiving hearing protectors through the chain of distribution that were labeled by a previous manufacturer, may use that previous manufacturer's data when labeling the protectors for ultimate sale or use, but is responsible for the accuracy of the information on the label. The manufacturer may elect to retest the protectors.

* * * * *

20. In § 211.210–2, paragraph (b) is revised to read as follows:

* * * * *

(b) Labeling requirements regarding each hearing protector category in a manufacturer's product line consist of:

(1) Testing hearing protectors according to § 211.206 and the hearing protectors must have been assembled by the manufacturer's normal production process; and it must have been intended for distribution in commerce.

* * * * *

21. In § 211.210–2, paragraph (d) is removed.

§§ 211.210–3 through 211.210–7 [Removed]

22. Sections 211.210–3 through 211.210–7 are removed.

23. Section 211.211 is revised to read as follows:

Section 211.211 Compliance with labeling requirement.

(a) All hearing protective devices manufactured after the effective date of this regulation, and meeting the applicability requirements of § 211.201, must be labeled according to this subpart, and must comply with the Labeled Values of mean attenuation.

(b) A manufacturer must take into account both product variability and test-to-test variability when labeling his devices in order to meet the requirements of paragraph (a) of this section. A specific category is considered when the attenuation value at the tested one-third octave band is equal to or greater than the Labeled Value, or mean attenuation value, stated in the supporting information required by § 211.204–4, for that tested frequency. The attenuation value must be determined according to the test procedures of § 211.206. The Noise Reduction Rating for the label must be calculated using the Labeled Values of mean attenuation that will be included in the supporting information required by §211.204–4.

§ 211.212–1 [Amended]

24. In § 211.212–1, paragraph (c) (4), the words enclosed by the parenthesis are removed.

25. Section 211.212–3 is revised to read as follows:

§ 211.212–3 Test hearing protector preparation.

The manufacturer must select the test hearing protector according to § 211.212–2 before the official test, and must comply with the test protector preparation requirements described in this subpart:

(a) A test hearing protector selected according to § 211.212–2 must not be tested, modified, or adjusted in any manner before the official test unless the adjustments, modifications and/or tests are part of the manufacturer's prescribed manufacturing and inspection procedures.

(b) Quality controls, testing, assembly or selection procedures must not be, used on the completed protector or any portion of the protector, including parts, that will not normally be used during the production and assembly of all other protectors of that category to be distributed in commerce.

26. In § 211.212–6, paragraph (a) is revised to read as follows:

§ 211.212–6 Determination of compliance.

(a) A category will be in compliance with these requirements if the results of the test conducted under the test request show that:

(1) The mean attenuation value, at each one-third octave band center frequency as determined from the Compliance Audit Test values plus 3 dB(A), is equal to or greater than the mean attenuation value at the same one-third octave band as stated in the Supporting Information required by § 211.204–4; and

(2) The Noise Reduction Rating, when calculated from the mean attenuation values determined by Compliance Audit Testing, equals or exceeds the Noise Reduction Rating as stated on the label required by § 211.204.

* * * * *

Appendix A [Removed]

27. Appendix A is removed.

Appendix B [Redesignated as Appendix A]

28. Appendix B is redesignated Appendix A.

Compactors

PART 205—TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS

1. The table of contents for Part 205, Subpart F is revised to read as follows:

Subpart F—Truck-Mounted Solid Waste Compactors.

Sec.
205.200 Applicability.
205.201 Definitions.
205.202 Noise emission standards.
205.204 Test procedures.
205.205 Requirements.
205.205–1 General requirements.
205.205–2 Compliance with standards.
205.205–3 Configuration identification.
205.205–4 Labeling.
205.206 Testing by the Administrator.
205.207 Selective enforcement auditing requirements.
205.207–1 Test request.
205.207–2 Test sample selection.
205.207–4 Testing procedures.
205.207–5 Reporting of the test results.
205.207–6 Passing or failing under SEA.
205.207–7 Continued testing.
205.207–8 Prohibition of distribution in commerce; manufacturer's remedy.
205.208 In-use requirements.
205.208–1 [Reserved].
205.208–2 Tampering.
205.208–3 Instructions for maintenance, use and repair.
205.208–4 Noise Level Degradation Factor (NLDF) and retention of durability data.
205.209 Recall of non-complying compactors.
Appendix I—Sample Tables.

Authority: Sec. 6, Noise Control Act (42 U.S.C. 4905) (except where otherwise specified).

§ 205.201 [Amended]

2. In § 205.201, paragraph (a) (13), is removed and reserved.

3. In § 205.201, paragraph (a)(5), is revised to read as follows:

(15) "Test compactor" means a compactor in a test sample.

4. In § 205.202, paragraph (b), the second sentence is revised to read as follows:

§ 205.202 Noise emission standards.

* * * * *

(b) * * * At the time of selective enforcement auditing (SEA) testing prescribed in § 205.207, new truck-mounting solid waste compactors must comply with the standards set forth in paragraph (a) of this section minus the noise level degradation factor (NLDF) developed in accordance with § 205.208–4.

* * * * *

§ 205.203 [Removed]

5. Section 205.203 is removed.

§ 205.204 [Amended]

6. Section 205.204, paragraph (a) is revised to read as follows:

* * * * *

(a) *General.* This section prescribes the conditions under which noise emission standard compliance testing for selective enforcement auditing or testing by the Administrator must be conducted and the measurement procedures that must be used to determine the maximum noise level of truck-mounted solid waste compactors.

* * * * *

7. In § 205.204, paragraph (g), the last sentence is revised to read as follows:

* * * * *

(g) * * * Tests conducted by manufacturers under approved alternate procedures may be accepted by the Administrator for all purposes, including, but not limited to, selective enforcement audit testing and testing by the Administrator.

8. Section 205.205 is retitled to read as follows:

§ 205.205 Requirements.

* * * * *

§ 205.205–1 [Amended]

9. In § 205.205–1, paragraphs (a)(1) and (2) are removed; paragraph (a)(3) and (4) are redesignated paragraphs (a)(1) and (2); and paragraph (1) is revised to read as follows:

(a) * * *

(1) Shall label each compactor in accordance with the requirements of § 205.205–4 of this subpart; and

* * * * *

10. In § 205.205–1, paragaraph (c) is revised to read as follows:

* * * * *

(c) A subsequent manfacturer of a truck-mounted solid waste compactor need not fulfill the requirements of paragraph (a)(1) of this section if the compactor, when received by the manfacturer, fits the definition of a new truck-mounted solid waste compactor in the regulation, and the prior manufacturer had already complied with these requirements.

. In § 205.205–1, paragraph (d) is removed.

12. In § 205.205–2 is retitled to read as follows;

§ 205.205–2 Compliance with standards.

* * * * *

13. In § 205.205–2, paragraph (a), (2) and (3) are removed.

14. In § 205.205–2, paragraph (b) is revised to read as follows:

* * * * *

(b) The requirements for purposes of Testing by the Administrator and Selective Enforcement Auditing with regard to each compactor configuration shall consist of:

(1) Testing in accordance with § 205.204 of a compactor selected in accordance with § 205.204–2; and

(2) Compliance of the test compactor with a noise level such that the arithemtic sum of the Noise Level Degradation Factor (NLDF, determined in accordance with § 205.208–4 of this Subpart) and that noise level does not exceed the applicable standards, when tested in accordance with § 205.204.

* * * * *

15. In § 205.205–2; paragraph (c), paragraph (1) (iii) is revised to read as follows:

* * * * *

(C)(1)* * *

(iii) Testing in accordance with § 205.204 of a compactor, selected in accordance with § 205.207–2 of the configuration identified pursuant to paragraph (c)(1)(ii) of this section as having the highest noise level (estimate or actual) within category:

* * * * *

16. In § 205.205–2, paragraph (c)(1)(v) is removed.

17. In § 205.205–2, paragraph (c)(2) is revised to read as follows:

* * * * *

(c) * * *

(2) If there has been compliance with the requirements of paragraph (c)(1) of this section, all those configurations within a category are considered to be represented by the tested compactor, and therefore considered to be verified.

* * * * *

18. In § 205.205–2, paragraph (c)(3) is revised to read as follows:

* * * * *

(c) * * *

(3) If there has been compliance with all other requirements of paragraph (c)(1) of this section, except that the manufacturer tests a configuration which does not have the highest noise level in a category (as identified in (c)(1)(ii)), all those configurations in the category which have noise levels no greater than that of the tested compactor are considered to be verified. However, a manufacturer must for purposes of Testing by the Administrator and Selective Enforcement Auditing verify according to the requirements of (b)(1) or (c)(1) of this section any configurations in the category which have a higher noise level than that of the compactor configuration tested.

* * * * *

19. In § 205.205–2, paragraph (d) is revised to read as follows:

* * * * *

(d) A manufacturer may elect to verify all or part of his product line using representative testing pursuant to paragraph (c) of this section.

* * * * *

20. In § 205.205–2, paragraph (e)(1) and (2) are revised to read as follows:

* * * * *

(e) * * *

(1) In the case of representative testing, a new test compactor from another configuration must be selected and verified according to the requirements of paragraph (c) of this section, in order to verify the category represented by the compactor that does not comply; or

(2) Modification of the test compactor and demonstration by testing that it meets applicable standards. The manufacturer shall modify all production compactors of the same configuration in the same manner as the test compactor before distribution into commerce.

* * * * *

21. In Section 205.205–2, paragraph (f) is removed.

§ 205.205–4 through 205.205–10 [Removed]

22. Sections 205.205–4 through § 205.205.10 are removed.

§ 205.205–11 [Redesignated as § 205.205.4].

23. Section 205.205–11 is redesignated as § 205.205–4 and paragraph (a)(3) is revised to read as follows:

§ 205.205–4 Labeling—compliance.

(a) * * *

(3) The compactor manufacturer shall affix the label in such a manner that it cannot be removed without destroying or defacing the label. He shall not affix the label to any piece of equipment that is easily detached from the compactor.

* * * * *

§ 205.206 [Amended]

24. In § 205.206 paragraph (c)(1)(i) is removed and [reserved and paragraph (c)(ii) is revised to read as follows:

* * * * *

(c)(1) * * *

(ii) Testing of a reasonable number of compactors for purposes of selective enforcement auditing under § 205.207.

* * * * *

25. In § 205.206 paragraph (c)(1)(v) is revised to read as follows:

* * * * *

(c)(1) * * *

(v) Testing of up to 50 percent of the manufacturer's production test products to be tested during a year, if the Administrator determines it is necessary to test these vehicles to assure that a manufacturer has acted or is acting in compliance with the Act.

26. In § 205.207–2, paragraph (c) is revised to read as follows:

§ 205.207–2 Test sample selection.

* * * * *

(c) The compactors of the category configuration or subgroup selected for testing shall have been assembled by the manufacturer for distribution in commerce using the manufacturer's normal production process.

* * * * *

27. In § 205.207–3 is revised to read as follows:

§ 205.207–3 Test sample preparation.

(a) Before the official test, the test compactor selected must not be prepared, tested, modified, adjusted, or maintained in any manner unless such adjustments, preparation, modification or tests are part of the manufacturer's prescribed manufacturing and inspection procedures, and are documented in the manufacturer's internal compactor assembly and inspection procedures, or unless such adjustments or tests are required or permitted under this subpart or are approved in advance by the Administrator. For purposes of this section prescribed manufacturing and inspection procedures include quality control testing and assembly procedures normally performed by the manufacturer on like products during production, if the resulting testing is not biased by this procedure. In the case of imported products, the manufacturer may perform adjustments, preparation, modifications or tests normally performed at the port of entry by the manufacturer, to prepare the compactor for delivery to a dealer or customer.

(b) Equipment or fixtures necessary to conduct the test may be installed on the compactor, if such equipment or fixtures have no effect on the noise emissions of the compactor, as determined by the measurement methodology.

(c) In the event of a compactor malfunction (e.g., failure to start) the manufacturer may perform the maintenance that is necessary to enable the compactor to operate in a normal manner.

(d) No quality control, quality assurance testing, assembly or selection procedures may be used on the test compactor or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other compactors of the category which will be distributed in commerce, unless such procedures are required or permitted under this subpart, or are approved in advance by the Administrator.

28. In § 205.207–5, the address in paragraph (b) is revised to read as follows:

§ 205.207–5 Reporting of the test results.

* * * * *

(b)* * *

Administrator, U.S. Environmental Protection Agency, Washington, D.C. 20460.

29. In § 205.207–8, paragraph (a)(1) is revised to read as follows:

§ 205.207–8 Prohibition of distribution in commerce, manufacturer's remedy.

(a)* * *

(1) Submits a written report to the Administrator which identifies the reason for the non-compliance of the compactors, described the problem and describes the proposed quality control or quality assurance remedies to be taken by the manufacturer to correct the problem.

* * * * *

30. In § 205.208–2, paragraph (1) is revised; paragraphs (b) and (c) are removed; paragraphs (d) and (e) are revised and redesignated paragraphs (b) and (c); paragraph (h) is removed; and paragraphs (f) and (g) are redesignated (d) and (e), respectively. The revised portions of §205.208–2 read as follows:

§ 205.208–2 Tampering.

(a) For each configuration of compactor covered by this part, the manufacturer shall develop a list of those acts which, in his judgment, might be done to the compactor in use and which would constitute the removal or rendering inoperative of noise control devices or elements of design of the compactor.

(b) The manufacturer shall include in the owner's manual the following information:

(1) The statement:

Tampering With Noise Control System Prohibited

Federal law prohibits the following acts or the causing thereof:

(1) The removal or rendering inoperative by any person, other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any new compactor for the purpose of noise control prior to its sale or delivery to the ultimate purchaser or while it is in use; or (2) the use of the compactor after such device or element or design has been removed or rendered inoperative by any person.

(2) The statement: Among those acts presumed to constitute tampering are the acts listed below.

Immediately following this statement, the manufacturer shall include the list developed under paragraph (a) of this section.

(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a prescribed act has been committed and it can be shown that such act resulted in no increase in the noise level of the vehicle or that the vehicle still meets the noise emission standard of § 205.202, such act will not constitute tampering.

(d) Manufacturers who only assemble compactors need not fulfill the requirements of paragraphs (a) and (b) of this section. Such manufacturers shall provide ultimate purchasers of their compactors with the tampering list developed by the compactor body manufacturer under paragraph (a) of this section for that particular compactor body and truck chassis combination.

31. In § 205.208–3, paragraphs (c), (d), and (f) are removed; paragraph (e) is redesignated (c) and is revised to read as follows:

§ 205.208–3 Instructions for maintenance, use and repair.

* * * * *

(c) Manufacturers who only assemble compactors are not required to fulfill the requirements of paragraphs (a) and (b) of this section. Such manufacturers shall

provide the maintenance instructions and log book developed by the compactor body manufacturer for that particular compactor body and chassis combination.

Motorcycles

PART 205—TRANSPORTATION EQUIPMENT NOISE

1. The table of contents for Part 205, Subpart D and E is revised to read as follows:

Subpart D—Motorcycles

Sec.
205.150 Applicability.
205.151 Definitions.
205.152 Noise emission standards.
205.153 Engine displacement.
205.154 Consideration of alternative test procedures.
205.155 Motorcycle class and manufacturer abbreviation.
205.156 [Reserved]
205.157 Requirements.
205.157–1 General requirements.
205.157–2 Compliance with standards.
205.157–3 Configuration identification.
205.158 Labeling requirements.
205.159 Testing by the Administrator.
205.160 Selective enforcement auditing (SEA) requirements.
205.160–1 Test request.
205.160–2 Test sample selection and preparation.
205.160–4 Testing procedures.
205.160–5 Reporting of the test results.
205.160–6 Passing or failing under SEA.
205.160–7 Continued testing.
205.160–8 Prohibition of distribution in commerce; manufacturer's remedy.
205.162–1 Warranty.
205.162–2 Tampering.
205.162–3 Instructions for maintenance, use, and repair.
205.163 Recall of noncomplying motorcycles; relabeling of mislabled motorcycles.

Subpart E—Motorcycle Exhaust Systems

205.164 Applicability.
205.165 Definitions.
205.166 Noise emission standards.
205.167 Consideration of alternative test procedures.
205.168 Requirements.
205.168–1 General requirements.
205.168–2 [Removed]
205.169 Labeling requirements.
205.170 Testing by the Administrator.
205.171 Selective enforcement auditing (SEA) requirements.
205.171–1 Test request.
205.171–2 Test exhaust system sample selection and preparation.
205.171–3 Test motorcycle sample selection.
205.171–6 Test procedures.
205.171–7 Reporting of the test results.
205.171–8 Passing or failing under SEA.
205.171–9 Continued testing.
205.171–10 Prohibition on distribution in commerce; manufacturer's remedy.
205.173 In-use requirements.
205.173–1 Warranty.
205.173–2 Tampering.
205.173–3 Warning statement.
205.173–4 Information sheet.
205.174 Remedial orders.
Appendix I: Motorcycle Noise Emission Test Procedure
Appendix II: Sampling Tables

Authority: Sec. 6, Noise Control Act (42 U.S.C. 4905) and additional authority as specified.

2. In § 205.151, paragraph (a)(24) is removed and reserved and paragraph (a)(27) is revised to read as follows:

§ 205.151 Definitions.

(a) * * *

(27) "Test vehicle" means a vehicle in a Selective Enforcement Audit test sample.

* * * * *

3. In § 205.154, the last sentence is revised to read as follows:

§ 205.154 Consideration of alternative test procedures.

* * * * *

* * * "After approval by the Administrator, testing conducted by manufacturers using alternative test procedures will be accepted by the Administrator for all purposes including, but not limited to, selective enforcement audit testing.

4. Section 205.157 is retitled as follows:

§ 205.157 Requirements.

§ 205.157–1 [Amended]

5. In 205.157–1, paragraphs (a) (1) and (2) are removed; paragraphs (a)(3) and (4) are redesignated paragraphs (a)(1) and (2); and paragraph (a)(1) is revised to read as follows:

* * * * *

(1) Shall be labeled in accordance with the requirements of section 205.158 of this subpart.

* * * * *

6. In § 205.157–1, paragraph (c) is revised to read as follows:

* * * * *

(c) Subsequent manufacturers of a new product which conforms to the definition of vehicle in these regulations when received by them from a prior manufacturer, need not fulfill the requirements of paragraph (a)(1) of this section where such requirements have already been complied with by a prior manufacturer.

* * * * *

7. Section 205.157–2 is retitled to read as follows:

§ 205.157–2 Compliance with standards.

8. In § 205.157–2, paragraph (a)(1) is revised to read as follows:

* * * * *

(a)(1) Prior to distribution in commerce of vehicles of a specific configuration, the first manufacturer of such vehicle must verify such configurations in accordance with the requirements of this subpart.

* * * * *

9. In § 205.157–2, paragraph (a)(2) is removed and reserved.

10. In § 205.157–2, paragraph (b) is revised to read as follows:

* * * * *

(b) The requirements for purposes of testing by the Administrator and selective enforcement auditing with regard to each vehicle configuration consist of:

(1) Testing in accordance with § 205.160–4 of a vehicle selected in accordance with § 205.160–2.

(2) Compliance of the test vehicle with the applicable standard when tested in accordance with § 205.160–4.

* * * * *

11. In § 205.157–2, paragraph (c) (1)(iii) is revised to read as follows:

* * * * *

(c)(1) * * *

(iii) Testing in accordance with § 205.160–4 of a vehicle selected in accordance with § 205.160–2 which much be a vehicle of the configuration which is identified pursuant to paragraph (c)(1)(ii) of this section as having the highest sound pressure level (estimated or actual) within the category.

* * * * *

12. In § 205.157–2, paragraph (c) (1)(v) is removed.

13. In § 205.157–2, paragraph (c) (2) is revised to read as follows:

* * * * *

(c) * * *

(2) Where the requirements of paragraph (c)(1) of this section are complied with, all those configurations contained within a category are considered represented by the tested vehicle.

* * * * *

14. § 205.157–2, paragraph (c) (3) is revised to read as follows:

* * * * *

(c) * * *

(3) Where the manufacturer tests a vehicle configuration which has not been determined as having the highest sound pressure level of a category, but all other requirements of paragraph (c)(1) of this section are complied with, all those configurations contained within that category which are determined to have sound pressure levels not greater than the tested vehicle are considered to be represented by the

tested vehicle; however, a manufacturer must for purposes of Testing by the Administrator and Selective Enforcement Auditing verify according to the requirements of (b)(1) and/or (c)(1) of this section any configurations in the subject category which have a higher sound pressure level than the vehicle configuration tested.

* * * * *

15. In § 205.157–2, paragraph (d) is revised to read as follows:

* * * * *

(d) A manufacturer may elect for purposes of Testing by the Administrator and Selective Enforcement Auditing to use representative testing pursuant to paragraph (c) of this section for all or part of his product line.

* * * * *

16. In § 205.157–2, paragraphs (e) (1) and (2) are revised to read as follows:

* * * * *

(e) * * *

(1) In the case of representative testing, a new test vehicle from another configuration must be selected according to the requirements of paragraph (c) of this section, in order to verify the configurations represented by the non-compliant vehicle.

(2) Modify the test vehicle and demonstrate by testing that it meets applicable standards. The manufacturer must modify all production vehicles of the same configuration in the same manner as the test vehicle before distribution into commerce.

17. In § 205.157–2, paragraph (f) is removed.

§§ 205.157–4—205.157–10 [Removed]

18. Sections 205.157–4 through 205.157–10 are removed.

§ 205.158 [Amended]

19. In § 205.158, paragraph (a)(1) is revised to read as follows:

(a)(1) The manufacturer of any vehicle subject to this subpart must, at the time of manufacture, affix a label, of the type specified in paragraph (a) (2), (3), and (4) of this section, to all such vehicles to be distributed in commerce.

* * * * *

20. In § 205.158, paragraph (a)(3) is revised to read as follows:

(a) * * *

(3) The label must be affixed by the vehicle manufacturer to the vehicle in such a manner that the label cannot be removed without destroying or defacing it, and must not be affixed to any piece of equipment that is easily detached from such vehicle.

* * * * *

21. In § 205.158, paragraph (e) is removed.

22. Section 205.159, paragraph (c)(5) is revised to read:

§ 205.159 Testing by the Administrator.

* * * * *

(c) * * *

(5) Testing of up to 10 percent of the manufacturer's test vehicles for a model year if the Administrator determines testing these vehicles at the EPA test site is necessary to assure that a manufacturer has acted or is acting in compliance with the Act.

23. In § 205.160–2, the section title and paragraph (a) are revised to read as follows:

§ 205.160–2 Test sample selection and preparation.

(a) Vehicles comprising the sample which are required to be tested under a test request in accordance with this subpart must be selected consecutively as they are produced. Before the official test, the test vehicle must not be prepared, tested, modified, adjusted, or maintained in any manner unless such preparation, tests, modifications, adjustments or maintenance are part of the manufacturer's prescribed manufacturing and inspection procedures, and are documented in the manufacturer's internal vehicle assembly and inspection procedures, are required or permitted under this subpart, or are approved in advance by the Administrator. For purposes of this section, prescribed manufacturing and inspection procedures include quality control testing and assembly procedures normally performed by the manufacturer on like products during early production if the resulting testing is not biased by this procedure. In the case of imported products, the manufacturer may perform adjustments, preparations, modification or tests normally performed at the port of entry by the manufacturer to prepare the vehicle for delivery to a dealer or customer.

(1) Equipment or fixtures necessary to conduct the test may be installed on the vehicle if such equipment or fixtures have no effect on the noise emissions of the vehicle, as determined by the measurement methodology.

(2) In the event of a vehicle malfunction (i.e., failure to start, etc.) the manufacturer may perform the maintenance that is necessary to enable the vehicle to operate in a normal manner. This maintenance must be documented and reported in the SEA report.

(3) No quality control, quality assurance testing, assembly or selection procedures may be used on the test vehicle or any portion of the test vehicle including parts and subassemblies, unless such quality control, quality assurance testing, assembly or selection procedures are used normally during the production and assembly of all other vehicles of this configuration which will be distributed in commerce, are required or permitted under this subpart or are approved in advance by the Administrator.

(4) If a vehicle is unable to complete the noise tests, the manufacturer may replace the vehicle. Any replacement vehicle must be a production vehicle of the same configuration as the replaced vehicle or a noisier configuration and will be subject to all the provisions of these regulations. Any replacement must be reported in the SEA report.

§ 205.160–3 [Removed and reserved]

24. Section 205.160–3 is removed and reserved..

§ 205.160–4 [Amended]

25. In § 205.160–4, paragraph (b), the first sentence is removed.

26. In § 205.160–8, paragraph (a)(1) is revised to read as follows:

§ 205.160–8 Prohibition of distribution in commerce; manufacturer's remedy.

(a) * * *

(1) Submission of a written report to the Administrator which identifies the reason for the noncompliance of the vehicles, describes the problem and/or quality control or quality assurance remedies to be taken by the manufacturer to correct the problem.

* * * * *

§ 205.161 [Removed]

27. Section 205.161 is removed.

§ 205.162–1 [Removed]

28. Section 205.162–1 is removed.

29. In § 205.162–2, paragraph (a) is revised; paragraphs (b) and (c) are removed; paragraphs (d) and (e) are revised and redesignated paragraphs (b) and (c), respectively; paragraph (g) is removed; and paragraph (f) is redesignated paragraph (d). The revised portions of § 205.162–2 read as follows:

§ 205.162–2 Tampering.

(a) For each configuration of vehicles covered by this part, the manufacturer shall develop a list of acts which, in his judgment, constitute the removal or rendering totally or partially inoperative, other than for purposes of maintenance, repair, or replacement of noise control devices or elements of design of the vehicle.

(b) The manufacturer shall include in the owner's manual the following information:

(1) The statement:

Tampering With Noise Control System Prohibited

Federal law prohibits the following acts or causing thereof:

(1) The removal or rendering inoperative by any person other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any new vehicle for the purpose of noise control prior to its sale or delivery to the ultimate purchaser or while it is in use, or (2) the use of the vehicle after such device or element of design has been removed or rendered inoperative by any person.

(2) The statement:

Among those acts presumed to constitute tampering are the acts listed below.

Immediately following this statement, the manufacturer must include the list developed under paragraph (a) of this section.

(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a presumed act of tampering has been committed and it can be shown that such act resulted in no increase in the noise level of the vehicle or that the vehicle still meets the noise emission standard of § 205.152, the act will not constitute tampering.

* * * * *

§ 205.162–3 [Amended]

30. In § 205.162–3, paragraphs (c), (d), and (e) are removed.

§ 205.162–4 [Removed]

31. Section 205.162–4 is removed.

§ 205.165 [Amended]

32. In § 205.165, paragraph (a)(6) is removed and reserved.

33. In § 205.165, paragraph (a)(8) is revised to read as follows:

(a) * * *

(8) "Test exhaust system" means an exhaust system in Selective Enforcement Audit test sample.

* * * * *

34. Section 205.168 is retitled to read as follows:

§ 205.168 Requirements.

* * * * *

35. Section 205.168–1 is revised to read as follows:

§ 205.168–1 General requirements.

(a) Each manufacturer of motorcycle exhaust systems manufactured for Federally regulated motorcycles and distributed in commerce in the United States which are subject to the noise emission standards prescribed in this subpart and not exempted in accordance with Subpart A, § 205.5:

(1) Must label each exhaust system in accordance with the requirements of § 205.169 of this subpart; and

(2) Must only manufacture exhaust systems which conform to the applicable noise emission standard established in § 205.166 of this regulation when installed on any Federally regulated motorcycle for which it has been designed and marketed.

(b) The manufacturer who is required to conduct testing to demonstrate compliance with a particular standard must satisfy all other provisions of this subpart applicable to that standard.

(c) Prior to distribution into commerce of exhaust systems of a specific category, the manufacturer of the exhaust system shall verify the category in accordance with this subpart.

(2) Notwithstanding paragraph (a)(1) of this section, the manufacturer may distribute in commerce exhaust systems of that category for up to 90 days if weather or other conditions beyond the control of the manufacturer make testing of a category impossible and if the following conditions are met:

(i) The manufacturer performs the tests required under paragraphs (d) or (e) of this section on such category as soon as conditions permit;

(d) The requirements for each exhaust system category consist of:

(1) Testing in accordance with § 205.171–1 of an exhaust system selected in accordance with § 205.171–2.

(2) Compliance of the test exhaust system on a motorcycle for which it is marketed with the applicable standard when tested in accordance with Appendix I; and

(e) A manufacturer is required to verify all categories of exhaust systems within his product line for each class of Federally regulated motorcycle for which it is designed and marketed. A category of a replacement exhaust system is defined by a separate combination of at least the following parameters:

(1) *Muffler/Silencer:* (i) Volume; (ii) type of absorption material; (iii) amount of absorption material; (iv) length; (v) diameter; (vi) directional flow of exhaust gas; (vii) interior construction; (viii) shell and inner construction material; (ix) number of header pipes entering muffler; and (x) specific motorcycle application.

(2) *Expansion Chamber:* (i) Volume; (ii) diameter; (iii) construction material; (iv) directional flow of exhaust gas; (v) length; and (vi) specific motorcycle application.

(3) *Spark Arrestors:* (i) Volume; (ii) construction material; (iii) directional flow of exhaust gas; (iv) length; (v) diameter, and (vi) specific motorcycle application.

(4) *Other Exhaust System Components:* (i) Volume; (ii) shape; (iii) length; (iv) diameter; (v) material; (vi) directional flow of exhaust gas; and (vii) specific motorcycle application.

(f) Exhaust system components sold as separate products shall be tested pursuant to § 205.166(b).

(g) Original equipment exhaust systems that are also sold as replacement systems for the same motorcycle configuration need not be tested under this subpart if they have been tested or represented in a test report under Subpart D of this part.

(h) A manufacturer has the following alternatives if any test exhaust system is determined not to be in compliance with applicable standards:

(i) Modify the test exhaust system and demonstrate by testing that it meets applicable standards. The manufacturer must modify all production exhaust systems of the same category in the same manner as the test exhaust system before distribution in commerce.

§§ 205.168–2—205.168–10 [Removed]

36. Sections 205.168–2 through 205.168–10 are removed.

§ 205.169 [Amended]

37. In § 205.169, paragraph (a) is revised to read as follows:

(a) The manufacturer of any product (including the manufacturer of newly produced motorcycles) subject to this subpart must, at the time of manufacture, affix a permanent, legible label, or mark of the type and in the manner described below, containing the information provided below, to all such exhaust systems or exhaust system components to be distributed in commerce.

* * * * *

38. In § 205.169, paragraph (f) is removed.

§ 205.170 [Amended]

39. In § 205.170, paragraph (c)(1) is removed and reserved.

40. In § 205.170, paragraph (c)(5) is revised to read as follows:

* * * * *

(c) * * *

(5) In addition to any exhaust systems included in paragraph (c) (1), (2), (3), or (4) of this section, testing of up to 10 percent of the manufacturer's exhaust systems for a model year if the Administrator determines testing these exhaust systems at the EPA test site is

necessary to assure that a manufacturer has acted or is acting in compliance with the Act.

41. In § 205.171–2, the section title and paragraph (a) are revised to read as follows:

§ 205.171–2 Test exhaust system selection and preparation.

(a)(1) Exhaust systems comprising the sample which are required to be tested under a test request in accordance with this subpart must be selected consecutively as they are produced.

(2) Test motorcycles and test exhaust systems to be used for testing of exhaust systems must be of the subject class which has been assembled using the manufacturer's normal production processes, in stock configuration including exhaust system, as sold or offered for sale in commerce.

(3) Before the official test, the test motorcycle and test exhaust system must not be prepared, tested, modified, adjusted, or maintained in any manner unless such preparation, tests, modifications, adjustments or maintenance are part of the original equipment manufacturer's prescribed manufacturing and inspection procedures, and are documented in the manufacturer's internal motorcycle assembly and inspection procedures, or are required or permitted under this subpart, or are approved in advance by the Administrator.

(4) Equipment or fixtures necessary to conduct the test may be installed on the motorcycle, if such equipment or fixtures shall have no effect on the noise emissions of the motorcycle as determined by the measurement methodology.

(5) In the event of a motorcycle malfunction (i.e., failure to start, etc.) maintenance that is necessary may be performed to enable the vehicle to operate in a normal manner. This maintenance must be documented and reported in the final report prepared and submitted in accordance with this subpart.

(6) No quality control, quality assurance testing, assembly or selection procedures may be used on the test vehicle or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other motorcycles of that class which will be distributed in commerce, unless such procedures are required or permitted under this subpart or are approved in advance by the Administrator.

§§ 205.171–4—205.171–5 [Removed]

42. Sections 205.171–4 and 205.171–5 are removed.

43. In § 205.171–6, paragraph (b), the first sentence is revised to read as follows:

§ 205.171–6 Testing procedures.

* * * * *

(b) No maintenance may be performed on the test exhaust system except as provided by § 205.171–2. * * *

44. In § 205.171–10, paragraph (a)(1) is revised to read as follows:

§ 205.171–10 Prohibition on distribution in commerce; manufacturer's remedy.

(a) * * *

(1) Submission of a written report to the Administrator which identifies the reason for the noncompliance of the exhaust systems, describes the problem and describes the proposed quality control or quality assurance remedies to be taken by the manufacturer to correct the problem.

* * * * *

45. In § 205.173–1, paragraph (b) is removed and reserved and paragraph (a) is revised as follows:

§ 205.173–1 Warranty.

(a) The exhaust system manufacturer must include in the information supplied to the ultimate purchaser pursuant to section 205.173–4, the following statement:

Noise Emission Warranty

[The manufacturer] warrants that this exhaust system, at time of sale, meets all applicable U.S. E.P.A. Federal noise standards. This warranty extends to the first person who buys this exhaust system for purposes other than resale, and to all subsequent buyers. Warranty claims should be direct to ————. (Manufacturer shall fill in this blank with his name, address and telephone number.)

* * * * *

46. In § 205.173–2, the introductory text is revised to read as follows:

§ 205.173–2 Tampering.

The manufacturer must include the following statement pursuant to § 205.173–4 with each product of that category the manufacturer distributes into commerce.

* * * * *

47. In § 205.173–3, the introductory text is revised to read as follows:

§ 205.173–3 Warning statement.

The manufacturer must include the following statement pursuant to § 205.173–4 with each product of that category the manufacturer distributes into commerce.

* * * * *

§ 205.173–5 [Removed]

48. Section 205.173–5 is removed.

[FR Doc. 82–34911 Filed 12–27–82; 8:45 am]

BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 47, No. 249
Tuesday, December 28, 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 352

Reemployment Rights; Correction

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations; correction.

SUMMARY: In publishing proposed regulations on reemployment rights in the November 12, 1982, issue of the **Federal Register** (47 FR 51146), the Office of Personnel Management (OPM) inadvertently left out the address for comments. Any comments on the proposed regulations should be sent to the address below.

ADDRESS: Written comments may be sent to Richard B. Post, Associate Director, Staffing Group, U.S. Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, or delivered to Room 6F08, 1900 E Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William Bohling, (202) 632-6000.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 82-35054 Filed 12-27-82; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 733

Political Activity of Federal Employees; Workplace Solicitation and Collection of Political Contributions Prohibited

AGENCY: Office Personnel Management

ACTION: Proposed rule

SUMMARY: The Office of Personnel Management proposes to issue a regulation prohibiting the solicitation, payment, and collection of political contributions in the Federal workplace and through Federal payroll deductions. This action is necessary to clarify the Office of Personnel Management's existing regulatory prohibition on the solicitation, payment, collection, and receipt of political contributions.

DATE: Comments should be submitted on or before February 28, 1983.

ADDRESS: Comments should be addressed to: Joseph A. Morris, General Counsel, Room 5H30, United States Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot, Office of the General Counsel, (202) 632-5421.

SUPPLEMENTARY INFORMATION: Section 7321 of Title 5, United States Code, provides that "* * * an employee in an Executive agency or in the competitive service is not obliged, by reason of that employment, to contribute to a political fund or to render political service * * * and * * * may not be removed or otherwise prejudiced for refusal to do so."

Section 7322 further provides that "* * * an employee in an Executive agency or in the competitive service may not use his official authority or influence to coerce the political action of a person or body."

Federal criminal statutes, at 18 U.S.C. 600, make it unlawful for any person to promise "any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor or reward for any political activity or for the support of or opposition to any candidate or any political party * * *."

Federal criminal statutes, at 18 U.S.C. 602, further make it unlawful for "* * * an officer or employee of the United States or any department or agency thereof * * * to knowingly solicit, any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer [or] employee * * *."

Federal criminal statutes, at 18 U.S.C. 603(a), also make it unlawful for "* * * an officer or employee of the United States or any department or agency thereof * * * to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer [or] employee * * *, if the person receiving such contribution is the employer or employing authority of the person making the contribution."

Federal criminal statutes, at 18 U.S.C. 607(a), additionally make it unlawful for "any person," with the exception, stated in 18 U.S.C. 607(b), of certain employees of Congress, "to solicit or receive any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties by any person mentioned in [18 U.S.C.] section 603, or in any navy yard, fort, or arsenal.

Section 301(8) of the Federal Election Campaign Act of 1971, as codified at 2 U.S.C. 431(8), defines a "contribution" to include "* * * any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. * * *"

The solicitation, payment, collection, or receipt of political contributions by Federal employees subject to the Hatch Act, if done in the Federal workplace, would violate one or more of the foregoing statutory prohibitions. In addition, even if solicitation of such contributions occurred elsewhere, the payment, collection, or receipt of such contributions in the Federal workplace would still violate the law.

Similarly, the use of a Federal payroll deduction scheme or the Government's allotment system as a conduit for political contributions by Federal employees subject to the Hatch Act would involve the use of Federal workplaces and instrumentalities to pay, collect, and receive such contributions. Because Government payroll deductions and allotments necessarily pass through the hands of supervisors, co-workers, and agency payroll offices, the use of such means to channel political contributions raises the unacceptable possibility of abuse; the certain knowledge that a Federal employee is making or is failing to make a political contribution would enable or encourage supervisors and co-workers to bring varieties of impermissible pressures upon the employee to change such conduct, thereby substantially impairing and inhibiting the employee's exercise of political rights secured by the Constitution.

The regulations presently in force under the Hatch Act make it clear that Federal employees who are covered by

the Hatch Act have the right to make financial contributions to political parties and organizations; *see* 5 CFR 733.111(a)(8). Present regulations do not adequately protect employee freedoms and the integrity of the Federal workplace, however, in that they do not clearly state prohibitions against the solicitation, payment, collection, and receipt of political contributions in the Federal workplace and through Government payroll and similar channels.

The congressional declaration of merit system principles that was enacted in Section 101(a) of the Civil Service Reform Act of 1978, 5 U.S.C. 2301(b), commands that "Employees should be * * * protected against arbitrary action, personal favoritism, or coercion for partisan political purposes * * *" 5 U.S.C. 2301(b)(8)(A). Therefore, OPM proposes to amend 5 CFR Part 733 (Political Activity of Federal Employees) to include the foregoing in the list of prohibited political activities set forth in 5 CFR 733.122.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects the political activities of Federal employees.

List of Subjects in 5 CFR Part 733

Political activity of Federal employees.

United States Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM proposes to amend 5 CFR as follows:

PART 733—POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

1. The authority citation for Part 733 would read as follows:

Authority: 5 U.S.C. §§ 3301, 3302, 7301, 7324, 7325, and 7327; Reorganization Plan No. 2 of 1978, E.O. 12107; and 3 CFR 1978 Comp., p. 264, unless otherwise noted.

2. In Part 733, § 733.101 would be amended by adding paragraphs (g), (h), and (i) to read as follows:

§ 733.101 Definitions.

* * * * *

(g) "Political fund" means any fund, organization, political action committee, or other entity that, for purposes of influencing in any way the outcome of any partisan election, receives or expends money or anything of value or transfers money or anything of value to any other fund, candidate, organization, political action committee, or other entity.

(h) "Contribution" means any gift, subscription, loan, advance, deposit of money, allotment of money, or anything of value given or transferred by one person to another, including in cash, by check, by draft, through a payroll deduction or allotment plan, by pledge or promise, whether or not enforceable, or otherwise.

(i) "Federal workplace" means any place, site, installation, building, room, or facility in which any Executive department or agency conducts official business, including, but not limited to, office buildings, forts, arsenals, navy yards, post offices, vehicles, ships, and aircraft.

3. In Part 733, § 733.122 (b) is amended by revising subparagraphs (12) and (13) and adding subparagraphs (14), (15), and (16) to read as follows:

§ 733.122 Political management and political campaigning; prohibitions.

* * * * *

(b) * * *

(12) Addressing a convention, caucus, rally or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office;

(13) Initiating or circulating a partisan nominating petition;

(14) Soliciting, collecting, or receiving a contribution from any employee for any political party, political fund, or other partisan recipient;

(15) Paying a contribution to any employee who is the employer or employing authority of the person making the contribution for any political party, political fund, or other partisan recipient; and

(16) Soliciting, paying, collecting, or receiving a contribution, at or in any Federal workplace, for any political party, political fund, or other partisan recipient.

[FR Doc. 82-35053 Filed 12-27-82; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 238]

Food Stamp Program; Notice of Adverse Action and Mass Change

AGENCY: Food and Nutrition Service, USDA.

AGENCY: Proposed rule.

SUMMARY: The Food and Nutrition Service is changing the way a State welfare agency tells food stamp recipients about changes in their food stamps. At present, there is confusion about how the State agency should make changes that affect many or all recipients. There are also needlessly difficult requirements for informing recipients of individual changes. This proposed rule would simplify these requirements.

DATES: Comments must be received on or before February 28, 1983.

ADDRESS: Please submit comments to Thomas O'Connor, Supervisor, Policy and Regulations Section, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Va. 22302. Comments will be available for public inspection during regular business hours (8:30 a.m. to 5:00 p.m.) at the agency's offices: Room 708, 3101 Park Center Drive, Alexandria, Va.

FOR FURTHER INFORMATION CONTACT: Mr. O'Connor at the address above; telephone (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291. This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 151-1. The Department has classified this rule as a non-major rule. The rule's effect on the economy will be less than $100 million. The rule will have no effect on costs or prices. Competition, employment, investment, productivity and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Regulatory Flexibility Act. Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has certified that this proposal does not have a significant economic impact on a substantial number of small entities. The rule gives State welfare agencies greater flexibility in their administration of the Food Stamp Program.

Paper Reduction Act. This regulation does not contain reporting and recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Mass Changes

A mass change in food stamps is one which affects many or all food stamp recipients. A mass change is also one which the Federal or State governments

cause, not one caused by the recipients. Examples of mass changes are an increase in the Thrifty Food Plan and an increase in Supplemental Security Income payments.

The current regulations discuss four kinds of mass change. First are changes in food stamps which occur according to a schedule for keeping up with the cost-of-living and seasonal variations. Second are changes in public assistance grants. Third are changes in other Federal benefits. Finally there are changes in food stamp regulations concerning the way a State agency notifies a household that a mass change has taken place.

The amendment would provide a way to resolve the often conflicting pressures of specificity and time. Participants need specific information about benefit changes to ensure their accuracy. The State agency needs time to inform individuals of the changes. To resolve this conflict, the Department propose to give the State agency a reasonable time to provide the necessary information to the household without diminishing the household's rights.

Notifying Households of Mass Changes

Currently, the regulations do not specify the amount of information which a State agency must give to a household when a mass change occurs. Neither do the regulations give clear instructions about the timeliness of the notice. The Department is proposing guidelines for State agencies to follow.

Content. The Department is proposing that the State agency shall, at a minimum inform the household of the general nature of the mass change by giving it a range of likely effects. For example a rule might change the percentage of the earned income deduction. The State agency would then inform households of the likely effects, that a household with $100 in monthly wages would probably lose $1 in food stamps, one with $300 in wages would lose $2 in food stamps, etc. The State agency would also notify the household, as it does now, of the household's rights to a fair hearing, continued benefits, and further information from the State agency.

Beyond this minimum, the Department proposes that the State agency provide the household with as specific information as the State agency can reasonably give. This would not be an encouragement to provide specific information; it would be a requirement.

There are many kinds of specific information which the State agency could provide, including the household's new benefit or individual notice to a household that its benefits will be reduced or terminated. The State agency may also be able to provide a general explanation of the change, even if it cannot notify specific households of specific effects.

Timing. The Department is proposing that the State agency shall, at a minimum, inform the household of the mass change no later than the household's scheduled issuance date. Beyond this minimum, the Department proposes that the State agency provide the household with as much advance notice as the State agency can reasonably give. This would not be an encouragement to provide early information; it would be a requirement. The State agency would not be required to provide information any earlier than ten days before the effective date of the change.

Conflicts between content and timing. It is clear that there may be, at times, an inverse relationship between content and timing. That is, the State agency may be able to provide specific information, but only at the last minute. Conversely, the State agency may be able to provide early notice, ten days before the effective date. However, the early notice may turn out to be only general.

The Department proposes that, when such a conflict occurs, the State agency resolve it in favor of more specific information with less advance notice. The Department is concerned that a household be able to make an informed decision as to the accuracy of a mass change when applied to itself. An informed decision depends upon the household's having adequate knowledge of the change.

If the specific information arrives as late as the issuance, the household will then be able to decide whether the State agency's action is right or wrong. Under the Department's proposal, the household can ask for a fair hearing. If the household is entitled to continued benefits, the State agency would reinstate the household's allotment to its prior level by the issuance date or within five working days, whichever is later.

Continuation of Benefits. (§ 273.12(e)(7)). The current regulations limit the times when a household can obtain continued benefits after it requests a fair hearing about a mass change. Specifically, according to § 273.15(k)(1), there are two conditions to continued benefits, either of which the household must meet. Because the policy concerning continued benefits is not clearly stated in § 273.12(e), the Department proposes to restate the current policy. A household would be entitled to a continuation of benefits only if the fair hearing request is based on either of two specific conditions. The first condition is that there was an error in arithmetic. For example, the State agency may have incorrectly computed the household's earned income deduction, calculating that 18 percent of $200 in wages was $30. If that incorrect calculation were appealed, the household could receive continued benefits while awaiting the fair hearing decision. The second condition is that the State agency misinterpreted or misapplied Federal policy. For example, a household contained a member 70 years of age (entitling the household to the net income eligibility limit) and the State agency terminated the household because its gross income was too high, the household could receive continued benefits while appealing. As with any continued benefits, the household may not receive them after the end of its certification period.

Because a household may not receive its notice until its issuance date, the household may not request a fair hearing until after it has already received its allotment. In such an instance, the State agency would reinstate the household's benefits to its prior level. Reinstatement would be the means of continuing the household's benefits.

Miscellaneous provisions. The Department proposes to amend the introductory sentences in § 273.12(e) on three points. First, this paragraph now specifies that Social Security is the Retirement, Survivors, and Disability Insurance (RSDI) program and that SSI means the Supplemental Security Income program. The second miscellaneous change is that the references to fair hearings during a mass change are gathered into one paragraph for the sake of clarity. The third miscellaneous change would be the deletion of § 273.12(e)(2)(ii). This paragraph is unnecessary, since a separate description of the notice would be added.

Notice of Adverse Action (§ 273.13)

The Department is making two changes in the regulations concerning notices of adverse action. These changes simplify the process of making changes.

Voluntary Termination. (§ 273.13 (b)(12)). Currently, the State agency must notify a household at least ten days before its participation is terminated. This is the case even if the household requests the termination. If the household requests termination on April 25, and the State provides advance notice on that day, the ten day period

would expire on May 5. If the household's next issuance date is May 1, the State agency cannot stop that allotment. The ten day period gives the household an opportunity to reconsider its withdrawal from the program.

The Department believes that a notice of adverse action is not productive in this situation. The State agency is terminating the household's participation only because the household has requested it. In this situation there is no question of the household's eligibility or its benefit level. The notice requirement serves only to produce more paperwork for the recipient and the State agency, and to delay the termination. Therefore, the Department proposes to exempt voluntary terminations from the requirement that a notice of adverse action be sent. This exemption applies only in cases where the household specifically requests the termination of its participation in writing or in person. This exemption does not apply when the household reports a change in circumstances which results in termination.

Moving from the Project Area. (§ 273.13(b)(13)). Currently, the regulations require a State agency to terminate participation, without notice, when a household has already moved from the project area (7 CFR 273.13(b)(3). The Department does not proposed to change this procedure.

The Department does propose to add a new procedure to use when a household reports that it will move from the project area. If the household will not be able to obtain its coupons because it will not be residing in the project area, the State agency would terminate the household's participation without notifying the household in advance.

This new procedure is meant to deal with the problem of issuing coupons (through direct mailing) and Authorization to Participate (ATP) cards to households which no longer reside in the project area and therefore cannot obtain them. The coupons and ATP cards can be used improperly by persons who wish to abuse the Food Stamp Program. When advance notice of the termination is required, the State agency now must issue benefits if the household reports its future move and leaves the project area in fewer than ten days before its next issuance.

Therefore, the Department proposes that the State agency not provide advance notice. However the State agency would provide notice. The notice would arrive no later than the issuance date. The notice would explain the termination, its effective date, and the household's right to a fair hearing and continued benefits.

Implementation (§ 272.1)

The Department proposes to require State agencies to implement this amendment's provisions no later than the first day of the month 90 days after publication of the final rule.

List of Subjects

7 CFR Part 272.

Alaska, Civil rights, Food stamps, Grant programs—social programs, Records, Reporting requirements.

7 CFR Part 273.

Administrative practice and procedure, Aliens, Claims, Fraud, Grant programs-social programs, Penalties, Records, Reporting requirements, Social security, Studients.

For the reasons set out in the preamble, the Department proposes to amend Parts 272 and 273 of Chapter II, Subtitle B, Title 7, Code of Federal Regulations, as follows.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, new paragraph (g) (56) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(56) *Amendment 238.* State agencies shall implement the mandatory provisions of this amendment no later than the first day of the month 90 days after publication of the final rule.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLD

2. In § 273.12, the introductory text of paragraph (e) is revised; paragraph (e)(2)(ii) is removed; paragraph (e)(2)(iii) is redesignated as paragraph (e)(2)(ii); and new paragraphs (e)(5), (e)(6), and (e)(7) are added; the revisions and additions read as follows:

§ 273.12 Reporting changes.

* * * * *

(e) *Mass changes.* Certain changes are initiated by the State or Federal government which may effect the entire caseload or significant portions of the caseload. These changes include adjustments to the income eligibility standards, the shelter and dependent care deductions, the Thrifty Food Plan and the standard deduction; annual and seasonal adjustments to Retirement, Survivors, and Disability Insurance (RSDI), and Supplemental Security Income (SSI) and other Federal benefits; periodic adjustments to Aid to Families with Dependent Children (AFDC) or General Assistance (GA) payments; and other changes in the eligibility and benefit criteria based on legislative or regulatory changes.

* * * * *

(5) Notice for Mass Changes. When the State agency makes a mass change in food stamp elibility or benefits or conducts desk reviews in place of a mass change, it shall notify all households whose benefits are reduced or terminated, except for mass changes made under § 273.12(e)(1).

(i) At a minimum, the State agency shall inform the household of:

(A) The general nature of the change;

(B) Examples of the change's effect on households' allotments;

(C) The month in which the change will take effect;

(D) The household's right to a fair hearing; and

(E) The household's right to continued benefits.

(ii) In addition, the State agency shall provide the household with as much specific information about the change in the household's allotment as it can reasonably provide at the time the State agency mails the notice.

(iii) At a minimum, the State agency shall notify the household of the mass change on the date the household is scheduled to received the allotment which has been changed.

(iv) In addition, the State shall notify the household of the mass change as much before the household's scheduled issuance date as reasonably possible, although the notice need not be given any earlier than the time required for advance notice of adverse action.

(v) In the event the State agency cannot notify the household of the specific change before the change is effective, the State agency shall provide as specific notice as reasonably possible.

(6) *Fair hearings.* The household shall be entitled to request a fair hearing when it is aggrieved by the mass change.

(7) *Continuation of benefits.* A household which requests a fair hearing due to a mass change shall be entitled to continued benefits at its previous level only if the household meets three criteria:

(i) The household does not specifically waive its right to a continuation of benefits;

(ii) The household requests a fair hearing within the time period set by the State agency in accordance with § 273.13(a)(1); and

(iii) The household's fair hearing is based upon improper computation of

food stamp eligibility or benefits, or upon misapplication or misinterpretation of Federal law or regulation.

* * * * *

In § 273.13, new paragraph (12) and (13) are added to paragraph (b), to read as follows:

§273.13 Notice of adverse action

* * * * *

(b) Exemptions from notice.* * *

(12) The household voluntarily requests, in writing or in the presence of a caseworker, that its participation be terminated.

(13) The State agency determines, based on reliable information, that the household will not be residing in the project area and therefore will be unable to obtain its next allotment. When this occurs, the State agency shall notify the household no later than its next scheduled issuance date. While the State agency may notify the household before its next issuance date the State agency shall not delay terminating the household's participation in order to provide advance notice. The notice shall contain all the information required by paragraph (a)(2) of this section.

(91 Stat. 958 (7 U.S.C. 2011–2029))

(Catalogue of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: December 21, 1983.

Robert E. Leard,

Associate Administrator.

[FR Doc. 82-35093 Filed 12-27-82; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 1011

Milk in Tennessee Valley Marketing Area; Proposed Temporary Revision of Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal that the supply plant shipping requirement under the Tennessee Valley Federal milk order be decreased temporarily for the months of January and February 1983. The temporary change was requested by the operator of a supply plant that is regulated as a pool plant by the Tennessee Valley order. The handler contends that the change is necessary to remove the need for its pool supply plant to incur the cost of uneconomic shipments of milk to maintain pool status for its plant during a period of supply imbalance.

DATE: Comments are due by January 4, 1983.

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

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202–447–4829.

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

It has also been determined that the potential need for adjusting certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register.** However, this would not permit the completion of the procedure in time to give interested parties timely notice that the supply plant shipping requirement for January 1983 would be modified. The initial request for the action was received on December 10, 1982.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1011.7(b) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Tennessee Valley marketing area is being considered for the months of January and February 1983.

All persons who desire to submit written data, views or arguments in connection with the proposed revision should file the same with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, not later than January 4, 1983. Please submit two copies of the documents filed. The period for filing views is being somewhat limited to enable the timely consideration of this matter since the proposed action would be applicable to milk shipments made during January 1983.

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

The provisions proposed to be revised are the supply plant shipping percentages set forth in § 1011.7(b) that are applicable during the months of January and February 1983. It has been requested that the shipping requirement be reduced from 60 percent to 50 percent for the two-month period. Section 1011.7(b) allows the Director of the Dairy Division to increase or decrease the applicable shipping percentage up to 10 percentage points in order to obtain needed shipments for the market or to prevent uneconomic shipments of milk to distributing plants.

Kraft, Inc., which operates a supply plant regulated by the Tennessee Valley order, has requested a temporary reduction in the supply plant shipping requirement of 10 percentage points. Kraft states that over the past year the Tennessee Valley market has experienced an increase in milk production without a corresponding increase in Class I sales. The handler claims that this marketwide development makes it difficult for its supply plant to meet the 60 percent shipping requirement without engaging in uneconomic shipments of milk if it wishes to maintain pool plant status. Kraft expects that the general imbalance of supply over demand in the Tennessee Valley market that led to a temporary reduction in the supply plant shipping requirements for October and November 1982 will continue through January and February 1983.

Under the circumstances described, it may be appropriate to reduce the pool supply plant shipping percentage for these months. The proposed temporary reduction in the shipping requirement could prevent uneconomic movements of milk merely for purposes of pool plant qualification. Also, the reduction could assure that producers who have been regularly associated with the fluid market can continue to share in the pool proceeds of the market.

List of Subjects in 7 CFR Part 1011

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on December 21, 1982.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 82-35148 Filed 12-27-82; 8:45 am]

BILLING CODE 3410-02-M

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

12 CFR Part 1204

[Docket No. D-0031]

Deregulation of Deposit Rate Ceilings

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Proposed rulemaking.

SUMMARY: As a result of the passage of the Garn-St Germain Depository Institutions Act of 1982, the Depository Institutions Deregulation Committee ("Committee") is requesting public comment on whether it should accelerate the deregulation of interest rate ceilings on deposits and should simplify other regulations on existing deposit categories. Specifically, the Committee requests comment on whether it should: (1) remove all interest rate ceilings immediately OR deregulate accounts with maturities of 91 days or more, except for a minimum early withdrawal penalty OR eliminate all existing time deposit categories with maturities of less than 91 days and extend the maximum maturity on the new Money Market Deposit Account (12 CFR 1204.122) to 91 days; (2) accelerate its current schedule for phasing out interest rate ceilings; (3) simplify the current rate ceiling schedules; (4) simplify interest rate ceilings and other characteristics on the 26-week money market certificate and the 91-day time deposit to make them more consistent; and (5) simplify and rationalize other features of account categories, such as minimum denomination and compounding of interest, to make them more consistent.

DATES: Comments must be received by February 1, 1983.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposal to Gordon Eastburn, Acting Executive Secretary, Depository Institutions Deregulation Committee, Room 1058, Department of the Treasury, 15th Street and Pennsylvania Avenue, NW., Washington, D.C. 20220. All material submitted should include the Docket Number D-0031. Such material will be made available for inspection and copying upon request except as provided in the Committee's Rules Regarding Availability of Information (12 CFR 1202.5).

FOR FURTHER INFORMATION CONTACT: Alan Priest, Attorney, Office of the Comptroller of the Currency (202/447-1880); F. Douglas Birdzell, Counsel, and Joseph A. DiNuzzo, Attorney, Federal Deposit Insurance Corporation (202/389-4147); Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377-6446); John Harry Jorgenson, Senior Attorney, Board of Governors of the Federal Reserve System (202/452-3778); or Elaine Boutilier, Attorney-Adviser, Treasury Department (202/566-8737).

SUPPLEMENTARY INFORMATION: The Depository Institutions Deregulation Act of 1980 (Title II of Pub. L. No. 96-221; 12 U.S.C. 3501 *et seq.*) ("DIDA") was enacted to provide for the orderly phaseout and ultimate elimination of the limitations on the maximum rates of interest and dividends that may be paid on deposit accounts by depository institutions as rapidly as economic conditions warrant. Under the DIDA, the Committee is authorized to phase out interest rate ceilings by any one of a number of methods, including the elimination of interest rate limitations applicable to particular categories of accounts, the creation of new account categories not subject to interest rate limitations, or with interest rate ceilings set at market rates of interest, or any combination of the above.

The Garn-St Germain Depositing Institutions Act of 1982, Pub. L. 97-320 ("Garn-St Germain Act") amended the DIDA and required the Committee to authorize the new Money Market Deposit Account ("MMDA"). After taking public comment, the Committee on November 15, 1982, did create such an account to enable institutions to compete with money market mutual funds, effective December 14, 1982. (47 FR 53710 November 29, 1982) Section 326 of the Garn-St Germain Act requires that the interest rate differential in favor of thrifts be eliminated on or before January 1, 1984.

In March 1982, the Committee adopted a deregulation schedule that phases out interest rate ceilings beginning with longer-term time deposits. With the deregulation schedule in place, the focus of the Committee turned to short-term deposit instruments. Prevailing high interest rates had caused a continued erosion of low-cost deposits at banks and thrifts, as depositors sought market rates elsewhere, particularly through money market mutual funds ("MMFs"). The Committee addressed this problem by authorizing, effective May 1, 1982, a 91-day time deposit with a $7,500 minimum denomination indexed to the 91-day Treasury bill rate, and establishing effective September 1, 1982, a 7- to 31-day deposit account with a $20,000 minimum denomination, also indexed to the 91-day Treasury bill rate. On December 6, 1982, the Committee further deregulated short-term deposits by exempting from interest rate ceiling NOW accounts with average balances of $2,500 that are subject to certain of the restrictions that apply to the MMDA to be effective January 5, 1983. The Committee also reduced to $2,500 the minimum denomination on the 7- to 31-day, the 91-day, and the 26-week MMC categories of deposits, effective January 5, 1983, and eliminated the indexed ceiling on the 7- to 31-day account, effective on that date.

Because of the effect the statutory and regulatory changes summarized above may have on the mix of short-term and long-term deposits of depository institutions, the Committee requests comments on several proposals pertaining to existing interest rate ceilings and account characteristics. The Committee wishes to encourage interested parties to comment on the effect that these changes may have on earnings and liquidity.

Even if opposed to any changes or in favor of complete deregulation of interested rate ceilings, interested parties are requested to comment on changes that should be made if the Committee does decide to accelerate the schedule or to amend the short-term deposit ceiling rate schedules in order to simplify their characteristics and make them more consistent.

Current Ceiling Rate Structure (see Table 1): Under the current interest rate ceiling structure for deposits at federally insured commercial banks, savings and loan associations, and mutual savings banks, most of the interest rate ceilings on traditional, fixed-rate time deposits are superseded as a practical matter by account categories with indexed rates or with no rate ceiling. Also, the MMDA has no interest rate ceiling, and the 7- to 31-day account, effective January 5, 1983, will also have no interest rate ceiling. Deposit categories with maturities of 91 days, 6 months and 2½ to less than 3½ years are available, but such accounts are subject to rate ceilings tied to an index. Other categories with maturities between 31 days and 3½ years are subject to the fixed-rate ceiling schedule. With the exception of the 1½ year IRA/Keogh deposit category (which has a limited purpose), depository institutions cannot offer ceiling-free deposits with

maturities of between 31 days and 3½ years.

TABLE 1.—CURRENT TIME DEPOSIT CEILING RATE STRUCTURE [1]

Maturity of account	Commercial banks	S&Ls and MSBs
Fixed Ceilings		
14 to 89 days [2]	5¼	(na).
90-day to 1 year [2]	5¼	6.
1 to 2½ years	6	6½.
2½ to 4 years [5]	6½	6¾.
4 to 6 years [3]	7½	7¾.
6 to 8 years [3]	7¾	7¾.
8 years and over [3]	7¾	8.
Indexed or Ceiling-Free		
1 to 31-day MMDA.	No ceiling	No ceiling.
7- to 31-day account [4]	No ceiling	No ceiling.
91-day account [3]	Indexed	Indexed.
6-month MMCD [3]	Indexed; ceiling rate does not decline below 7.75 percent.	Indexed; ceiling rate does not decline below 7.75 percent.
18-month IRA/Keogh Account:	No ceiling	No ceiling.
2½-year to less than 3½-year [6]	Indexed; ceiling rate does not decline below 9.25 percent.	Indexed; ceiling rate does not decline below 9.50 percent.
3½-year or more [7]	No ceiling	No ceiling.

1. Does not describe all details of current ceiling rates.
2. Partially superseded by indexed accounts.
3. Completely superseded by indexed or ceilingless accounts.
4. Ceiling removed effective January 5, 1983.
5. See TABLE 3 for full detail of the index rate schedule for these accounts.
6. Indexed to average yield for Treasury securities with comparable remaining maturity. See 12 C.F.R. § 1204.106. Effective April 1, 1983, this category becomes "1½ year to less than 2½ years."
7. These accounts have characteristics that distinguish them from fixed ceiling time deposits. See 12 C.F.R. § 1204.119. Effective April 1, 1983, this category becomes "2½ years or more."

Current Phaseout Schedule (see TABLE 2): The phaseout schedule adopted by the Committee in March of 1982 established a new deposit category with a maturity of 3½ years or more and no interest rate ceiling. Institutions were free to offer the deposit in any denomination but had to at least offer it in a $500 denomination. Under the schedule, the maturity of the instrument will be reduced annually by one year until March 31, 1986, at which time it will have the minimum maturity for time deposits (currently 14 days).

The gap between short-term and long-term ceiling-free deposits will be narrowed somewhat on April 1, 1983, when institutions will be able to offer ceiling-free deposits with maturities of 2½ years or more. However, a 31-day to 2½ year gap would remain, restricting depositors and institutions alike in their selection of ceiling-free accounts to those with very short, or with still relatively long, maturities. Since rate ceilings were initially intended to reduce the risks to institutions of offering short-term interest bearing deposits, and since, in any event, the existence of indexed rate ceilings in the near-term ceiling structure may induce institutions to shorten their liability structure unduly, the Committee believes it is appropriate to consider removing existing interest rate ceilings on longer-term deposits (or accelerating their removal) to allow institutions to offer a range of deposit instruments distinguished primarily by a negotiated rate and maturity. This is especially true since the short-term, ceiling-free accounts may be attractive enough to draw significant funds from longer-term indexed accounts. The flexibility of the management of depository institutions would also be increased by such an action.

TABLE 2.—CURRENT INTEREST RATE CEILING DEREGULATION SCHEDULE FOR INDEXED TIME DEPOSITS

Original maturity	Commercial bank ceiling	Thrift ceiling
Effective Apr. 1, 1983:		
2½ years or more[1].	Ceiling eliminated	Ceiling eliminated.
1½ years to less than 2½ years[2].	Thrift rate less .25%.	Average yield for 1½ year Treasury securities.
Effective Apr. 1, 1984: 1½ years or more[3].	Ceiling eliminated	Ceiling eliminated.
Effective Apr. 1, 1985: 6 months or more[4].	do	Do.
Effective Mar. 31, 1986, 14 days or more[5].	do	Do.

[1] See 12 C.F.R. § 1204.119(d).
[2] See 12 C.F.R. § 1204.106(c)(2).
[3] See 12 C.F.R. § 1204.119(e).
[4] See 12 C.F.R. § 1204.119(f).
[5] See 12 C.F.R. § 1204.119(g).

Comments on Elimination or Acceleration of Ceilings

Elimination of Rate Ceilings: The Committee requests comment on whether to eliminate the current rate ceilings (TABLE 1) completely at its next meeting. The Committee is particularly interested in comments on the projected effect such as action would have on institutional earnings and deposit flows. While such an action would effectively eliminate the need for the various existing deposit categories, such as the 91-day, and the 26-week MMC and the short-term fixed-ceiling deposit categories, it would not actually eliminate these accounts. Institutions would probably want to retain some of these categories because they are currently popular with consumers. Eventually, however, the accounts will probably become obsolete like the longer-term fixed-ceiling time deposits shown in the top panel of TABLE 1. Further, while elimination of the rate ceiling structure would automatically remove any interest rate differentials on deposit categories in favor of thrift institutions, the elimination of all differentials must occur on or before January 1, 1984, under section 326 of the Garn-St Germain Act. Thus, if the Committee eliminated all existing ceilings at its next meeting, and assuming a delayed effective date, the elimination of the thrift differential would be accelerated by no more than nine months.

An alternative to the removal of the current rate ceiling structure was suggested to the Committee by the Federal Deposit Insurance Corporation ("FDIC"). The FDIC suggests that the Committee completely deregulate all time deposits with original maturities of 91 days or more by removing all interest rate ceilings and other restrictions (except for an early withdrawal penalty) on such time deposits. For such time deposits, if funds are withdrawn within the first 90 days of the deposit, a minimum early withdrawal penalty, requiring the forfeiture of one-month's interest (not to exceed the interest earned), would be imposed. This penalty would be necessary so that these totally deregulated time deposits can not be structured to provide instant liquidity. If withdrawal is permitted after the first 90 days, institutions would be permitted, but not required by regulation, to impose an early withdrawal penalty. The remaining rate structure on time deposits with maturities of 31 to 90 days would be phased out on March 31, 1986. Alternatively, the Federal Home Loan Bank Board suggested that all categories of time deposits with original maturities of 91 days or less be eliminated and that the maximum maturity of the money market deposit account be extended to 91 days from its current maximum of 31 days. The balance of the ceiling rate structure would be phased out as currently scheduled (TABLE 2).

Acceleration of Rate Schedule: As mentioned above, the Garn-St Germain Act accelerated the total elimination of the thrift differential from March 31, 1986, to on or before January 1, 1984 and directed the Committee to create the ceiling-free MMDA. Consistent with this Congressional acceleration of the phaseout of limitations on the payment of interest, the Committee also requests comment on accelerating its current schedule (TABLE 2) for phasing out ceilings in general in the event the Committee finds that total deregulation or the removal of ceilings is inappropriate at this time. For example, the entire schedule could be advanced one year so that elimination of all ceilings occurs on April 1, 1985, instead of March 31, 1986, or the one-year interval in TABLE 2 could be reduced to six months. The Committee could also accelerate the removal of ceilings on

longer-term deposits while keeping the short-term portion of the schedule intact. For example, it could accelerate deregulation of ceilings on deposits with maturities of 1½ years or more to April 1, 1983, from April 1, 1984, but leave deregulation of rate ceilings on deposits with maturities of 6 months to 1½ years until the currently scheduled date of April 1, 1985.

Comments on Simplification

In addition to requesting comment on deregulation in general, the Committee also requests comments on how it could simplify current ceiling rate schedules and current account characteristics. The Committee also requests comment on whether it should rescind ceilings on fixed-rate deposits that have been or will be, superseded by indexed or ceiling-free account categories (TABLE 1). The Committee also requests comment on whether it should promptly extend indexing to all categories of fixed-rate deposits that have not yet been superseded by indexed ceilings or by removal of ceilings (TABLE 1). Ceilings on these newly indexed accounts would be phased out in accordance with the schedule on TABLE 2.

Short-Term Deposit Rate Schedule (TABLE 3): The current ceiling rate structure for the 26-week money market certificate is presented in the top portion of TABLE 3. The schedule is rather complex in that two alternative index rates are used—the most recent auction rate on 6-month Treasury bills or an average of the bill rates at the four most recent auctions—and the formula for determining the ceiling rate changes at five different levels of the index rate.

TABLE 3—CURRENT CEILING SCHEDULES FOR SHORT-TERM DEPOSIT ACCOUNTS

Index rate [1]	Commercial bank ceiling	Thrift ceiling	Differential
26-week money market certificates:			
Greater than 8.75 percent	Index rate +0.25	Index rate +0.25	0.
8.5 to 8.75	Index rate +0.25	9.0	0 to 0.25.
7.5 to 8.5	Index rate +0.25	Index rate +0.50	0.25
7.25 to 7.5	7.75	Index rate +0.50	0.25 to 0.
Less than 7.25	7.75	7.75	0.
91-day account:			
Greater than 9.0 percent [2]	Index rate −0.25	Index rate	0.25.
9.0 percent or below [3]	Index rate	Index rate	0.
7- to 31-day account [4]	No ceiling	No ceiling	0.

[1] The index rate for the 26-week MMC is the higher of the most recent auction rate (auction average, discount basis) on 6-month Treasury bills or an average of the four most recent auction rates. The index rate on the 91-day account is the most recent auction rate (auction average, discount basis) on 3-month Treasury bills.
[2] The differential is scheduled to be removed on May 1, 1983. At that time, all institutions will be able to pay the index rate at all interest rate levels.
[3] The index must be 9.0 percent or below for four consecutive auctions.
[4] At its December 6, 1982 meeting, the Committee determined that, effective January 5, 1983, the 7- to 31-day account would become ceiling free. This action was taken because the ceiling (indexed to the 91-day Treasury bill rate) became meaningless with the authorization of the new money market deposit account, which is ceiling free.

The methods of establishing the ceilings on the newer 91-day account (authorized beginning in May 1982) is less complex than the MMC, with the formula for determining the ceiling rate at various index rate levels changing only once, namely, when the 3-month Treasury bill rate reaches 9.0 percent (middle portion of TABLE 3). In addition to different ceiling rate structures, the thrift differential is applied inconsistently to these accounts. It is added to the index rate in the case of the 26-week MMC but is deducted from the index in the case of the 91-day deposit. Moreover, in the case of the 26-week MMC the differential is removed if the index rate goes above 8.75 percent and is removed on the 91-day account when the index rate falls below 9 per cent. However, the differential on the 91-day account is scheduled to be eliminated on May 1, 1983, so conforming this feature on these two accounts solely for the purpose of consistency may be unnecessary.

The different methods of calculating the ceilings on the MMC and the 91-day instrument have resulted in a confusing, and in some instances an inconsistent, situation. Therefore, the Committee requests comment on whether and how this schedule should be revised.

Simplification of Other Account Characteristics (TABLE 4): Even if the Committee determines to make no changes to the short-term rate ceiling schedule, other characteristics of the short-term deposit categories could be made more consistent in order to simplify the current account structure. Some of the differences in the short-term deposit accounts are presented in TABLE 4.

TABLE 4—SELECTED CHARACTERISTICS OF SHORT-TERM DEPOSIT ACCOUNTS

Characteristic	26-week MMC	91-day account	7- to 31-day account
Minimum denomination	$2,500 [1]	$2,500 [1]	$2,500 [1]
Loophole loans	Permitted	Prohibited	Prohibited.
Index rate	6-mo bill rate or 4-week average of bill rates.	3-mo bill rate	NA.
Relation between index rate and ceiling rate.	Presented in table 1	Presented in table 1	NA.
Minimum ceiling	7.75 percent	None	None.
Compounding	Prohibited [2]	Prohibited [3]	Unrestricted.
Differential	When index rate is between 7.25 and 8.75 percent.[4]	When index rate is above 9 percent.[5]	NA.
Differential on IRA/Keogh accounts and deposits of governmental units.	Banks may pay the thrift rate for these deposits.	Differential applies to these deposits.	NA.
Scheduled elimination of differential.	Dec. 31, 1983 [6]	May 1, 1983	
Scheduled elimination of ceiling	Apr. 1, 1985	Mar. 31, 1986	

[1] Effective Jan. 5, 1982.
[2] Although compounding is prohibited, a saver effectively will receive semiannual compounding if the original deposit plus interest is reinvested in another MMC at maturity.
[3] Although compounding is prohibited, a saver effectively will receive quarterly compounding if the original deposit plus interest is reinvested in another 91-day certificate at maturity.
[4] The full 25 basis point differential is in effect only when the index rate is between 7.5 and 8.5 percent.
[5] Scheduled to be eliminated May 1, 1983.
[6] Prior to the passage of the Garn-St Germain Depository Institutions Act, this differential was scheduled to be eliminated on April 1, 1985.

In view of these complexities, the Committee requests comment on whether changes should be made to the existing regulations authorizing these accounts in order to make the regulations less cumberesome and more uniform. The Committee is particularly interested in comments on (1) the relation between the index rate and the ceiling rate, (2) the thrift ceiling rate differential, (3) loophole loans, (4) the use of the four-week average method of calculating the MMC ceiling, and (5) the frequency of compounding that is permitted.

The Committee also requests comment on whether it should phase out minimum denomination requirements. For example, combining the phaseout of the minimum denomination on the MMDA and other short-term accounts with the Committee's current rate deregulation schedule would have the effect of phasing out passbook and NOW account ceiling rates as well as the minimum denomination on NOW accounts exempt from rate ceilings. Ceilings on savings account and on NOW accounts not subject to a minimum denomination requirement are not eliminated until March 31, 1986 under the Committee's current phaseout schedule. As the minimum denomination of indexed or ceiling-free, short-term time deposits is reduced under a phaseout schedule, the ceiling rate on savings and NOW accounts would become less binding, and more depositors would become eligible for the higher rate. For example, the $2,500 minimum denomination on the MMDA, NOW accounts exempt from rate ceilings, the 7- to 31-day account, the 91-day account, and the 26-week MMC could be reduced $500 or $1,000 at the time of each interest rate ceiling adjustment. At the next such adjustment, scheduled for April 1, 1983, the minimum denomination on such accounts could be reduced to $1,500. Subsequent periodic reductions would occur until no minimum denomination would be required on any deposit category.

Outline of Possible Options on Which Comment is Requested

A summary of the options, disscussed above, or possible Committee action is presented in an outline form below.

Elimination of Interest Rate Ceilings

1. Should the Committee eliminate the current interest rate ceiling structure (TABLE 1)?

a. Should the Committee eliminate all remaining interest rate ceilings immediately?

b. Should the Committee adopt the FDIC proposal and remove interest rate ceilings and all other restrictions on deposits with original maturities of 91 days or more, except for an early withdrawal penalty for withdrawals made in the first 90 days of the deposit?

c. Should the Committee adopt the FHLBB suggestion by extending the maximum maturity on money deposit accounts to 91 days and eliminating all competing categories of short-term deposits and let the current schedule apply otherwise?

d. What other methods of eliminating current ceilings should the Committee consider?

Acceleration of the Current Rate Phaseout Schedule (Table 2)

2. Should the Committee accelerate the current phaseout schedule (Table 2)?

a. Should the Committee simply advance each date in Table 2 by six months or a year or by some other period?

b. Should the Committee accelerate the long-term phaseout schedule (i.e., move up deregulation of deposits with original maturities of 1½ years or more) but allow the deregulation schedule for all other time deposits to remain intact (i.e. 91-days to 1 year)?

c. What other methods of accelerating deregulation should the Committee consider?

Simplification of Interest Rate Ceilings

3. If the Committee does not eliminate or accelerate the phaseout of interest rate ceilings in general, should the Committee make changes to the rate ceiling schedule for any category of time deposits (Table 1)?

a. Should all indexed accounts (middle of Table 1 and Table 3) become ceiling-free when their base rate is at 9 per cent or below (or at some other base rate) for four consecutive auctions (or for some other period)?

b. Should indexed accounts have a minimum ceiling that remains at 9 per cent (or some other rate) if the auction rate is at or below a rate of 9 per cent?

c. Should the elimination of the thrift differential be accelerated from its current statutory elimination on December 31, 1983?

d. Should the Committee rescind existing rate ceilings on all fixed-ceiling time deposits that are now, or in the future will be, superseded by indexed or ceiling-free accounts? (See footnotes 2 & 3 to Table 1)

e. Should existing ceilings on fixed-rate accounts (top of TABLE 1) be eliminated and replaced by appropriate market rate indexing (bottom of TABLE 1), which would then be subject to the phaseout schedule (TABLE 2)?

f. What other options for simplifying ceilings should the Committee consider?

Simplification and Rationalization of Interest Rate Ceilings and Other Characteristics of the 26-week MMC and the 91-day Account

4. If the Committee does not make changes to the rate ceiling schedule for deposits in general (No. 3, above), should it make changes to the 26-week MMC and the 91-day account (TABLE 3)?

a. Should a Committee remove the interest rate ceilings on the 26-week money market certificate and the 91-day account as it did for the 7- to 31-day account at its last meeting?

b. Should the 26-week MMC and the 91-day account become ceiling-free

when the rate on U.S. Treasury bills is at 9 percent or below (or at some other rate) for four consecutive auctions (or for some other period)?

c. Should the 26-week MMC and the 91-day account have a minimum ceiling that remains at 9 percent (or at some other rate) if the auction rate is below a rate of 9 percent (or at some other rate)?

d. Should the Committee eliminate the 7.75 percent minimum ceiling for the 26-week MMC?

e. Should the phaseout of the differential on 26-week MMCs, currently scheduled for December 31, 1983, be accelerated to May 1, 1983, to conform to the phaseout date for the differential on the 91-day account?

f. Should commercial banks be permitted to pay the thrift ceiling rate on maturing 26-week MMCs in order to enable them to compete more effectively for such deposits upon maturity?

g. Should the Committee rescind the amendment on the 26-week MMC which permits the ceiling to be the higher of the auction average or a 4-week average of the auction rates?

h. What other options concerning changes to the ceiling rates on these accounts should the Committee consider?

Simplification of Characteristics of Deposit Categories

5. If the Committee does not make changes to the schedule for deregulating rates in general, should it make changes to the primary characteristics of short-term deposits (TABLE 4)?

a. Should the Committee permit loans to meet the minimum denomination requirements on all accounts *OR* should it prohibit such loans on all accounts?

b. Should the Committee establish a schedule for phasing out all minimum denomination requirements (such as reducing the minimum by $500 or $1,000 on each scheduled interest rate phaseout date) *OR* should it eliminate such requirements immediately?

c. Should the Committee permit compounding on the 26-week MMC and the 91-day account as is currently permitted on all other interest-bearing accounts?

d. Should commercial banks be permitted to pay the ceiling rate for thrifts on *IRA/Keogh* and *governmental unit* deposits?

e. What other changes to the characteristics of these accounts should the Committee consider?

The Committee wishes to encourage interested parties to comment on the effect these changes may have on earnings and liquidity. Even if opposed to any changes or in favor of complete deregulation of interest rate ceilings, interested parties should comment on specific changes that they believe should be made if the Committee does decide to accelerate the schedule or to amend the short-time deposit ceiling rate schedules in order to simplify and make their characteristics more consistent.

List of Subjects in 12 CFR Part 1204

Banks, Banking.

By order of the Committee, December 22, 1982.

Mark Bender,

Acting Executive Secretary.

[FR Doc. 82-35152 Filed 12-27-82; 8:45 am]

BILLING CODE 4810-25-M

CIVIL AERONAUTICS BOARD

14 CFR Parts 241, 248, 291 and 297

[Econ. Regs. Docket 41147; EDR-450]

Uniform System of Accounts and Reports for Certificated Air Carriers; Submission of Audit and Reconciliation Reports; Domestic Cargo Transportation; and Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations

Dated: December 16, 1982.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to eliminate reporting requirements for foreign air freight forwarders and to revise reports required of all-cargo carriers. The CAB also proposes to eliminate the reconciliation report required of certificated air carriers. This information is no longer needed by the CAB and their elimination will reduce burdens on these carriers.

DATE: Comments by February 28, 1983.

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

Requests to be put on Service List by January 12, 1983.

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

ADDRESSES: Twenty copies of comments should be sent to Docket 41147, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Jack Calloway, Office of the Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-6042, or David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION:

The Paperwork Reduction Act of 1980, Pub. L. 96-511 (PRA) took effect on April 1, 1981. The law has two general objectives: 1) insure that agencies make only necessary information request of the public, and 2) eliminate those reporting burdens that are found to be unnecessary. It establishes a goal of reducing the existing paperwork burden by 25 percent in 3 years, and consolidates information policy functions within the Office of Management and Budget (OMB).

In light of the impending "sunset" of the CAB, and later, in view of the PRA, the Board has been reviewing the need for its reporting requirements and information systems. The purpose of this review has been to determine which reporting requirements could be eliminated or reduced at or before sunset and which should be transferred to other agencies. Decisions are based on whether the regulatory program that a reporting requirement supports transfers at sunset or expires, and on whether there is still a regulatory need for the report. The conclusions of this review are contained in the staff report "CAB Information Systems and Early Sunset" (Docket 40024), which the Board approved for public release on September 15, 1981.

The Board sent the staff report to the heads of other Federal agencies for their comments before rulemakings were initiated. It recognized that these agencies also use CAB data and that changing the data collection system might impair their programs. The Board also sent the staff report to airline presidents, State aeronautics agencies, hub airport executives and about 275 other interested persons to obtain their views and to let them know that the Board might stop collecting data that they are relying on.

Based on its review of the comments received, the Board has tentatively decided to eliminate some reporting requirements and to reduce the scope of others. In this notice, the Board proposed to eliminate two reporting requirements and to reduce one other. These are: (1) The report required of

foreign air freight forwarders and cooperative shippers associations under 14 CFR Part 297; (2) the special report under 14 CFR Part 248 reconciling a carrier's audited balance sheet and income statement with like statements in the Form 41 report, and 3) the report required of all-cargo carriers under 14 CFR Parts 241 and 291.

Foreign Indirect Carriers

Foreign indirect carriers of property (air freight forwarders and cooperative shippers associations) are required by § 297.40 of the Board's rules to file a Financial and Operating Report (CAB Form 296R) by February 15 of each year. This section requires the reporting of gross air freight forwarding revenues, gross air freight forwarding expenses, net income (loss) from forwarding operations, and the number of shipments and number of tons of air freight received from customers as an indirect air carrier.

The Board has been moving to reduce its oversight of the activities of indirect air carriers of property. In ER–1094, 44 FR 6634, February 1, 1979, the Board significantly liberalized its rules governing these carriers. In ER–1159, 44 FR 69633, December 4, 1979, the Board adopted similar rules for foreign air freight forwarders and cooperative shippers associations. This action was taken to place U.S. and foreign indirect air carriers on an equal competitive footing. Both rules included the reporting requirements described above. The Board stated in ER–1094 that these requirements were necessary to monitor the industry during the initial stages of deregulation, and that they would be phased out completely in the future. By ER–1261, 46 FR 54726, November 4, 1981, the Board eliminated these reporting requirements for U.S. indirect air carriers of property. This notice proposes to accord equal treatment to foreign ones. The Board no longer has any need for this report. The reporting requirements of § 297.40 are waived pending the completion of this rulemaking.

All-Cargo Carriers

Part 291 of the Board's rules (14 CFR Part 291) applies to domestic cargo transportation by air carriers certificated under sections 401 or 418 of the Act. Subpart E of that part sets forth reporting requirements for these carriers. Section 291.41 states that carriers operating under section 401 certificate must comply with the reporting requirements of 14 CFR Part 241. The reporting obligations of carriers operating under a section 418 certificate are governed by Part 291, specifically § 291.42. If a carrier holds both a 401 and 418 certificate it is presumed to be operating under the section 418 certificate (see § 291.20) unless it is also conducting passenger or international operations.

The staff report recommended that the reporting requirement for 418 carriers in § 291.42 be eliminated. It recommended that these carriers file instead a balance sheet, an income statement, and a summary statistical schedule under Part 241 if they operate large aircraft (aircraft with a capacity of more than 18,000 pounds). Carriers operating small aircraft would not have had any reporting requirements. The reporting obligations of 401 carriers would not have been affected.

The reporting requirements were originally designed to monitor the growth and health of all-cargo carriers during the initial stages of cargo deregulation. It has now been more than 5 years since Congress passed the law deregulating all-cargo service (P.L. 96–163, November 9, 1977) and more than 4 years since the Board issued the rule substantially lessening the extent of its regulation of domestic cargo transportation (ER–1080, 43 FR 53628, November 16, 1978). The Board therefore would favor revoking § 291.42.

The Department of Transportation (DOT), however, has asked the Board not to eliminate all reporting by all-cargo carriers. It stated that it has a need to monitor the level of demand for air cargo activity. Since a substantial portion of this activity is conducted by all-cargo carriers, DOT considered some data reporting by these carriers to be essential. It called for a scaled-down version of the current reporting requirements.

Since DOT will administer most of the Board's remaining programs after sunset, the Board gives great weight to the views of that agency in these matters. The Board is therefore proposing to revise § 291.42 along the lines requested by DOT. Similar changes are proposed in the Schedule T–8 in Part 241 applicable to section 401 carriers. It will be less expensive to continue these reporting requirements in this way than to eliminate them, if DOT plans to reinstitute them later. Continuing these reporting requirements would also provide for continuity of the cargo data base. We are asking DOT to document for the record its need and economic justification for these report.

Under this proposal, the reporting obligations of section 418 all-cargo carriers would be reduced to nine items—three profit and loss items (total operating revenues, total operating expenses, and operating income or loss) and six traffic items (total revenue ton-miles, revenue tons enplaned, available ton-miles, aircraft miles flown, aircraft departures performed, and aircraft hours-airborne). This approximately an 85 percent reduction in the level of current reporting by these carriers.

Audit and Reconciliation Reports

Part 248 of the Board's rules (14 CFR Part 248) requires certificated carriers to submit to the Board, if an independent audit is made, two copies of the audit report. This part further requires each carrier to submit a special report reconciling the financial statements certified by a public accountant as part of the independent audit with those that the carrier filed with the Board as part of its Form 41 reports (§ 248.3). This reconciliation report was required to help resolve inconsistencies between the financial statements of the independent auditor and those in the Form 41 reports, and to help the Board detect possible inaccuracies in the Form 41 or violations of the uniform system of accounts.

The staff report recommended that the submission of the audit report be continued but that the reconciliation report be eliminated. No comments were received opposing these recommendations. The Board is therefore now proposing to eliminate § 248.3. Although there were formerly significant differences between the generally accepted accounting principles used by independent auditors and accounting principles that formed the basis for the Form 41 reports, this is no longer the case. By ER–980, 42 FR 19, January 3, 1977, the Board amended Part 241 of its rules (14 CFR Part 241) to minimize the differences between Board regulations and report forms on the one hand and generally accepted accounting principles on the other. This reduces the likelihood of inconsistencies between the financial statements of the independent auditor and those in the Form 41 reports.

We are also proposing to make a technical change in §§ 248.2 and 248.4 in light of recent staff reorganizations.

Regulatory Flexibility Act

In accordance with 5 U.S.C. §605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, the Board certifies that this rule will not, if adopted as proposed, have a significant economic impact on a substantial number of small entities. Most of the entities affected by this proposal would be large certificated air carriers, and the effect of the change

will be a moderate reduction in reporting costs.

List of Subjects in 14 CFR Parts 241, 248, 291, and 297

Accounting, Air Carriers, Antitrust, Air transportation—foreign, Freight Forwarders, Insurance, Reporting requirements.

Accordingly, the Board proposes to amend Chapter II of 14 CFR, as follows:

PART 241—[AMENDED]

1. In Part 241, *Uniform System of Accounts and Reports for Certificated Air Carriers*, schedule T–8 of section 25 would be revised to read:

Section 25 Traffic and Capacity Elements

* * * * *

Schedule T–8—Report of all-cargo Operations.

(a) This schedule shall be filed semiannually by all air carriers holding section 401 certificates that conduct all-cargo operations under certificates issued under section 418 of the Act.

(b) Data reported on this schedule shall include only results of operations conducted in all-cargo aircraft. Data shall be segregated between domestic all-cargo operations conducted within the geographic limitations of section 418 certificates and all other all-cargo operations.

(c) Statement of operations. This statement shall include the following elements:

(1) Total operating revenue, categorized as follows:

(i) Transport revenues from the carriage of property in scheduled and nonscheduled service;

(ii) Transport revenues from the carriage of mail in scheduled and nonscheduled service; and

(iii) Transport-related revenues.

(2) Total operating expenses; and

(3) Operating profit or loss, computed by subtracting the total operating expenses from the total operating revenues.

(d) Summary of traffic and capacity statistics. This summary shall include the following elements:

(1) Total revenue ton-miles, which are the aircraft miles flown on each flight stage times the number of tons of revenue traffic carried on that stage. They shall be categorized as follows:

(i) Property; and

(ii) Mail.

(2) Revenue tons enplaned, reflecting the total revenue tons of cargo loaded on aircraft during the semiannual period;

(3) Available ton-miles, reflecting total revenue ton-miles available for all-cargo service during the semi-annual period, and computed by multiplying aircraft miles flown on each flight stage by the number of tons of aircraft capacity available for that stage;

(4) Aircraft miles flown, reflecting the total number of aircraft miles flown in cargo service during the semiannual period;

(5) Aircraft departures performed, reflecting the total number of take-offs performed in cargo service during the semiannual period; and

(6) Aircraft hours airborne, reflecting the aircraft hours of flight (from take-off to landing) performed in cargo service during the semiannual period.

PART 248—[AMENDED]

2. In Part 248, *Submission of Audit and Reconciliation Reports*, § 248.2 would be revised by replacing "Bureau of Accounts and Statistics" with "Office of Comptroller", as follows:

§ 248.2 Filing of audit reports.

(a) Whenever any air carrier subject to § 248.1 shall have caused an annual audit of its books, records, and accounts to be made by independent public accountants, such air carrier shall file with the Board's Office of the Comptroller, in duplicate, a special report consisting of a true and complete copy of the audit report submitted by such independent public accountants, including all schedules, exhibits, and certificates included in, attached to, or submitted with or separately as a part of, the audit report.

(b) Each air carrier subject to § 248.1 that does not cause an annual audit to be made of its books, records, and accounts for any fiscal year shall, at the close of such fiscal year file with the Board's Office of the Comptroller, as a part of its periodic reports, a statement that no such audit has been performed.

§ 248.3 [Removed and Reserved]

3. Also in Part 248, § 248.3, *Reconciliation of reports* would be removed and reserved.

4. Also in Part 248, § 248.4 would be revised by replacing "Bureau of Accounts and Statistics" with "Office of the Comptroller", as follows:

§ 248.4 Time for filing reports.

The report required by this part shall be filed with the Board's Office of Comptroller within 15 days after the due date of the appropriate periodic CAB Form 41 report, filed for the 12-month period covered by the audit report, or the date the accountant submits its audit report to the air carrier, whichever is later.

PART 291—[AMENDED]

5. In Part 291, *Domestic Cargo Transportation*, § 291.42 would be revised as follows:

§ 291.42 Section 418 financial and statistical reporting.

(a) General instructions.

(1) Carriers operating under section 418 certificates that are not subject to Part 241 of this chapter shall file Form 291, Statement of Operations and Statistics Summary for section 418 operations.

(2) The form required by this section shall be filed semiannually on February 10 and August 10 covering the six months ending December 31 and June 30 respectively. They shall be filed at the Office of the Comptroller, Information Management Division, B–46a, Civil Aeronautics Board, Washington, D.C. 20428.

(3) The carrier's chief accounting officer shall sign a certification attesting to the truth and completeness of the reports required by this section.

(b) Statement of Operations and Statistics Summary of section 418 operations. This statement shall include the following elements:

(1) Total operating revenue, categorized as follows:

(i) Transport revenues from the carriage of property in scheduled and nonscheduled service;

(ii) Transport revenues from the carriage of mail in scheduled and nonscheduled service; and

(iii) Transport-related revenues.

(2) Total operating expenses; and

(3) Operating profit or loss, computed by subtracting the total operating expenses from the total operating revenues.

(c) Summary of traffic and capacity statistics. This summary shall include the following elements:

(1) Total revenue ton-miles, which are the aircraft miles flown on each flight stage times the number of tons of revenue traffic carried on that stage. They shall be categorized as follows:

(i) Property; and

(ii) Mail.

(2) Revenue tons enplaned, reflecting the total revenue tons of cargo loaded on aircraft during the semiannual period;

(3) Available ton-miles, reflecting the total revenue ton-miles available for all-cargo service during the semiannual period, and computed by multiplying aircraft miles flown on each flight stage

by the number of tons of aircraft capacity available for that stage;

(4) Aircraft miles flown, reflecting the total number of aircraft miles flown in cargo service during the semiannual period;

(5) Aircraft departures performed, reflecting the total number of take-offs performed in cargo service during the semiannual period; and

(6) Aircraft hours airborne, reflecting the aircraft hours of flight (from take-off to landing) performed in cargo service during the semiannual period.

PART 297—[AMENDED]

Subpart E—[Reserved]

6. In Part 297, *Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations*, Subpart E, *Reporting Requirements*, would be removed and reserved.

(Secs. 204, 401, 407, 416, 418, 1601, P.L. 85–726, 72 Stat. 743, 754, 766, 771, 91 Stat. 1284, 92 Stat. 1744; 49 U.S.C. 1324, 1371, 1377, 1386, 1388, 1551.)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

BILLING CODE 6320-01-M

STATEMENT OF OPERATIONS AND SUMMARY STATISTICS
FOR SECTION 418 OPERATIONS

Carrier _____ (Carrier Code)
Six Months Ended _____ (Date)

Operating Revenues and Expenses		
Transport Revenue:		
Property	1	
Mail	2	
Transport Related Revenue	3	
Total Operating Revenue	4	
Total Operating Expense	5	
Operating Profit or (Loss)	6	
Traffic and Capacity Statistics		
Total Revenue Ton-Miles:		
Property	7	
Mail	8	
Revenue Tons Enplaned	9	
Available Ton Miles	10	
Aircraft Miles Flown	11	
Aircraft Departures Performed	12	
Aircraft Hours (Airborne)	13	

CAB Form 291

REPORT OF ALL-CARGO OPERATIONS

Air Carrier		All-Cargo Operations	
Six-Months Ended _____		Domestic (418)	Other Than Section 418
		(A)	(B)
Operating Revenues and Expenses			
Transport Revenue:			
Property	1		
Mail	2		
Transport Related Revenue	3		
Total Operating Revenue	4		
Total Operating Expense	5		
Operating Profit or (Loss)	6		
Traffic and Capacity Statistics			
Total Revenue Ton-Miles:			
Property	7		
Mail	8		
Revenue Tons Enplaned	9		
Available Ton Miles	10		
Aircraft Miles Flown	11		
Aircraft Departures Performed	12		
Aircraft Hours (Airborne)	13		

Schedule T-8 CAB Form 41

[FR Doc. 82-35143 Filed 12-27-82; 8:45 am]
BILLING CODE 6320-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 78N-0023]

GRAS Status of Ammonium Bicarbonate, Ammonium Carbonate, Ammonium Chloride, Ammonium Hydroxide, and Mono- and Dibasic Ammonium Phosphate

Correction

In FR Doc. 82-28348 beginning on page 46113 of the issue for Friday, October 15, 1982, on page 46115, the third column, in § 184.1137, paragraph (a), the first line should read "(a) Ammonium carbonate ($(NH_4)_2CO_3$,".

BILLING CODE 1505-01-M

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21 CFR Parts 333, 347, and 348

[Docket Nos. 75N-0183, 78N-0021, 78N-0301, and 80N-0476]

Topical Antifungal, Topical Antimicrobial, External Analgesic, and Skin Protectant Drug Products for Over-the-Counter Human Use; Advance Notices of Proposed Rulemaking; Extension of Time for Comments and Reply Comments

AGENCY: Food and Drug Administration.

ACTION: Advance notices of proposed rulemaking; extension of comment periods.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment periods to February 4, 1983, and the reply comment periods to March 7, 1983, for the advance notices of proposed rulemaking to establish conditions for the safety, effectiveness, and labeling of over-the-counter (OTC) topical antifungal, topical antimicrobial, external analgesic, and skin protectant drug products as the relate to OTC diaper rash drug products. FDA is taking this action in response to a request to allow more time for interested persons to address adequately issues related to diaper rash drug products as a product category and to consult experts so that more informed comments may be submitted to FDA.

DATES: Written comments by February 4, 1983, and reply comments by March 7, 1983.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFN-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 7, 1982 (47 FR 39406, 39412, 39436, and 39464), FDA issued four advance notices of proposed rulemaking to establish conditions under which OTC topical antifungal, topical antimicrobial, external analgesic, and skin protectant drug products used (1) For the treatment of diaper rash; (2) for the prevention of poison ivy, oak, and sumac; (3) for the treatment of fever blisters; (4) as male genital desensitizers; (5) as astrigents; and (6) as insect bite neutralizers are generally recognized as safe and effective and not misbranded. These notices reopened the administrative records for OTC topical antifungal, topical antimicrobial, external analgesic, and skin protectant drug products to allow for consideration of recommendations on drug products for the six drug categories listed above that were received from the Advisory Review Panel on OTC Miscellaneous External Drug Products. These notices relate to the development of monographs for topical antifungal, topical antimicrobial, external analgesic, and skin protectant drug products in general, as part of the ongoing review of OTC drug products conducted by FDA. Interested persons were given until December 6, 1982 to comment on each advance notice of proposed rulemaking and until January 5, 1983 for reply comments. FDA advised that comments and reply comments were limited to those that relate to drug products for the six drug categories listed above.

In response to the advance notices of proposed rulemaking, The Proprietary Association requested a 60-day extension of the comment periods in order to allow adequate time for the association to address what it considered a number of unique and unexpected problems concerning OTC drug products for the treatment of diaper rash. The Proprietary Association stated that, because categorization of data and a proposed monograph were not included in the Panel's statement on diaper rash drug products, and because of the complexity of the subject of diaper rash and diaper rash drug products, more time was needed by member company experts and outside consultants to study adequately and consider the best options for handling these products in the OTC drug review process.

FDA has carefully considered the request. The agency believes that information described in the request may be of assistance in adequately establishing the safety and effectiveness of OTC topical antifungal, topical antimicrobial, external analgesic, and skin protectant drug products used for the treatment of diaper rash and is in the public interest. The agency considers a general extension of the comment periods for 60 days to be appropriate. This extension applies only to comments on diaper rash drug products. Accordingly, the comment periods for submissions by any interested person are extended to February 4, 1983 and the reply comment periods are extended to March 7, 1983. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding these advance notices of proposed rulemaking as they relate to OTC diaper rash drug products. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments may be seen in the Dockets Management Branch betwen 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 22, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-35205 Filed 12-23-82; 11:48 am]

BILLING CODE 4160-01-M

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21 CFR Part 356

[Docket No. 81N-0033]

Oral Health Care Drug Products for Over-the-Counter Human Use; Advance Notice of Proposed Rulemaking; Extension of Time for Reply Comments

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; extension of reply comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to January 21, 1983, the reply comment period for the advance notice of proposed rulemaking to establish conditions for the safety, effectiveness, and labeling of over-the-counter (OTC) oral health care drug products. FDA is taking this action in response to a request to allow more time for interested persons to address adequately several important issues raised during the comment period.

DATE: Written reply comments by January 21, 1983.

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

FOR FURTHER INFORMATION CONTACT: William E Gilbertson, National Center for Drugs and Biologics (HFN–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4960.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 30, 1982 (47 FR 32953), FDA issued an extension of comment periods for an advance notice of proposed rulemaking to establish conditions for the safety, effectiveness, and labeling of oral health care drug products for OTC human use. This advance notice of proposed rulemaking, which was based on the recommendations of the Advisory Review Panel on OTC Oral Cavity Drug Products, is part of the ongoing review of OTC drug products conducted by FDA. Interested persons were given until November 22, 1982, to comment on the advance notice of proposed rulemaking and until December 22, 1982, for reply comments.

The Proprietary Association has requested a 60-day extension of the reply comment period in order to allow adequate time for the association to analyze and evaluate comments submitted in response to the advance notice of proposed rulemaking and to prepare reply comments. The association stated that as of December 2, 1982 all comments were not yet available at the Dockets Management Branch, and that the number and length of the comments available on December 2, 1982 were extensive. The association pointed out that the reply comment period runs through the holiday season when many member company employees are not available to analyze and evaluate the comments fully.

FDA has carefully considered the request. The agency believes that an extension of the reply comment period may be of assistance in establishing the safety and effectiveness of OTC oral health care drug products and is in the public interest. Because the comment and reply comment periods have already been extended once and because the submitted comments are now available at the Dockets Management Branch, the agency considers an additional extension of 20 days for the reply comment period to be appropriate. Accordingly, the reply comment period for submissions by any interested person is extended to January 21, 1983. Interested persons may submit to the Dockets Management Branch (address above) written reply comments to comments submitted in response to the advance notice of proposed rulemking. Three copies of any reply comments are to be submitted, except that individuals may submit one copy. Comments and reply comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 21, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-35070 Filed 12-22-82; 11:39 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-010]

Servicing of Multi-Piece and Single Piece Rim Wheels; Extension of Comment Period

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of time for submission of written comments.

SUMMARY: This notice extends the comment period for written responses to the questions OSHA presented in the notice of proposed rulemaking: "Servicing of Multi-Piece and Single Piece Rim Wheels" (47 FR 51159, November 12, 1982).

DATES: Written responses to the November 12, 1982 notice must submitted on or before January 26, 1983.

ADDRESS: Comments and hearing requests should be sent to: Docket Officer, Docket No. S–101, Room S–6212, U.S. Department of Labor, Washington, D.C. 20210 (202) 523–7894.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Sauger, U.S. Department of Labor—OSHA, Office of Mechanical Engineering Safety Standards, Room N–3506, Washington, D.C. 20210 (202) 523–7213.

SUPPLEMENTARY INFORMATION: On November 12, 1982, OSHA published in the **Federal Register** (47 FR 51159) a proposed rule, "Servicing of Multi-Piece and Single Piece Rim Wheels." In the proposed rule, OSHA included requirements for the training of all tire servicing employees, establishing a safe practice procedure for servicing single piece rim wheels, using restraining devices or other means of securing the rim wheel during inflation and using only matching rim wheel components (tires and rims). The proposal also contains several minor amendments to the provisions currently applicable to multi-piece rim wheel servicing operations.

In the notice, OSHA requested written responses to many general and special issues pertaining to multi-piece and single piece rim wheels. The written responses were to have been received December 27, 1982.

OSHA has been asked to extend the comment period to ensure that interested parties have sufficient time to compile data and prepare responses to the issues raised in the notice. OSHA believes that the information gathering process will be improved if all interested parties are granted additional time for submission of comments. Thus, OSHA has decided to extend the written comments period to January 26, 1983.

(Sec. 6, 84 Stat. 1593 (29 U.S.C. 655), 29 CFR Part 1911; Secretary of Labor's Order No. 8–76 (41 FR 25059))

Signed at Washington, D.C., this 22nd day of December 1982.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 82-35144 Filed 12-27-82; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Public Comment Procedures and Opportunity for Public Hearing on Modified Portions of Illinois Permanent Regulatory Program

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

ACTION: Proposed Rule.

SUMMARY: OSM is announcing procedures for the public comment period and for requesting a public hearing on the substantive adequacy of certain program amendments submitted by the State of Illinois to satisfy conditions imposed by the Secretary of the Interior on the approval of the Illinois permenent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This notice sets forth the times and locations that the Illinois program and the proposed amendments are available

for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements and the procedures that will be followed for the public hearing.

DATES: Written comments must be received on or before 4:00 p.m., January 27, 1983, to be considered in the decision on whether the proposed amendments satisfy the conditions of approval.

A public hearing on the proposed modifications will be held only if requested. If no one requests a public hearing, none will be held. If only one person requests a public hearing, a public meeting rather than a public hearing may be held, and a summary of the meeting included in the Administrative Record. If a hearing is requested and scheduled, a notice announcing the time and location of the hearing will be published in the Federal Register. Requests for a public hearing should be directed to Daniel Jones at the address and phone number listed below by 4:00 p.m., January 12, 1983.

ADDRESSES: Written comments and requests for a hearing should be sent to: 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.

Copies of the Illinois program, the proposed modifications to the program, a listing of any scheduled public meeting, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters Office and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays:

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

Illinois Department of Mines and Minerals, 277 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:

The Illinois program was approved on June 1, 1982 (47 FR 23858–23883). The approval was conditioned on the correction of five minor deficiencies. In accepting the Secretary's conditional approval, Illinois agreed to correct deficiencies (a), (d), and (e) by December 1, 1982, and deficiencies (b) and (c) by June 1, 1983. Information pertinent to the general background, revisions, modifications, and amendments to the Illinois permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Illinois program can be found in the June 1, 1983 Federal Register.

Submissions of Amendments

Illinois has now submitted rules, by letter dated November 30, 1982, intended to satisfy conditions (a), (d), and (e).

(1) To satisfy condition (a), Illinois has amended its rules 1816.64(a) and 1817.65(a) as follows:

Section 1816.64 Use of explosives: Public notice of blasting schedule.

(a) Blasting schedule publication.

(1) Each person who conducts surface mining activities shall publish a blasting schedule at least 30 days, but not more than 60 days, before beginning a blasting program in which blasts that use more than 5 pounds of explosives or blasting agent are detonated. The blasting schedule shall be published in a newspaper of general circulation in a locality of the blasting site.

Section 1817.65 Use of explosives: Surface blasting requriements.

(a) A resident or owner of a dwelling or structure that is located within one-half mile of any area affected by any surface blasting event shall be notified in writing at least 30 days, but not more than 60 days, before beginning a blasting program in which blasts that use more than 25 pounds of explosives or blasting agent are detonated. Such notification shall be accompanied by information advising the owner or resident how to request a pre-blast or condition survey.

(2) To satisfy condition (d), Illinois has amended its rule 1807.11(d) as follows:

Section 1807.11 Procedures for seeking release of performance bond.

(d) Inspection by Department. The Department shall inspect and evaluate the reclamation work involved within 30 days after receiving a completed application for bond release, or as soon thereafter as weather conditions permit. The surface owner, or lessee, or agent thereof shall be given notice of such inspection, and may participate with the regulatory authority in making the bond release inspection.

(3) To satisfy condition (e), Illinois has amended its rule 1843.12(f) and added a new 1843.12(i) as follows:

Section 1843.12 Notices of violation.

(f) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(2) Where there is a valid judicial or administrative order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

(3) Where the permittee cannot abate within 90 days due to a labor dispute;

(4) Where climatic conditions preclude abatement within 90 days, clearly:

(i) Would cause more environmental harm than would prevent; or

(ii) Requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(5) Where abatement of the violation within 90 days would create an imminent danger to the health or safety of the public or would cause, or could reasonably be expected to cause, significant imminent environmental harm to land, air, or water resources.

(i) *No extension granted under paragraph (h) exceed 90 days in length. Where the condition or circumstances which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of paragraph (h).*

The Secretary seeks public comment on whether the amendments satisfy conditions (a), (d), and (e). If the amendments are approved, conditions (a), (d), and (e) will be removed from the Illinois program.

Additional Determinations

National Environmental Policy Act

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.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act 5 U.S.C. 601 et seq. I certify that this proposed rule will not have a significant

economic impact on a substantial number of small entities.

Executive Order 12291

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 programs, actions or amendments. Therefore, this proposed program amendment is exempt from the requirement to prepare a Regulatory Impact Analysis and regulatory review by OMB.

List of Subjects in 30 CFR Part 913

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

Dated: December 22, 1982.

J. Steven Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82-35146 Filed 12-27-82; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 936

Cancellation of Public Comment Period and Hearing on Oklahoma's Proposed Rules of Practice and Procedure

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

ACTION: Proposed Rule; Cancellation of Public Comment Period and Hearing.

SUMMARY: On December 3, 1982, OSM announced the procedures for a public comment period and hearing on the substantive adequacy of Oklahoma's proposed Rules of Practice and Procedure. Those rules were intended to satisfy one of the conditions of the Secretary's approval of the Oklahoma State Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On December 20, 1982, OSM received from the Oklahoma Department of Mines a request that OSM withdraw the Rules of Practice and Procedure from consideration as a formal program amendment at this time for the reasons set forth later in this notice.

In response to Oklahoma's request, OSM hereby gives notice that it is suspending the public comment period that was to end on January 3, 1983, and cancelling the public hearing that was scheduled to be held on December 27, 1982, in Tulsa, Oklahoma.

DATE: This cancellation is effective December 28, 1982.

ADDRESSES: See "Supplementary Information" below for locations where copies of Oklahoma's withdrawal request is available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Director, Oklahoma Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 581-7927.

SUPPLEMENTARY INFORMATION:

I. Availability of Copies

Copies of the Oklahoma Department of Mines' withdrawal request is available for review and copying at the OSM offices and the office of the state regulatory listed below, Monday through Friday, 8:00 a.m., to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 L Street NW., Washington, DC 20240

Office of Surface Mining Reclamation and Enforcement, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103

Oklahoma Department of Mines, 4040 North Lincoln Boulevard, Suite 107, Oklahoma City, Oklahoma 73105

II. Details of the Cancellation of the Public Comment Period and Hearing

On November 9, 1982, OSM received a revised set of Rules of Practice and Procedure from the Oklahoma Department of Mines. See OK-436. The Rules of Practice and Procedure were submitted as a formal state program amendment and were intended to meet the requirements of condition 30 CFR 936.11(b) of the Secretary's approval of the Oklahoma program. That condition requires Oklahoma to amend its Rules of Practice for hearings to make the public participation aspects of those rules no less effective than the public participation aspects of SMCRA, 30 CFR Chapter VII and 43 CFR Part 4.

OSM announced receipt of Oklahoma's proposed program amendment in the **Federal Register** on December 3, 1982, at 47 FR 54473-54474. The notice stated that the public hearing would be held, if requested, in Tulsa, Oklahoma on December 27, 1982, and that the comment period would close on January 3, 1983.

On December 20, 1982, OSM received a letter from Mr. Blaney Qualls, Director and Deputy Chief Mine Inspector of the Oklahoma Department of Mines. See OK-437. Mr. Qualls requested that the November 9, 1982, submission of Rules of Practice and Procedure be withdrawn from further consideration because those rules had not been adopted under the permanent rulemaking procedures of Oklahoma and to do so would require review by the Oklahoma Legislature during its 1983 session. Mr. Qualls also stated that the Department of Mines had made several revisions to the Rules of Practice and Procedure subsequent to the date when those rules were submitted to OSM as a State program amendment. The Department of Mines Director also indicated that he expects Oklahoma will promulgate permanent Rules of Practice and Procedure on or after February 3, 1983, unless the rules are disapproved by the Legislature.

OSM has decided to honor Oklahoma's request. For this reason, this notice has been issued to inform the public about the circumstances of Oklahoma's withdrawal request and to indicate that the public hearing and comment period have been cancelled. However, OSM will forward to Oklahoma copies of all comments received during the cancelled comment period for the State's consideration in redrafting its rules.

OSM notes that Oklahoma has until May 15, 1983, to meet the requirements of condition 30 CFR 936.11(6).

Dated: December 22, 1982.

Wm. B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 82-35145 Filed 12-27-82; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[SW-10-FRL 2272-2]

Hazardous Waste Management Program; Washington Application for Interim Authorization, Phase I and Phase II Components A and B

Correction

FR Doc. 82-34701 was published on page 57022 in the issue of Wednesday, December 22, 1982. It announced a public hearing and comment period. It was incorrectly published as a Rule document and should have appeared in the Proposed Rules section of the **Federal Register.**

BILLING CODE 1505-01-M

40 CFR Part 610

[AMS-FRL-2231-6]

Amendment and Clarification of the Test Procedures and Evaluation Criteria for Fuel Economy Retrofit Devices

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: To eliminate the present confusion regarding the Agency's authority to test fuel additives as part of its retrofit device evaluation program, this rulemaking proposes that the definition of "retrofit devise" in EPA's fuel economy retrofit device evaluation regulations, 40 CFR Part 610, be revised to include fuel additives and thereby make it consistent with the provisions of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2011. This rulemaking also proposes to revise the definition of a "manufacturer" so that the Agency can more efficiently administer the retrofit device evaluation program. Finally, this rulemaking proposes to require the Administrator to notify manufacturers when it intends to test their fuel economy retrofit device, and to afford them the right to comment on the test design and to observe the test sessions. This formally guarantees certain rights to manufacturers which heretofore had been courteously granted by the Agency as common practice during its evaluation programs.

DATES: Comments must be submitted on or before February 28, 1983.

ADDRESS: Comments should be submitted to: U.S. Environmental Protection Agency, Central Docket Section (A-130), Gallery 1, West Tower Lobby, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460, ATTN: Docket No. A-82-01.

FOR FURTHER INFORMATION CONTACT: Merrill W. Korth, Test and Evaluation Branch, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (313) 668-4299.

SUPPLEMENTARY INFORMATION: Since publication of the fuel economy retrofit device regulations, 40 CFR Part 610, 44 FR 17946 (March 23, 1979), EPA has evaluated over 30 fuel econmy retrofit devices. The devices generally have been mechanical and/or electrical in design. Recently, however, EPA has been receiving requests to evaluate fuel additives as part of the retrofit device evaluation program. EPA considered it appropriate to evaluate fuel additives under the program because; (1) Section 511 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2011, (hereafter referred to as "MVICSA") includes fuel additives within the definition of "retrofit device", (2) MVICSA requires EPA to evaluate retrofit devices to determine their effect on fuel economy and emissions of air pollutants, (3) EPA has test procedures in place for evaluating regulated exhaust emissions and fuel economy, and (4) EPA has been interpreting the regulations to mean that fuel additives are included within the definition of retrofit device. For these reasons, EPA has evaluated and tested a number of fuel additives.

During its evaluation of fuel additives under its retrofit device testing program, EPA has found three areas of the existing fuel economy retrofit device regulations which require amendment and/or clarification. First, the preamble to the existing regulations states:

> Although fuel additives are also included in this definition (referring to retrofit devices), EPA has not yet developed test protocols for fuel additives, therefor, these rules will not apply to fuel additives. Fuel additive protocols used in this program are being developed as a part of EPA's responsibility to evaluate the emissions impact of fuel additives under Section 211 of the Clean Air Act, 42 U.S.C. 7545 ("The Act")[1] and will be published in a future rulemaking (44 FR 17946, March 23, 1979).

Some manufacturers of fuel additives have interpreted this to mean that EPA had not established test procedures for regulated emissions and fuel economy and that these procedures were being developed under Section 211 of the Act.

A second area caused further confusion in that the preamble includes fuel additives as retrofit devices while the regulatory definition does not. Because of the regulatory definition of retrofit device, and the interpretation of the preamble, some manufacturers have questioned the legality of EPA's evaluating and testing of fuel additives.

The Agency has always considered fuel additives to be included within the definition of retrofit device. In developing the current retrofit device regulations, the Agency intended to include the identical definition of retrofit devices as contained within the MVICSA. However, because certain language was inadvertently omitted from the regulatory definition, fuel additives were not included within the definition of a retrofit device. EPA proposes to change the regulatory definition to specifically include fuel additives. In doing so, the regulatory definition will correspond to the MVICSA definition.

In addition, EPA intended that the preamble contrast the different purposes of the testing of fuel additives under the MVICSA with the testing of fuels and fuel additives under Section 211 of the Act, 42 U.S.C. 7545. Because this relationship was not adequately stated, the Agency would like to make this relationship clear.

(1) For the purposes of the MVICSA, the Agency intends to evaluate and test fuel additives as part of its retrofit device evaluation program to determine the effects of fuel additives on fuel economy and emissions. The Agency has test procedures in place which it believes are appropriate for measuring the effect of fuel additives on regulated emissions and fuel economy. These are the same test procedures that have been used for several years for the new vehicle certification and fuel economy programs and also for evaluations of other retrofit devices. Because the Agency believes these procedures are also appropriate for fuel additives, this proposal would make them applicable to the evaluation of fuel additives. Further, in accordance with 40 CFR 610.31(c), EPA will modify these test procedures, as needed, so that a technically correct evaluation of a particular fuel additive can be performed. Comments are specifically solicited on whether these protocols are appropriate for testing and evaluating fuel additives.

(2) For the purposes of Section 211 of the Act, 42 U.S.C. 7545, the Agency has not yet developed test protocols for determining the health effects of fuel additives. It should be emphasized that the fuel economy and emission testing of a fuel additive under the MVICSA would in no way fulfill the responsibility of the manufacturer to perform any health effects tests required by any regulations issued in the future under Section 211 of the Act.

(3) Test procedures and protocols for health effects are being developed under Section 211 of the Act, 42 U.S.C. 7545, and will be published in a later rulemaking.

The third area of the regulations requiring amendment and clarification is the definition of a "manufacturer" as it applies to retrofit devices. The current

[1] Section 211 of the Act directs EPA to regulate fuels and fuel additives. Section 211(b)(2) directs the Administrator to require manufacturers of fuels and fuel additives to conduct tests to determine potential public health effects. Additionally, it provides that such tests shall be conducted in conformity with test procedures and protocols established by the Administrator. These test procedures for determining health effects caused by fuels and fuel additives have not yet been developed.

regulation, 40 CFR Part 610.11(a)(8), defines a manufacturer as "a person or company who is engaged in the business of manufacturing, distributing, or selling retrofit devices for which a fuel economy improvement claim is made." Further, 40 CFR 610.12 states that a retrofit device evaluation program will be initiated by either the Federal Trade Commission, the EPA Administrator, or upon the application of any manufacturer of a retrofit device. Together, these two sections allow distributors and other persons selling a retrofit device to make application for an EPA evaluation of that device. In some instances, this has resulted in two or more individuals applying for an EPA evaluation of the same retrofit device. The multiple applications have led to confusion, delays, and additional paperwork. Moreover, one manufacturer (who actually produces or assembles the device) has protested that the MVICSA does not provide for the initiation of an evaluation by distributors or dealers (and perhaps even competitors) of the device, i.e., that the manufacturer (one who actually produces or assembles the device) is the only person outside the government who can initiate a device evaluation.

To remedy these problems, this rulemaking proposes to narrow the current regulatory definition by defining a "manufacturer" as one who actually produces or assembles a retrofit device. Therefore, distributors, dealers, and anyone else connected with a device will be precluded from initiating an evaluation unless authorized by the manufacturer. EPA does not expect this change to have a significant impact on distributors and dealers because few applications for evaluation have been made by distributors and dealers and in those instances the application was generally with the consent of the manufacturer.

Finally, this rulemaking proposes to formally assure manufacturers of fuel economy retrofit devices certain rights which until now have been courteously granted, as common practice, by the Agency during its evaluation programs. Specifically, this rulemaking proposes that the Administrator be required to make a reasonable effort to notify manufacturers when the Agency intends to test their devices, to afford them the opportunity to comment on specific test designs, and to attend the test sessions. By guaranteeing these rights, the Agency hopes that more manufacturers will be encouraged to participate in the Agency's testing of their device, early in the test program to resolve minor differences in opinion regarding test designs and thereby improving the evaluation program.

Administrative Designation

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 will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, or government agencies, or significant adverse effects on competition, employment, investment, productivity, or innovation.

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

Effect on Small Entities

I certify that this action will not have a significant economic impact on a substantial number of small entities. Thus, the Agency has not prepared an analysis under the Regulatory Flexibility Act.

Reporting and Recordkeeping Requirements

This rule creates no new reporting or recordkeeping requirements. It merely clarifies that fuel additives can be tested under the fuel economy retrofit program and makes no change to the existing reporting and recordkeeping requirements.

Availability of Documents

Copies of material relevant to this relemaking are located in Public Docket No. A–82–01, at the U.S. Environmental Protection Agency, Central Docket Section (A–130), Gallery 1, West Tower Lobby, Waterside Mall, 401 M Street SW., Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 4 p.m., Monday through Friday. A reasonable fee may be charged for copying services.

List of Subjects in 40 CFR Part 610

Fuel Economy, Gasoline, Motor Vehicles.

(15 U.S.C. 2011)

Dated: December 20, 1982.

Anne M. Gorsuch,

Administrator.

PART 610—[AMENDED]

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR Part 610 as follows:

1. The authority citation for Part 61 reads as follows:

Authority: Sec. 511, Motor Vehicle Information and Cost Savings Act as amended (Sec. 301. Pub. L. 94–163, 89 Stat. 915, (15 U.S.C. 2011)).

2. In § 610.11, paragraphs (a)(1), (a)(1)(i), (a)(1)(ii), and (a)(4) are proposed to be revised to read as follows:

§ 610.11 Definitions.

(a) * * *

(1) "Retrofit device" or "device" means any component, equipment, or other device, (except flow measuring instruments or other driving aids) or fuel additive or substance:

(i) Which is designed to be installed in or on an automobile as an addition to, as a replacement for, or through alteration or modification of, any original component, equipment, or other devices, or which is to be added directly to the fuel supply of an automobile by means other than service station fuel dispenser pumps; and

(ii) Which any manufacturer, dealer, or distributor of such device represents will provide higher fuel economy than would have resulted with the automobile as originally equipped, as determined under rules of the Administrator.

* * * * *

(4) "Manufacturer" means a person or company which is engaged in the business of producing or assembling a retrofit device for which a fuel economy improvement claim is made.

* * * * *

3. In § 610.30, it is proposed that paragraph (d) be added as follows:

§ 610.30 General.

* * * * *

(d) For each device the Agency intends to test, the Administrator will make a reasonable effort to give to the manufacturer prior notice of the Agency's intent to test the device, and to provide the manufacturer the opportunity to comment on the specific test design and to attend the test sessions.

[FR Doc. 82–35149 Filed 12–27–82; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 47, No. 249
Tuesday, December 28, 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.

CIVIL AERONAUTICS BOARD

[Docket No. 41163]

Newark-London Back-Up Case; Postponement of Prehearing Conference

Notice is hereby given that at the request of People Express Airlines, Inc., the prehearing conference in the above-titled matter assigned to be held on December 29, 1982 is postponed of January 4, 1983 at 10:00 a.m. (local time), in Room 1012 Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C.

Dated at Washington, D.C., December 21, 1982.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 82-35137 Filed 12-27-82; 8:45 am]

BILLING CODE 6320-01-M

Fitness Determination of PEE DEE Air Express, Inc. d.b.a. Trans Southern Airways

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 82-12-102, Order to Show Cause.

SUMMARY: The Board is proposing to find that PEE DEE Air Express, Inc. d/b/a Trans Southern Airways is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform applicable safety standards. The complete text of the order is available, as noted below.

DATE: Responses: All interested persons wishing to respond to the board's tentative fitness determination shall serve their responses on all persons listed below no later than January 7, 1983, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESS: Responses or additional data should be filed with the Special Authories Divisions, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A to Order 82-12-102.

FOR FURTHER INFORMATION CONTACT: Mrs. Ava Kleinman, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5345.

SUPPLEMENTARY INFORMATION: The complete text of Order 82-12-102 is available from the Distritution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 82-12-102 to that address.

By the Civil Aeronautics Board: December 21, 1982.

Phyllis T. Kaylor,

Secretary

[FR Doc. 82-35136 Filed 12-27-82; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

Alabama Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 11:00a and will end at 2:30p, on January 26, 1983, at The Madison, Fountain Room C, 120 Madison Avenue, Montgomery, Alabama 36104. The purpose of this meeting is to report, plan and implement selected Advisory Committee projects.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Ms. Abigail Turner, P.O. Box 2963, Mobile, Alabama 36601, (205) 433-7409; or the Southern Regional Office, Citizens Trust Bank Building, Room 362, 75 Piedmont Avenue, N.E., Atlanta, Georgia 30303, (404) 242-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 22, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-35097 Filed 12-27-82; 8:45 am]

BILLING CODE 6335-01-M

South Carolina Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 1:00p and will end at 3:30p, on January 19, 1983, at The Gressette Senate Office Building, Room 201, State Capitol Complex, Columbia SC 29201. The purpose of this meeting is to discuss proposal for study on utilization of Chapter 2 educational block grant funds (plan implementation of project), report on Commission funding, and discuss program plans for FY 83.

Persons desiring additional information or planning a presentation to the Committee should contact the Chairperson, Dr. Oscar P. Butler, Jr., P.O. Box 1705, South Carolina State College, Orangeburg, SC 29117, (803) 536-7040; or the Southern Regional Office, Citizens Trust Bank Building, Room 362, 75 Piedmont Avenue, N.E., Atlanta, Georgia 30303, (404) 242-4391.

The meeting wil be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 22, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-35098 Filed 12-27-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Toshiba Ampex Company, Ltd.; Order

The Office of Export Enforcement, United States Department of Commerce, initiated administrative proceedings pursuant to Section 11(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2401, *et seq.*) (Supp. III 1979) (the "Act") and Part 388, of the Export Administration Regulations (15 CFR Part 368, *et seq.* (1981)) (the "Regulations")

against Toshiba Ampex Company, Ltd. ("TOAMCO"), by issuing a Charging Letter alleging that, in the year 1976, TOAMCO violated §§ 387.2 and 387.4 of the Regulations.

The Department and TOAMCO have entered into a Consent Agreement whereby each party has agreed to settle this matter: (1) By a denial to TOAMCO of all export privileges, subject to certain exceptions, for a period ending three months from the date of this order, (2) by a further denial to TOAMCO of the privilege of participating in any transaction which requires a validated export license or reexport authorization, subject to certain exceptions, for a period ending one year from the date of this order, (3) by payment of a civil penalty by TOAMCO in the amount of $6,000, and (4) by undertaking certain corrective measures to ensure compliance with the Regulations.

The Hearing Commissioner approves the Consent Agreement.

It is therefore ordered

First. TOAMCO is denied export privileges, pursuant to Section 11(c)(2) of the Act, as follows:

A. For a period ending three months from the date of this Order, TOAMCO is denied all export privileges, except as authorized by Paragraph 1 of the Consent Agreement.

B. For a period ending one year from the date of this Order, TOAMCO is denied all privileges of participating, directly or indirectly, in any transaction which requires a validated export license or reexport authorization, except as authorized by Paragraph 1 of the Consent Agreement.

C. The last nine months of the denial period set forth in Paragraph B. above is suspended pursuant to § 388.16(c) of the Regulations, to be waived at the end of this period, provided TOAMCO has committed no violation of the Act, the Regulations, or this Order.

Second. TOAMCO is assessed a civil penalty, pursuant to Section 11(c)(1) of the Act, in the amount of $6,000 to be paid withing 20 days of the service of this Order, in the manner specified in the attached instructions.

Third. Within six months after the date of this Order, TOAMCO shall submit a written report to the Director, Office of Export Enforcement, setting forth in detail the steps TOAMCO has taken to implement the corrective measures specified in the Consent Agreement with respect to continuing operations. Because a copy of such report and accompanying documents may be available for public inspection and copying, TOAMCO may submit, for such public inspection, a duplicate of this report, marked "Public Inspection Copy," and may edit this copy to delete information that would be properly exempt from public disclosure under 5 U.S.C. 552.

Fourth. The Charging Letter, the Consent Agreement and this Order shall be made available for public inspection pursuant to Section 388.20(c) of the Regulations.

This Order is effective immediately.

Dated: December 17, 1982.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 82-35101 Filed 12-27-82; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

[Docket No. 21206-243]

Proposed Federal Information Processing Standard for Codes for Identification of Hydrologic Units in United States and the Caribbean Outlying Areas

Under the provisions of Public Law 89-306 and Executive Order 11717, the Secretary of Commerce is authorized to establish uniform Federal automatic data processing (ADP) standards. A proposed standard for coding and identification of hydrologic units is being recommended for Federal use. It represents Federal adoption of a data standard developed by the U.S. Geological Survey in cooperation with the U.S. Water Resources Council.

Prior to the submission of this proposal to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

The proposed Federal Information Processing Standard (FIPS) contains two parts: (1) An announcement part which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) the specifications which adopt the set of codes for identification of hydrologic units published in *Geological Survey Circular 878-A* by the U.S. Geological Survey. Only the announcement is provided in this notice.

Interested parties may obtain copies of the specifications from and submit comments in writing to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, ATTENTION: Proposed FIPS for Hydrologic Units. To be considered, comments on this proposed standard must be received on or before March 28, 1983.

Written comments received in response to this notice plus written comments obtained from Federal departments and independent agencies will be made part of the public record and will be available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Main Commerce Building, 14th Street between Constitution Avenue and E Street, N.W., Washington, D.C. 20230.

Persons desiring further information about the proposed FIPS for Hydrologic Units may contact Mr. Roy G. Saltman, Data Element and Representation Standards Program, Data Management and Programming Languages Division, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, telephone: 301/921-3491.

Dated: December 22, 1982.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication

1982 (Month) (Day)

Announcing the Standard for Codes for the Identification of Hydrologic Units in the United States and the Caribbean Outlying Areas

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards in accordance with section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315), dated May 11, 1973, and Part 6 of Title 15 Code of Federal Regulations.

1. *Name of Standard:* Codes for the Identification of Hydrologic Units in the United States and the Caribbean Outlying Areas, (FIPS PUB——).

2. *Category of Standard:* Federal General Data Standard, Representations and Codes: Earth Science Series.

3. *Explanation:* This standard adopts the set of codes used to identify hydrologic units published in *Geological Survey Circular 878-A*. These codes identify a hydrologic system that divides the United States and Caribbean outlying areas into 21 major regions. These regions are further subdivided into approximately 2150 units that delineate river basins having drainage areas usually greater than 700 square miles. The codes provide a standardized base for use by water-resources organizations in the storage, retrieval, and exchange of hydrologic data; the indexing and inventorying of hydrologic data and information; the cataloging of water-data acquisition activities; and a variety of other applications.

This data standard is one of a series developed under the leadership of the U.S. Geological Survey for use in automated earth-science systems. Earth sciences include

geology, topography, geography, and hydrology, and are concerned with the material and morphology of the Earth and physical forces relating to the Earth.

4. *Approving Authority:* The Secretary of Commerce.

5. *Maintenance Agency:* U.S. Geological Survey, Water Resources Division, Office of Water Data Coordination, 417 National Center, Reston, VA 22092. Questions concerning the list of entities and codes should be addressed to the Office of Water Data Coordination, which will make all necessary amendments to the standard. The Geological Survey has assumed the leadership in developing and maintaining earth-science data element and representation standards under the terms of a Memorandum of Understanding signed in February 1980 by the National Bureau of Standards of the Department of Commerce and the Geological Survey, a bureau of the Department of the Interior.

The Maintenance Agency is responsible for the content of the standard and will provide the National Bureau of Standards with information on adopted changes. Change notices to the standard will be issued by the National Bureau of Standards. Users of the standard who need to be notified of changes may complete the change request form included in this publication and return the form to the address indicated.

6. *Cross Index:* None.

7. *Applicability:* This Federal general data element and representation standard is made available for data interchange among executive departments and independent agencies and for Federal data interchange with the non-Federal sector including industry, State, local, and other governments, and the public at large.

8. *Implementation Schedule:* This standard becomes effective upon publication in the **Federal Register** of an announcement by the National Bureau of Standards of approval by the Secretary of Commerce. Use by Federal agencies is encouraged when such use contributes to operational benefits, efficiency, or economy.

9. *Specifications:* This standard adopts U.S. Geological Survey Circular 878–A, *Codes for the Identification of Hydrologic Units in the United States and the Caribbean Outlying Areas,* July, 1981, Reston, VA, except for cataloging units 21030001 (Panama Canal Zone) and 21030003 (Roncador and Serrana Banks), which are deleted.

10. *Where To Obtain Copies of the Standard:* Copies of this publication and the associated specifications are available for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication —— (FIPS PUB ——) and title. If microfiche is desired, this should be specified.

Inquiries concerning the FIPS data element standards program may be directed to the Program Manager, Data Element and Representation Standards, National Bureau of Standards, Washington, D.C. 20234; telephone (301) 921–3491.

[FR Doc. 82–35088 Filed 12–27–82; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Halibut Moratorium; Public Hearings

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

ACTION: Public Hearings.

SUMMARY: The North Pacific Fishery Management Council (Council) and the National Marine Fisheries Service, Alaska Region, will hold public hearings on a proposed moratorium on participation in the Alaska halibut fishery. These will be the first three in a series of proposed hearings.

DATES AND LOCATIONS: The first hearing will be held in Juneau, Alaska, from 1:00 p.m. to 7:00 p.m. on Friday, January 7, 1983, in the Gastineau Room of the Baranof Hotel. The second hearing will be held in Petersburg, Alaska, from 1:00 p.m. to 7:00 p.m. on Saturday, January 8, 1983, in the City Council Chambers, Municipal Building. The third hearing will be held in Ketchikan, Alaska, from 3:30 p.m. to 7:00 p.m. on Sunday, January 9, 1982, in the Conference Room 207, State Office Building, 415 Main Street. Additional hearings planned for Seattle and Kodiak will be announced at a later date. Winter travel in Alaska is sometimes difficult, making it necessary to consider alternative hearing locations and times. Cancellations and new locations, if necessary, will be publicized locally by telephone, radio, newspaper, and television.

FOR FURTHER INFORMATION CONTACT: Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 3136 DDT (605 West Fourth Avenue, Room 166), Anchorage, Alaska 99510; telephone (907) 274–4563.

SUPPLEMENTARY INFORMATION: The proposed rule which is currently under Administration review would impose a moratorium on the entry of certain fishermen into the halibut fishery in waters under U.S. jurisdiction in the North Pacific Ocean International Pacific Halibut Commission (IPHC management area 2C and 3) and that part of the Bering Sea and Aleutians south of 56°N Latitude (IPHC management area 4). As currently written, the proposed rule would forbid any person to harvest and sell halibut for commercial purposes from May 1, 1983, through December 31, 1985, who had not lawfully harvested and sold halibut from those waters between January 1, 1978, and December 31, 1982. This action is deemed necessary by the Council to prevent a surge of new participation in the fishery in hopes of obtaining rights under a limited entry system currently under Council consideration.

Dated: December 22, 1983.

Joe P. Clem

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 82–35141 Filed 12–27–82; 8:45 am]

BILLING CODE 3510–22–M

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35)

Agency: International Trade Administration

Title: Trade Opportunity Program (TOP) Registration Form

Form Number(s): Agency–ITA–427P; OMB—0625–0046

Type of Request: Extension

Burden: (9,000 respondents; 2,250 reporting hours

Needs and uses: Companies subscribe to the TOP Notice Service of Bulletin Service which enables a company to receive Trade opportunities according to its overseas interest. The form is used for registration purposes and it allows subscribers to select the specific trade opportunities information suited to their needs.

Affected public: U.S. manufactures that subscribe to the TOP Notice Service or Bulletin Service

Frequency: On occasion

Respondent's obligation: Voluntary

OMB Desk Officer: Ken Allen, 395–3785.

Agency: International Trade Administration

Title: Titanium Sponge and Ingot

Form Number(s): Agency—ITA–0945;' OMB—None

Type of Request: New

Burden: 20 respondents; 20 reporting hours

Needs and uses: The Federal Emergency Management Agency needs capacity data for national stockpiling planning and industry planning. The Department of Defense will use the data for continuing mobilization planning programs.

Affected public: Producers of Titanium Spronge and Ingot

Frequency: Nonrecurring

Respondent's obligation: Mandatory

OMB Desk Officer: Ken Allen, 395–3785.

Agency: International Trade Administration

Title: Reports of Requests for Restricitive Trade Practice or Boycott—Single for Multiple Transaction

Form Number(s): Agency—ITA–621P, 6051P, 6051P-a; OMB—0625–0036

Type of Request: Extension
Burden: 1,700 respondents; 35,250 reporting hours
Needs and uses: In order to enable the Department to enforce compliance with the antiboycott law, records are to be retained and certain reports must be filed. These requirements permit the Department to monitor boycott requests.
Affected public: Any U.S. industry or person which receives a request to take any action having the effect of furthering or supporting an restrictive trade practice or boycott.
Frequency: Quarterly
Respondent's obligation: Mandatory
OMB Desk Officer: Ken Allen, 395–3785.

Agency: Minority Business Development Agency
Title: MBDA Business Development Report
Form Number(s): Agency—MBDA–115; OMB—0640–0005
Type of Request: Revision
Burden: 100 respondents; 10,000 reporting hours
Needs and uses: The Business Development Report collects statistical information on clients assisted by each Minority Business Development Center. The information is used to evaluate the performance of each reporting organization.
Affected public: MBDA Minority Business Development Centers report this collection each quarter.
Frequency: Quarterly
Respondent's obligation: Required to obtain or retain benefit
OMBN Desk Officer: Tim Sprehe, 395–4814.

Agency: National Oceanic and Atmospheric Administration
Title: Interim Capital Construction Fund Family of Forms (merge of Interim Capital Construction Agreement and Certificate of Construction/Reconstruction)
Form Number(s): Agency—NOAA–88–14; OMB—0640–0090 and 0648–0091
Type of Request: Revision
Burden: 500 respondents; 2,250 reporting hours
Needs and uses: Information is used to establish eligibility of applicant for financial assistance benefits, to formalize the Agreement controlling the applicant's objectives and use of funds, and to certify completion of the Agreement's objectives.
Affected public: U.S. Fishermen applying for benefits under this program
Frequency: On occasion
Respondent's obligation: Required to obtain or retain benefit
OMB Desk Officer: Ken Allen, 395–3785.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Edward Michals,
Departmental Clearance Officer.

[FR Doc. 82-35090 Filed 12-27-82; 8:45 am]
BILLING CODE 3510-CW-M

Announcement of Public Availability of Report on Closed Meeting of Advisory Committees

AGENCY: Department of Commerce.

ACTION: Announcing Public Availability of Report on Closed Meetings of Advisory Committees.

SUMMARY: The Department of Commerce has prepared its report on the activities of closed or partially-closed meetings of advisory committees, as required by the Federal Advisory Committee Act and Office of Management and Budget Circular A–63 of March 1974.

ADDRESSES: Copies of the reports have been filed and are available for public inspection at two locations:

Library of Congress, Newspaper and Current Periodicals Reading Room, Room 1026, John Adams Building, 2nd and Independence Avenue, S.E. Washington, D.C. 20540.

Department of Commerce, Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 377–4217, Attention Mrs. G. LeBoo or Mr. A. Pinkney.

SUPPLEMENTARY INFORMATION: The reports cover the closed and partially-closed meetings held in 1981 for 30 Department of Commerce advisory committees and several subcommittees, the names of which are listed below.

Committee (Subcommittee)

Advisory Committee on East-West Trade
Committee of Chairmen of the Industry Secor Advisory Committee (ISAC) for Trade Policy Matters (TPM)
Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee
Computer Systems Technical Advisory Committee
—Hardware Subcommittee
Electronic Instrumentation Technical Advisory Committee
Industry Functional Advisory Committee on Customs Valuations for Trade Policy Matters
Industry Functional Advisory committee on Standards for Trade Policy Matters
ISAC on Aerospace Equipment for TPM
ISAC on Capital Goods for TPM
ISAC on Chemical and Allied Products for TPM
ISAC on Consumer Goods for TPM
ISAC on Electronics and Instrumentation for TPM
ISAC on Ferrous Ores and Metals for TPM
ISAC on Footwear, Leather, and Leather Products for TPM
ISAC on Industrial and Construction Materials and Supplies for TPM
ISAC on Lumber and Wood Products for TPM
ISAC on Nonferrous Ores and Metals for TPM
ISAC on Paper and Paper Products for TPM
ISAC on Services for TPM
ISAC on Smalll and Minority Business for TPM
ISAC on Textiles and Apparel for TPM
ISAC on Transportation, Construction, and Agricultural Equipment for TPM
ISAC on Wholesaling and Retailing for TPM
National Advisory Committee on Oceans and Atmosphere
New England Fishery Management Council
Numerically Controlled Machine Tool Technical Advisory Committee
Pacific Fishery Management Council
Semiconductor Technical Advisory Committee
—Discrete Semiconductor Device Subcommittee
—Microcircuit Subcommittee
—Semiconductor Manufacturing Materials and Equipment Subcommittee
Telecommunications Equipment Technical Advisory Committee
—Switching Subcommittee
Western Pacific Fishery Management Council

At the end of the year the Department of Commerce had 45 other advisory committees which did not hold any closed or partially-closed meetings during the reporting period.

FOR FURTHER INFORMATIN CONTACT: Mrs. Yvonne Barnes, Committee Management Analyst, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377–4217.

Dated: December 3, 1982

Marilyn S. McLennan
Chief, Information Policy and Management Division, Office of Information Management.

[FR Doc. 82-35089 Filed 12-27-82; 8:45 am]
BILLING CODE 3510-CW-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Intent To Impose Controls on Imports of Cotton, Wool, and Man-Made Fiber Textiles and Apparel from the People's Republic of China

The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of September 17, 1980, as amended, between the Governments of the United States and the People's Republic of China is scheduled to expire on December 31, 1982. Negotiations have been held in an effort to reach a new agreement. To date, no new agreement has been reached; however, negotiations are expected to continue in an attempt to conclude a mutually acceptable agreement.

The purpose of this notice is to advise the public that, if no mutually satisfactory solution is reached by January 15, 1983, the United States Government will take further action under Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), to control imports of cotton, wool, and man-made fiber textile products from the People's Republic of China, effective on January 1, 1983.

In order to carry out the Arrangement Regarding International Trade in Textiles, the MFA, Section 204 authorizes regulation of textiles and textile products from non-signatories to the MFA. These import controls are deemed necessary to avoid frustration of the purposes of the MFA, under which the textile trade of signatory countries is controlled.

In addition, Article 8 of the MFA requires the United States, as a participating country, to ensure that trade in textiles and textile products from MFA member countries is not more severely restrained than trade in similar goods from non-participating countries which are causing or threatening market disruption.

For the above reasons, it has been determined that, should no arrangement be reached by January 15, 1983, the categories listed below should be controlled, effective as of January 1, 1983, for the merchandise exported during the periods indicated below, produced or manufactured in the People's Republic of China, at the following levels.

Category	Limit	Time period (Jan. 1 to Dec. 31, 1983)
315	[1]92,500,000	
331	[2]3,382,165	
334	[3]192,000	
335	[3]265,000	
338	[3]601,929	
338 pt	[3]338,351	
339	[3]865,280	
340	[3]584,064	
341	[3]443,456	
342	[3]94,744	
347/348	[3]1,414,672	
445/446	[3]252,500	
448	[3]13,060	
631	[2]433,879	
645/646	[3]583,495	
649	[3]485,618	

[1] Square yards.
[2] Dozen pairs.
[3] Dozen.

The levels for Categories 335, 342, 445/446, and 645/646 may be adjusted for swing available from other categories under unilateral restraint up to the amounts specified, upon request by the Government of the People's Republic of China. The amount available for Category 335 is 18,550 dozen; for Category 342, 4,737 dozen; for Category 445/446, 12/625 dozen; and for 645/646, 35,010 dozen.

Category	Limit (dozen)	Time period (July 30, 1982 to July 29, 1983)
337	717,382	
640	944,132	
641	759,996	
648	833,162	

Category	Limit (dozen)	Time period (Nov. 26, 1982 to Nov. 25, 1983)
333	41,538	
345	59,448	
443	7,271	
635	331,690	

Category	Limit (Oct. 20, 1982 to Jan. 17, 1983)	Time period (Jan. 18, 1983 to Jan. 17, 1984)
351	[1]79,416	[1]244,468
363	[2]4,682,449	[2]14,718,906
634	[1]103,429	[1]318,905
647	[1]195,671	[1]623,720

[1] Dozen.
[2] Numbers.

Category	Limit (Dec. 1, 1982 to Feb. 28, 1983)	Time period (Mar. 1, 1983 to Feb. 29, 1984)
350	[1]24,586	[1]74,547
447	[1]20,634	[1]53,599

[1] Dozen.

Walter C. Lenahan,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-35156 Filed 12-27-82; 8:45 am]
BILLING CODE 3510-25-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 81-1]

1980 Cable Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.
ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Eddie W. Ray, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Rm. 450, Washington, D.C. 20036, 202-653-5175.

SUPPLEMENTARY INFORMATION: 17 USC 111(d)(4) authorizes the Copyright Royalty Tribunal (Tribunal) to distribute royalty fees paid by cable systems to certain copyright owners who have filed claims with the Tribunal. The procedures for distribution of the cable royalty fees are set forth at 17 USC 111(d)(5).

The Tribunal on March 2, 1982 (47 FR 8808) issued public notice declaring the existence of a controversy concerning the distribution among copyright owners of cable royalty fees paid by cable systems for secondary transmission during 1980 pursuant to 17 U.S.C. 111(d)(5)(B). In accordance with the conduct of the 1978 and 1979 proceedings, the Tribunal resolved that the distribution proceeding would be conducted in two phases. Phase I would determine the allocation of cable royalties to specific groups of claimants. Phase II would allocate cable royalties to individual claimants within each group.

In order to permit the Tribunal to proceed to Phase II of this proceeding, the Tribunal is publishing this summary statement of its Phase I determinations. In accordance with 17 U.S.C. 803(b), a full and complete statement of the Tribunal's conclusions of law, findings of fact, and other relevant determinations will be included in the Tribunal's final determination. Final distribution of cable royalties to claimants will be made at the conclusion of this proceeding. This notice does not constitute a "final determination" pursuant to 17 U.S.C. 803(b) of a "final decision" under 17 U.S.C. 80(e) and 17 U.S.C. 810.

The Tribunal, in its final determination, will provide for the following allocation to categories of the specified percentage of the sum available for distribution:

1. Motion Picture Association of America and other program syndicators including claimants for programs syndicated by commercial television—70%.
2. Joint Sports Claimants—15%.

3. Public Broadcasting Service (for all purposes)—5.25%.
4. U.S. Television Broadcasters—4.25%.
5. Music Performing Rights Societies—4.50%.
6. Canadian Claimants (except radio)—.75%.
7. National Public Radio—.25%.
8. Devotional Claimants—0.

No award for any U.S. commercial radio claim. The award for commercial television covers all copyrightable interests, except program syndication.

In preparation for Phase II of this proceeding, the Tribunal directs that not later than January 12, 1983, each claimant category shall notify the Tribunal of any voluntary agreements for distribution of royalty fees among the claimants within a category. The Tribunal further directs that not later than January 12, 1983 any claimant desiring to present evidence during Phase II shall notify the Tribunal of such intention, and the Phase II issues to be decided.

The Tribunal directs that not later than January 18, 1983 parties shall file with the Tribunal and exchange with other parties their direct, written cases, including list of witnesses, prehearing statements, any written witness statements, and all documentary evidence.

Phase II hearings will commence at 10:00 a.m., January 25, 1983 at a location to be announced. Dates and procedures for Phase II rebuttal cases will be announced later.

Commissioner Burg dissents from the Phase I royalty allocation.

All communications on the above matters shall be addressed to Edward W. Ray, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW, Suite 450, Washington, D.C. 20036, (202) 653–5175.

Dated: December 21, 1982.

Edward W. Ray,

Chairman.

[FR Doc. 82-35130 Filed 12-27-82; 8:45 am]

BILLING CODE 1410-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board, 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 the committee: Army Science Board (ASB).

Dates of meeting: Tuesday and Wednesday, 1 & 2 February 1983.

Times: 0830–1700 hours, 1 February 1983 (Closed); 0830–1700 hours, 2 February 1983 (Closed).

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Functional Subgroup on Planning, Concepts, and Management Support will meet for classified briefings and discussions on the present Army planning system in order to analyze this system with respect to long-range planning and materiel acquisistion. This meeting will be closed to the public in accordance with Section 552(b) 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) 697–9703 or 695–3039.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 82-35140 Filed 12-27-82; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; 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 the committee: Army Science Board (ASB).

Date of meeting: Monday, January 31, 1983.

Times: 0830–1700 hours (Closed).

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Functional Subgroup Research and on New Initiatives will meet to receive classified briefings and hold discussions on developments and opportunities which will have an impact on Army research, development and acquisition.This meeting will be closed to the public in accordance with Section 552(b) 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) 697–9703 or 695–3039.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 82-35139 Filed 12-27-82; 8:45 am]

BILLING CODE 3510-08-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to 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). Each entry contains the following information: (11) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

ASVAB Validation Against Benchmark Industrial Business Occupations.

This contract is designed to validate the test performance of individuals who take the Armed Services Vocational Aptitude Battery by comparing that performance on the test to their work performance. This validation is necessary in order to provide pertinent job validity information to high school counselors who will be counseling students going into the world of work. Without this validity information, the credibility of the program will suffer greatly.

Vocational training organizations: 4,000 responses; 1,000 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and John V. Wenderoth, DOD Clearance Officer, OASD(C), DIRMS, IRAD, Room 1A658, Pentagon, Washington, D.C. 20301, telephone (202) 697–1195.

A copy of the information collection proposal may be obtained from David O. Cochran, DAAG–OPI, Room 1D667, Pentagon, Washington, D.C. 20310, telephone (202) 695–5111.

Dated: December 21, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 82-35128 Filed 12-27-82; 8:45 am]

BILLING CODE 3710-08-M

Privacy Act of 1974; Amendments to Systems of Records

AGENCY: Department of the Army, DoD.

ACTION: Addition, deletion of, and amendments to notices for systems of records.

SUMMARY: The Department of the Army proposes to add 1, delete 15, and amend 4 system notices for systems of records suject to the Privacy Act of 1974. Following identification of changes, the amended notices are set forth in their entirety below.

DATE: Actions shall be effective January 27, 1983 unless public comments are received which result in a contrary determination.

ADDRESS: Comments may be submitted to Headquarters, Department of the Army, ATTN: DAAG–AMR–S, Room 1146, Hoffman Building 1, 2641 Eisenhower Avenue, Alexandria, VA 22331.

FOR FURTHER INFORMATION CONTACT: Mrs. Dorothy Karkanen, Office of The Adjutant General, Department of the Army, at the above address; telephone: 703/325–6163

SUPPLEMENTARY INFORMATION: The Department of the Army inventory of system notices for systems of records subject to the Privacy Act of 1974 appeared in the **Federal Register** at:

FR Doc. 82–674 (47 FR 2544), January 18, 1982
FR Doc. 82–5277 (47 FR 8610), March 1, 1982
FR Doc. 82–11002 (47 FR 17324), April 22, 1982
FR Doc. 82–12993 (47 FR 20654), May 13, 1982
FR Doc. 82–16040 (47 FR 25780), June 15, 1982
FR Doc. 82–20786 (47 FR 33314), August 2, 1982
FR Doc. 82–23089 (47 FR 36880), August 24, 1982
FR Doc. 82–27594 (47 FR 44379), October 7, 1982
FR Doc. 82–30218 (47 FR 50065), November 4, 1982
FR Doc. 82–31421 (47 FR 51783), November 17, 1982

The system notice being "added" represents a consolidation of records described in 10 notices deleted herein. None of the actions requires submission of a report of a new or altered system, pursuant to 5 U.S.C., 552a(o).

M. S. Healy,
OSD Federal Register Liaison Officer, Department of Defense.
December 21, 1982.

Addition

AO901.02DASG

SYSTEM NAME:

Medical Facility Administration Records.

SYSTEM LOCATION:

Medical centers, hospitals, health clinics. Addresses are in the appendix to the Army's inventory of system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are authorized to use services of an Army medical facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system generally relates to administration at a medical facility, as opposed to an individual's health/care. Typically, records comprise birth; death; accountability of patients (e.g., bed charts, transfer, leave requests, etc.); receipts for patients' personal property; prescriptions for medications, eye glasses; hearing aids, prosthetic devices; diet/special nourishment plans; blood donor; charges, receipts and accounting documents of payments for medical/dental services; and similar records/reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By the Department of the Army to enhance efficient management practices and effective patient administration.

Birth records may be disclosed to States' Bureau of Vital Statistics; overseas birth records are disclosed to the Department of State.

Death records may be disclosed to Federal, State, and private sector authorities having legitimate need therefor.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards; paper records in file folders; microfiche.

RETRIEVABILITY:

By individual's surname or SSN.

SAFEGUARDS:

Records are maintained within secured buildings in areas accessible only to persons having official need therefor who are properly trained and screened.

RETENTION AND DISPOSAL:

Records of transient value (e.g., issuance of spectacles/prosthetics, diet/food plan, etc.) are destroyed within 3 months of patient's release. Other records have varying periods of retention as follows:

Record of birth/death: 2 years.

Patient accountability (admission/discharge): 5 years.

Blood donor: 5 years or when no longer required for medical/legal reasons, whichever is later.

Record of patient's personal property: 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information exists on them in this system should contact the commander at the medical facility where service/care was provided. Inquirer should furnish full name, SSN, details which will assist in locating record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information from this system of records should provide information in "Notification procedure".

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; medical facility reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Deletions

AO225.09aAMC

System name:

Computer Technology Files (44 FR 73780). December 17, 1979.

Reason:

Records are covered by system notice AO102.03aDAAG, Office Personnel Locator/Organizational Rosters.

AO410.04DAJA

System name:

Judicial Information Release File (44 FR 73816), December 17, 1979.

Reason:

Records are not retrieved by personal identifier.

AO810.09DAEN

System name:

Contract Training Files (44 FR 73915), December 17, 1979.

Reason:

Records are covered by OPM/GOVT–1 system of records.

AO909.01DASG

System name:

Patient Accountability Files (44 FR 73924), December 17, 1979.

Reason:

Records are consolidated in proposed system of records AO901.02DASG added in this Federal Register.

AO909.05DASG

System name:

Control Card Files (44 FR 73925), December 17, 1979.

Reason:

Records are consolidated in proposed system of records AO901.02DASG added in this Federal Register.

AO910.02DASG

System name:

Patient Trust Fund and Baggage Files (44 FR 73925), December 17, 1979.

Reason:

Records are consolidated in proposed system of records AO901.02DASG added in this Federal Register.

AO910.06DASG

System name:

Medical Services Account Files (44 FR 73925), December 17, 1979.

Reason:

Records are consolidated in proposed system of records AO901.02DASG added in this Federal Register.

AO911.05DASG

System name:

Individual Patient Diet Files (44 FR 73926), December 17, 1979.

Reason:

Records are consolidated in proposed system of records AO901.02DASG added in this Federal Register.

AO913.02DASG

System name:

Medical Prescription Files (44 FR 73928), December 17, 1979.

Reason:

Records are consolidated in proposed system of records AO901.02DASG added in this Federal Register.

AO914.05DASG

System name:

Blood donor files (44 FR 73939), December 17, 1979.

Reason:

Records are consolidated in proposed system of records AO901.02DASG added in this Federal Register.

AO915.02DASG

System name:

Patient Condition Reporting Files (44 FR 73930), December 17, 1979.

Reason:

Records are consolidated in proposed system of records AO901.02DASG added in this Federal Register.

AO917.05DASG

System name:

Spectacle Issue and Receipt Files (44 FR 73933), December 17, 1979.

Reason:

Records are consolidated in proposed system of records AO901.02DASG added in this Federal Register.

AO915.07DASG

System name:

Medical Facility Individual Reporting Files (44 FR 73931), December 17, 1979.

Reason:

Records are covered by system notice AO607.01bDAPE, Accident and Incident Case Files: Army Safety Management Information System.

AO925.04DASG

System name:

Prosthetic Case Files (44 FR 73942), December 17, 1979.

Reason:

Records are consolidated in proposed system of records AO901.02DASG added in this Federal Register.

A1501.07ADAEN

System name:

Users' Profile System (44 FR 74006), December 17, 1979.

Reason:

Records are covered in proposed amended system notice A1401.08aDAAG appearing in this Federal Register.

Amendments

AO314.24DAAG

System name:

NAF Employee Insurance Files (44 FR 73798), December 17, 1979.

Changes:

System name:

After "Insurance", insert "and Retirement".

Authority:

Delete "PL 591, 93rd Congress"; substitute therefor: "Pub. L. 95–595".

Notification procedure:

Change entry to read: "Information may be obtained from: HQDA (DAAG–NFI–B), Room 1248, Hoffman Building 1, 2461 Eisenhower Avenue, Alexandria, VA 22331; (703) 325–9730."

Contesting record procedures:

Delete entry; substitute therefor: "The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505)."

AO708.02aDAPC

System name:

Official Military Personnel file (46 FR 6469), January 21, 1981.

Changes:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Before the final paragraph, insert the following:

"Federal Emergency Management Agency: to facilitate participation of Army members in civil defense planning, training, and emergency operations pursuant to the military support of civil defense as prescribed by DOD Directive 3025.10 and Army Regulation 500–70.

"Other elements of the Federal Government pursuant to their respective authority and responsibility."

AO715.01aDAPC

System name:

Personnel Data Card (44 FR 73892), December 17, 1979.

Changes.

System name:

Insert "SIDPERS" prior to "Personnel".

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Retention and disposal:

Change "8 years" to "1 year"; change period to semi-colon and add: "they are then shipped to the National Personnel Records Center (MPR), St. Louis, MO where they are retained 74 additional years before being destroyed."

Contesting record procedures:

After "determinations", delete remainder and insert in lieu thereof: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

A1401.08aDAAG

System name:

Alphabetical Library Borrowers' File (44 FR 73999), December 17, 1979.

Changes:

System Identification:

Substitute ".07b" for ".08a".

System name:

Change title to read: "Library Borrowers/Users' Profile Files".

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefore: "By the Army to identify individuals authorized to borrow library materials; to insure that all library property is returned and individual's account is cleared; and to provide librarian useful information for selecting, ordering and meeting user requirements."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Retention and disposal:

Delete entry; substitute therefore: "Records are destroyed when no longer needed to obtain and/or control library materials."

System manager(s) and address:

After "Army", delete remainder and substitute therefor: "DAAG–LM, 2461 Eisenhower Avenue, Alexandria, VA 22331."

A0314.24DAAG

SYSTEM NAME:

Nonappropriated Fund Employee Insurance and Retirement Files.

SYSTEM LOCATION:

HQDA, The Adjutant General's Office, Club and Community Activities Management Directorate, 2461 Eisenhower Avenue, Alexandria, VA 22331.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army nonappropriate fund (NAF) employees who participate in the NAF Group Insurance and Retirement Plan.

CATEGORIES OF RECORD IN THE SYSTEM:

Monthly and cumulative insurance and retirement deductions for each NAF employee, together with employee's name and SSN.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95–595; 26 U.S.C. 401a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLIDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By the Department of the Army to substantiate initial enrollment and subsequent changes in the NAF Group Insurance and Retirement Plan; to verify monthly deductions and to compute annuities, refunds and death benefits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes/disks, microfiche, paper records.

RETRIEVABILITY:

By individual's surname within each NAF activity.

SAFEGUARDS:

Records are located in controlled areas within building having security guards; information is accessed only by individuals who are properly cleared and trained and have need therefor in the performance of official duties.

RETENTION AND DISPOSAL:

Records are permanent. They are retained in active file until individual terminates employment, retires or is deceased; held 1 additional year in inactive file, and sebquently retired to the Washington National Records Center, Suitland, MD.

SYSTEM MANAGER(S) AND ADDRESS:

The Adjutant General, Headquarters, Department of the Army, Club and Community Activities Management Directorate, 2461 Eisenhower Avenue, Alexandria, VA 22331.

NOTIFICATION PROCEDURE:

Information may be obtained from HQDA (DAAG–NGI–B), Room 1248, Hoffman Building 1, 2461 Eisenhower Avenue, Alexandria, VA., (703) 325–9730.

RECORD ACCESS PROCEDURES:

Individuals should address their request as specified in "Notification procedure" and furnish their full name, Social Security Account Number, NAF activity in which employed, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; NAF Personnel Offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0708.02aDAPC

SYSTEM NAME:

Official Military Personnel File.

SYSTEM LOCATION:

Primary: Personnel Information Systems Directorate, US Army Military Personnel Center (MILPERCEN), 200 Stovall Street, Alexandria, VA 22332.

Secondary: US Army Enlisted Records and Evaluation Center; US Army Reserve Components Personnel and Administration Center; and National Personnel Records Center, General Services Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each individual on active duty in the US Army in enlisted, appointed, or commissioned status, or in a USA or AUS retired status; each individual not on active duty who has a reserve status in an enlisted, appointed or commissioned status, or in a retired reserve status; and each individual who was an enlisted, appointed, or commissioned member of the US Army and who was completely separated by discharge, death, or other termination of his/her military status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include enlistment contract; Veterans Administration laws; physical evaluation board proceedings; military occupational specialty data; statement of service; qualification record; group life insurance election; emergency data; application for appointment; qualification/evaluation report; oath of office; medical examination; security questionnaire; application for retired pay; application for correction of military records; application for active duty; transfer or discharge report; active

duty report; voluntary reduction; line of duty and misconduct determinations; discharge or separation reviews; police record checks consent/declaration of parent/guardian; Army ROTC supplemental agreement; award recommendations; academic reports; casualty reports; US field medical card; retirement points; deferment; pre-induction processing and commissioning data; transcripts of military records; summary sheets review of conscientious objector; election of options; oath of enlistment extensions; survivor benefit plans; efficiency reports; records of proceeding, Title 10 U.S.C. section 815 appellate actions; determination of moral eligibility; waiver of disqualifications; temporary disability record; change of name; statements for enlistment; acknowledgments of service requirements; retired benefits; application for review of physical evaluation board and disability board; appointments; designations; evaluations; extensions; birth certificates; photographs; citizenship statements and status; educational constructive credit/ transcripts; flight status board reviews; assignment agreements/limitations/ wiavers/election and travel; efficiency appeals; promotion/reduction recommendations/approvals/ declinations/announcements/ notifications/reconsiderations/ worksheets/elections/letters of notification to deferred officers and promotion passover notifications; absence without leave and desertion records; FBI reports; SSA correspondence; miscellaneous correspondence, documents, and military orders relating to military service including information pertaining to dependents, inter-service action, in-service details, determinations, reliefs, component; awards, pay entitlements, releases, transfers, and other military service data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By the Department of the Army: to maintain, use, collect, and disseminate information with respect to an individual holding a military status or former military status, including regular reserve, retired, former member separated, or deceased. Information pertains to individual's former, current, and subsequent to active duty status; birth; citizenship; parentage; home of record; education; training; dependents; travel; language proficiency; former and current associations; brotherhood, memberships and related affiliations with organizations and like collective elements which service member divulges as having meaning, substance, or significance to his/her military service status; assignment history; and other related military experiences, qualifications training, preferences, restrictions, and status actions.

Department of State: to issue passport/visa/ to document persona non-grata status, attache' assignments, and related administration of personnel assigned and performing duty with the Department of State.

Department of Treasury: to issue bonds; to collect and record income taxes.

Department of Defense: to authorize and consummate interdepartmental actions relating to inter-service requirements pertaining to the Army, Navy, Air Force, and Coast Guard (when the latter is operational under DOE).

Department of Justice: to file fingerprints; to perform intelligence function.

Department of Agriculture: to coordinate matters related to its advanced education program.

Department of labor: to accomplish actions required under Federal Employees Compensation Act.

Department of Health and Human Services: to provide services authorized by medical, health, and related functions authorized by 10 U.S.C., sections 1074–1079.

Nuclear Regulatory Commission: to accomplish requirements incident to nuclear accident/incident control officer functions.

American Red Cross: to accomplish coordination and complete service functions including blood donor programs and emergency investigative support and notifications.

Civil Aeronautics Board: to accomplish flight qualifications, certification, and licensing actions.

Federal Aviation Agency: to determine rating and certification (including medical) of in-service aviators.

General Services Administration: for records storage and archival services and for printing of directories and related material which includes personal data.

US Postal Service: to accomplish postal service authorization involving postal officers and mail clerk authorizations.

Veterans Administration: to provide information relating to benefits, pensions, in-service loans, insurance, and appropriate hospital support.

Bureau of Immigration and Naturalization: to comply with statutes relating to alien registration and annual residence/location.

Office of the President of the United States of America: to exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

Federal Maritime Commission: to obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

Each of the several States, and US possessions: to support state bonus applications; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions: to accomplish student registration, tuition support, tests, and related requirements incident to in-service education programs in compliance with 10 U.S.C., Chapters 102 and 103.

Social Security Administration: to obtain or verify Social Security Account Number; to transmit Federal Insurance Compensation Act deductions from Member's wages.

Department of Transportation: to coordinate and exchange necessary information pertaining to inter-service relationships between US Coast Guard and US Army when service members perform duty with the USCG.

Civil authorities: for compliance with 10 U.S.C. 814.

Department of the Air Force: to administer personnel support for Army members assigned for duty with the Air Force.

Department of the Navy: to administer personnel support for Army members assigned for duty with the Navy or Marine Corps.

US International Communication Agency: to investigate applicants for sensitive positions pursuant to Executive Order 10450.

Federal Emergency Management Agency: to facilitate participation of Army members in civil defense planning, training, and emergency operations pursuant to the military support of civil defense as prescribed by DOD Directive 3025.10 and Army Regulation 500–70.

Other elements of the Federal Government pursuant to their respective authority and responsibility.

Record of the identity, diagnosis, prognosis, or treatment of any client/

patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 21 U.S.C. 1175 and 42 U.S.C. 4582. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. Blanket "routine uses" identified in 44 FR 72728 do not apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfiche stored randomly in electro-mechanical storage/retrieval devices. Temporary files consist of paper records in file folders; selected data automated for management purposes on tapes, disks, cards, and other computer media.

RETRIEVABILITY:

Alphabetically by surname; automated data retrieved by name, SSN, or ADP parameter; records of reserve, retired, and deceased persons retrieved by SSN terminal digit sequence.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel; automated records are further protected by authorized passwork system for access terminals, controlled access to operation locations, and controlled output distribution.

RETENTION AND DISPOSAL:

Microfiche and paper records are permanent; they are retained in active file until termination of service, held in inactive file in accordance with retention and retirement schedule and subsequently retired to the National Personnel Records Center, St Louis, MO.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, US Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

NOTIFICATION PROCEDURE:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to: Commander, US Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332; (703) 325–9606.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, US Army Enlisted Records and Evaluation Center, Ft Benjamin Harrison, IN 46249; (317) 542–3361.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to: Commander, US Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St Louis, MO 63132; (314) 268–7770.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after 30 June 1917, or enlisted members who were completely separated after 31 October 1912 should be sent to: Chief, National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St Louis, MO 63132; (314) 268–7262.

RECORD ACCESS PROCEDURES:

Written requests should contain full name of individual, service identification number, current or former military status, and appropriate return address.

Personal visits may be made to the appropriate location based on the individual's status; individual should provide commonly acceptable identification such as valid driver's license, employment identification, and verbal information relating to his/her military status.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Enlistment, appointment, or commission related forms pertaining to individual's military status; academic, training, or qualifications records acquired prior to or during military service; correspondence, forms, records, documents, and other relevant papers originating in or collected by DA staff agencies and commands, other Federal agencies, commission, boards, or authority, state and local governmental entities; civilian education and training institutions; and members of the public when such information obtained directly concerns the military service member.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0715.01aDAPC

SYSTEM NAME:

SIDPERS Personnel Data Card.

SYSTEM LOCATION:

Each active Army unit furnishing personnel and strength data to the Department of the Army.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Army members (commissioned, warrant, and enlisted).

CATEGORIES OF RECORDS IN THE SYSTEM:

DA Form 2475–2 which includes individual's name, Social Security Number, organization, unit, station, grade and pay group, bloodtype, duty assignment, duty phone, local address and phone number, name and address of next-of-kin, home of record, place of birth, awards, military occupational specialty evaluation data, and unit commander's name and grade. In addition, records include actions reported as SIDPERS change report remarks on members assigned/attached to a military unit bearing on the legal and financial rights of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301; 10 U.S.C., section 3012.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By the Department of the Army: to account for and maintain data relating to each assigned and/or attached active military person; to support the accounting of and reporting function incident to maintenance of the Officer Master File, Enlisted Master File, the Military Personnel Records Jacket, and the Official Military Personnel File; for personnel management actions and reports.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tapes and disks.

RETRIEVABILITY:

By individual's surname; SSN.

SAFEGUARDS:

Records are maintained in secured areas accessible only to authorized

personnel who are trained, cleared, and have official need for the information.

RETENTION AND DISPOSAL:

Records are retained in the reporting unit for 1 year following the date of the last entry on the personnel data card; they are than shipped to the National Personnel Records Center (MPR), St. Louis, MO where they are retained 74 additional years before being destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, US Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the reporting unit of assignment/attachment of the individual.

RECORD ACCESS PROCEDURES:

Individual should write or visit the reporting unit of assignment/attachment, furnishing name, SSN, military or other normally acceptable indentification, and details that will assist in locating the information sought.

CONTESTING RECORD PROCEDURES:

The Army's rules for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the Enlistment Record (DD Form 4), Report of Separation (DD Form 214) for reenlistees, Extension of enlistment (DA Form 1695), Special Orders issued by enlistment/reenlistment authorities, personal information furnished by the individual, documents/records/reports/forms originated within the reporting unit.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A1401.07bDAAG

SYSTEM NAME:

Library Borrowers'/Users' Profile Files.

SYSTEM LOCATION:

Libraries on Army installations/activities. Addresses are contained in the appendix to the Army's inventory of system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Authorized users of Army library facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, SSN, and telephone number of the user.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By the Army to identify individuals authorized to borrow library materials; to insure that all library property is returned and individual's account is cleared; and to provide librarian useful information for selecting, ordering, and meeting user requirements.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card files, magnetic tapes, computer printouts.

RETRIEVABILITY:

By user's surname, SSN, and/or residence.

SAFEGUARDS:

Information is maintained in areas accessible only to authorized persons who have official need therefor. Libraries are secured during non-duty hours.

RETENTION AND DISPOSAL:

Records are destroyed when no longer needed to obtain and/or control library materials.

SYSTEM MANAGER(S) AND ADDRESS:

The Adjutant General, Headquarters, Department of the Army (DAAG–LM), 2461 Eisenhower Avenue, Alexandria, VA 22331.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether this system contains information on them should inquired of the specific library that provided services, furnishing their name, period in which a user, and any other information that would assist in locating applicable records.

RECORD ACCESS PROCEDURES:

Individuals seeking access should follow the guidance in "Notification procedure".

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82–35133 Filed 12–27–82; 8:45 am]
BILLING CODE 3710–08

Office of the Secretary

Privacy Act of 1974; Publication of a Notice for a System of Records

AGENCY: Office of the Secretary of Defense.

ACTION: Publication of a system notice.

SUMMARY: The Office of the Secretary of Defense publishes a notice for a system of records subject to the Privacy Act of 1974.

DATE: This notice will become effective January 27, 1983.

ADDRESS: Send any comments to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Gilliat, Assistant General Counsel (Manpower and Health Affairs) Office of the Secretary of Defense, Room 3E–999, The Pentagon, Washington, D.C. 20301; telephone: 202/697–9341.

SUPPLEMENTARY INFORMATION: The text of the system notice is set forth below. A new system report as required by 5 U.S.C. 552a(o) was submitted on November 22, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

December 21, 1982.

DCG 06

SYSTEM NAME:

Attorney and summer intern Position Applications

SYSTEM LOCATION:

Office of the Assistant General Counsel (Manpower & Health Affairs), Office of the Secretary of Defense, Room 3E999, Pentagon, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who applies to the Office of General Counsel of DoD for an attorney position or for a summer intern position.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain copies of letters and any other documents submitted by applicants, such as resumes, SF–171s, and applicant writing samples, and also contains responses from the Office of the General Counsel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, United States Code, Section 3101.

PURPOSE(S):

To consider applicant qualifications for available positions in the Office of the General Counsel and the Defense Legal Services Agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

To consider applicant qualifications for available positions in other employing authorities in the DoD, when requested.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Documents filed chronologically in folders. Summer intern applicants filed alphabetically, with separate storage for first and second year students.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name card index indicating date in chronological file folder. Summer intern files retrievable by alphabetical file folders.

SAFEGUARDS:

Building employs security guards. Records are maintained in file cabinets to which office personnel grant access only to those with a need to know. Training and screening of office personnel regarding protection of sensitive legal files is applicable to the subject file.

RETENTION AND DISPOSAL:

Records are maintained for a one-year period. They are destroyed monthly. Summer intern applicant files are destroyed at the end of the summer.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Cousel (Manpower & Health Affairs), Office of the Secretary of Defense, Room 3E999, Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: Assistant General Counsel (Manpower & Health Affairs), Office of the Secretary of Defense, Room 3E999, Pentagon, Washington, D.C. 20301. Telephone: 202–697–9341.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to the above System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b (see also OSD Administrative Instruction Number 81).

RECORD SOURCE CATEGORIES:

Application and related forms from the individual applying for position.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82–35131 Filed 12–27–82; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation; Advisory Committee Meeting

The Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation will meet in closed session on 19 January 1983 in the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on 19 January 1983 the Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation will continue its review of the Defense Department's policies, plans and procedures which impede or might impede international arms cooperation and thereby have the potential for adversely impacting the collective security of the United States, its friends and Allies. In this context, the Task Force will also analyze the effect current international cooperation policies have on the utility of the US, its friends and Allies to achieve in good order and sustain mobilization capacities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. I, (1976)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly these meetings will be closed to the public.

Dated: December 22, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

[FR Doc. 82–35129 Filed 12–27–82; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Canadian and Mexican Natural Gas Imports; Conference

AGENCY: Economic Regulatory Adminstration, DOE.

ACTION: Notice of Conference.

SUMMARY: The Department of Energy (DOE) will hold a public conference with respect to importation of Canadian and Mexican natural gas on January 18, 1983, beginning at 10:00 a.m., e.s.t., in the auditorium, Room GE–086, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., in which all interested persons are invited to participate. The purpose of the conference is to solicit comments on various issues related to overland imported natural gas. The DOE is seeking information to define the nature and extent of concerns associated with these imports in current and future markets and how these concerns might be resolved. This conference will afford interested persons the opportunity to present their views to the DOE on these matters.

DATES: The conference will be held on January 18, 1983. Request to speak should be made by close-of-business on January 12, 1983. Written comments may be submitted in lieu of an oral presentation. These written comments will be due by close-of-business on January 18, 1983.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Room GA–007 (RG–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–9482.

James K. White (Assistant General Counsel, Natural Gas and Mineral Leasing), Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–6667.

Jack C. Vandenberg (Public Affairs), Economic Regulatory Administration, 12th & Pennsylvania Avenue, N.W., Federal Building, Room 4309, Washington, D.C. 20461 (202) 633–8108.

Background

The DOE has the responsibility under section 3 of the Natural Gas Act to authorize imports of natural gas unless it finds that such imports will not be consistent with the public interest. The DOE has decided to solicit public

comment from interested parties on the nature and extent of concerns associated with natural gas imports from Canada and Mexico and to seek views on appropriate solutions. In recent import proceedings, we have found that imported gas will be needed in the U.S. in the future as long as the price is reasonable, and we have noted the long history of reliability of our overland gas imports. We are now seeking suggestions for an approach that would permit flexible prices responsive to market forces while at the same time ensuring that the public interest is served.

As of April 1, 1981, Canadian gas imports reached a uniform border price of $4.94 per MMBtu, after five increased that more than doubled the price in less than two years. The Canadian government sets the price of its gas exports based on the price of crude oil imported into eastern Canada adjusted for certain transportation costs. The price of Mexican imports is essentially tied to the price of a group of representative crude oils or the Canadian price, whichever is higher. These imports have experienced similar price increases since gas started flowing from Mexico in 1980. (All import prices are authorized by the U.S. on a case-by-case basis.)

Accordingly to intervenors in various import proceedings, letters received from the public, their Congressional representatives, industry and consumer groups, and others, Canadian and Mexican gas may be priced higher than supply, demand and completing oil prices would permit in a free market. Furthermore, lower cost domestic gas which is now available as a result of reduced demand is often not taken, while at the same time take-or-pay requirements in most contracts for Canadian and Mexican gas may cause pipelines to take the higher cost imported gas. Although imports account for less than 5 percent of the total U.S. natural gas supply, these imports may have a substantial impact on the price of gas in certain states and regions, particularly in the Midwest, the Northwest and California.

Matters To Be Discussed at Conference

The DOE is particularly interested in responses to the following questions. Persons wishing to comment are encouraged to focus on their region, state, service area, company, association of group, or on their interest as a producer, transporter, distributor, importer or consumer of natural gas. Participation by state public utility commissions is especially welcome.

(1) What types of alternative pricing systems, as opposed to a uniform border price, would permit imported natural gas to enter the domestic system at competitive prices? How would such a system assure flexibility to serve individual markets over time?

(2) How can a market-oriented, flexible pricing system for imports be implemented? How would state energy regulatory authorities view such a system?

(3) With more flexible prices, would take-or-pay or minimum bill requirements cease to be a serious concern? If so, why? If not, how could these problems be resolved?

(4) Has the cost of Canadian and Mexican gas made it more difficult to sell gas in U.S. markets? If so, how?

(5) Is a premium price appropriate for imported gas? If so, under what conditions?

Conference Procedures

The conference will be conducted in an informal manner using a panel approach to permit participation by the various elements of the DOE and other concerned agencies. The presiding official will conduct the conference in a fashion that will facilitate the orderly presentation of interested persons' oral statements. The DOE reserves the right to select the persons to be heard at this conference, to schedule their respective statements, and to establish the procedures governing the conduct of the conference. All interested persons are encouraged to present their views: however, statements may be subject to time limitations if determined necessary by the presiding official.

Questions will be asked of persons presenting statements by members of the panel and a free dialogue between the panel and the speakers will be encouraged. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity for further comments, time permitting. The presiding official may also allow questions from the audience if time permits. Any further procedural rules needed for the proper conduct of the conference will be announced by the presiding official.

This conference will be open to the public. However, any person who wishes to be scheduled to make an oral statement at the conference should notify the Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, RG-43, Forrestal Building, 1000 Independence Avenue SW., Washington, D. C. 20585, (202 252-9482, on or before January 12, 1982. This request should indicate the person (with address and telephone number) who wishes to speak and the amount of time desired. Any person making an oral presentation should bring at least 50 copies of their statement to the conference for distribution to other attendees. Persons wishing to speak at the conference who have not scheduled time will be given an opportunity to do so if time permits.

Any person who wishes to file written comments with the DOE in lieu of an oral presentation or in addition to their oral statement must make such filing with the Director, Natural Gas Division, By January 18, 1982, at the above address. The filing should be labeled "Overland Imported Natural Gas Comments." Any submission including information or data considered confidential by the person furnishing it must be so identified on the first page of the document, one copy only. The person also should submit a copy of the document with the confidential material excluded. The DOE reserves the right to determine the confidential status of the information or data and to treat it according to our determination. All comments (with confidential material excluded) received by the DOE will be available for public inspection in the Natural Gas Division Docket Room, Room GA-007, Forrestal Building, 1000 Independence Avenue Ave. SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

A transcript of the conference will be made and will be available for public review at the Natural Gas Division Docket Room at the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on December 22, 1982.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 82-35011 Filed 12-23-82; 12:09 pm]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP83-89-000]

Algonquin Gas Transmission Co.; Application

December 21, 1982.

Take notice that on November 5, 1982, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP83-89-000 [1] an application

[1] This application was orginally submitted as *Algonquin Gas Transmission Company*, Docket Nos. CP67-303, CP69-41, and CP75-349 and as *Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company*, Docket No. CP68-238.

pursuant to Section 7(c) of the Natural Gas Act, for amendment of four of its existing certificates of public convenience and necessity issued in Docket Nos. CP67-303, CP68-238, CP69-41, and CP75-349, all as more fully described in the application which is on file with the Commission and open to public inspection.

Applicant requests clarification or in the alternative amendment of the authorizations issued in Docket Nos. CP67-303, CP69-41, CP75-349, and CP68-238, so as to authorize the past and future transportation of excess quantities of natural gas on behalf of three of its existing transportation customers, Central Hudson Gas & Electric Corporation (Central Hudson), Orange and Rockland Utilities, Inc., (Orange and Rockland), and Consolidated Edison Company of New York, Inc., (Con Ed). Applicant asserts that it intends to perform the transportation on a best-efforts basis, pursuant to Section 7 of Applicant's Rate Schedule T-1.

Applicant states that it has been advised by the Commission's staff that the existing authorizations for the subject transportation services for Central Hudson and for Orange and Rockland are narrower than the language of Rate Schedule T-1 and do not authorize best-efforts transportation of gas tendered by Texas Eastern for the account of those Rate Schedule T-1 customers. Further, Applicant states that by the same reasoning it would appear that the Rate Schedule T-1 transportation of gas supplied by Tennessee Gas Pipeline Company, a Division of Tenneco Inc., for the account of either Central Hudson or the remaining Rate Schedule T-1 customer, Con Ed, may not be covered by the existing authorizations.

Applicant states no additional facilities are required to effectuate the transportation of natural gas proposed herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (19 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35111 Filed 12-27-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6789-001]

Atkins, Callis H.; Exemption From Licensing

Issued December 22, 1982.

A notice of exemption from licensing of a small hydroelectric project known as the Advance Mills Project No. 6789, was filed on November 26, 1982, by Callis H. Atkins. The proposed hydroelectric project would have an installed capacity of 100 kW and would be located on the North Rivanna River in Albermarle County, Virginia.

Pursuant to Sections 4.109(b) and 375.308(ss) of the Commission's regulations, and subject to the terms and conditions set forth in Section 4.111 of the Commission's regulations, the Director, Office of Electric Power Regulation, issues this notification that the above project is exempted from licensing as of December 25, 1982.

Lawrence R. Anderson,

Director, Office of Electric Power Regulation.

[FR Doc. 82-35113 Filed 12-27-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5225-001]

Barrett, Harold T., Jr.; Surrender of Preliminary Permit

December 21, 1982.

Take notice that Harold T. Barrett, Jr., Permittee for the proposed Tallassee Shoals Hydropower Project No. 5225, has requested that its preliminary permit be terminated. The permit was issued on December 17, 1981, and would have expired on May 31, 1983. The project would have been located on the Middle Oconee River in Clarke and Jackson Counties, Georgia.

The Permittee filed its request on November 29, 1982, and the surrender of the preliminary permit for Project No. 5225 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35119 Filed 12-27-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE81-102-001]

Board of Public Utilities, Kansas City, Kansas; Application for Exemption

December 22, 1982.

Take notice that Kansas City Board of Public Utilities (KCB) filed an application on November 18, 1982 for exemption from certain requirements of Part 290 of the Commission's Regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act, Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or before June 30, 1984, information on the costs of providing electric service as specified in Sections 290.201(j), 290.302 (a) and (b), and 290.403(b).

In its application for exemption KCB states that it should not be required to file the specified data for the following reasons (in part):

(1) No record is kept of common utility plant and expenses.

(2) No accounting distinction is made between fixed versus variable maintenance expenses.

(3) KCB's load research program is still in the formative stages and the accuracy level specified in Section 290.403(b) will not be possible.

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official

State publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period such person must also serve a copy of such comments on: Robert L. Sadrakula, Kansas City Board of Public Utilities, 700 Minnesota Avenue, Kansas City, Kansas 66101.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35112 Filed 12-27-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE80-2-001]

Cliffs Electric Service Co.; Application for Exemption

December 22, 1982.

Take notice that Cliffs Electric Service Company (Cliffs Electric) filed an application on November 5, 1982 for exemption from certain requirements of Part 290 of the Commission's Regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act, Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or before June 30, 1984, information on the costs of providing electric service as specified in Subparts B, C, D, and E.

On April 22, 1980, the Commission issued an order (Docket No. RE80-2-000) granting Cliffs Electric an exemption from the requirements of Subparts B, C, D, and E of Part 290 of the Commission's regulations for the filings that would otherwise have been required on or before November 1, 1980 and June 30, 1982. In addition, the order stated that future applications for exemption by Cliffs Electric shall include a statement as to whether the nature of its retail service (industrial load consisting of iron mines owned or operated by applicant's parent company) is substantially the same as described in its previous application for exemption. In its current application for exemption, Cliffs Electric states that it should not be required to file the specified data since its retail service is substantially the same as described in its previous application.

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period such person must also serve a copy of such comments on: William J. Madden, Jr., Esq., Debevoise & Liberman, 1200 17th Street, NW., Washington, D.C. 20036.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35114 Filed 12-27-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-185-000]

Consumers Power Co.; Filing

December 21, 1982.

The filing Company submits the following:

Take notice that Consumers Power Company (Consumers) on December 8, 1982, tendered for filing Amendment No. 1 to the Transmission Agreement between Consumers and the Dow Chemical Company (Transmission Agreement). The Transmission Agreement became effective May 25, 1979, and was accepted for filing by letter of September 11, 1979 in FERC Docket No. ER79-556. The proposed changes would supplement and modify paragraph No. 3 of the Transmission Agreement by substituting a $0.24 per kilowatt per week demand charge for the existing $0.19 per kilowatt per week demand charge. In addition the existing paragraph No. 12 of the Transmission Agreement is cancelled by Amendment No. 1 and a new paragraph No. 12 is substituted stating that unless earlier terminated by mutual agreement of Consumers and Dow-Midland the Transmission Agreement shall continue to be in effect until the effective date of the Agreement for Electric Service between Consumers and the Dow Chemical Company (dated June 21, 1978) or until July 31, 1984, whichever date is earlier.

Consumers states that the charge for transmission service by Consumers is $0.24 per kilowatt per week, based on the maximum scheduled one-hour kilowatt demand during the each week determined at Consumers point of interconnection with Detroit Edison. This rate is consistent with (1) Amendment No. 4 to the Consumers-Edison-Toledo Operating Agreement (Docket No. ER81-514-000 accepted for filing at FERC on 7/6/81) and (2) Amendment No. 16 to the Consumers-Edison-I&M Operating Agreement (Docket ER80-174 accepted for filing at FERC on October 17, 1980).

Copies of the filing were served upon the Dow Chemical Company, the Michigan Public Service Commission and the Detroit Edison Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 5, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35115 Filed 12-27-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-90-000]

Gas Gathering Corp.; Application

December 22, 1982.

Take notice that on November 16, 1982, Gas Gathering Corporation (Applicant), P.O. Box 519, Hammond, Louisiana 70404, filed in Docket No. CP83-90-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that on August 27, 1982, it entered into a transportation agreement with United in which Applicant agreed to transport up to 5,000

Mcf of natural gas per day for United. It is asserted that the gas subject to this agreement is produced from Davis Oil Company's St. Martin Land Company No. 1 well located in St. Martin Parish, Louisiana. Applicant states that it would transport the subject volumes approximately 27 miles and deliver equivalent volumes for United's account to Transcontinental Gas Pipe Line Corporation's Sherburne Meter Station in Pointe Coupee Parish, Louisiana.

It is asserted that Applicant assessed United 9.25 cents per MMtu for this service.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 13, 1983 file with the Federal Energy Regulatory Commission, Washington, D.C. 29426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necesity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-3517 Filed 12-27-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-182-000]

Montana Power Co.; Filing

December 21, 1982.

The filing Company submits the following:

Take notice that Montana Power Company (Montana) on December 7, tendered for filing a Letter Agreement dated June 1, 1982, Between Montana and Western Area Power Administration (WAPA) providing for the sale of nonfirm energy.

Montana States that under the terms of this Letter Agreement, it will make available to WAPA nonfirm energy.

Montana indicates that the terms of the Letter Agreement have been agreed to by the parties.

Montana further states that the rate for nonfirm energy sold to WAPA under this Letter Agreement shall be between 11.98 ($0.01108) and 15.0 ($0.015) mills per kilowatt-hour.

An effective date of May 1, 1982 is proposed and waiver of the Commission's notice requirements is therefore requested.

Montana also tendered for filing a Notice of Cancellation of an agreement for the sale of nonfirm energy between Montana and Western Area Power Administration (WAPA). According to Montana this agreement has expired as of its own terms and has not been renewed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 5, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35120 Filed 12-27-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP70-195-002]

Natural Gas Pipeline Co. of America; Petition To Amend

December 22, 1982.

Take notice that on November 22, 1982, Natural Gas Pipeline Company of America (Petitioner), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP70-195-002 a petition to further amend the order issued July 30, 1970, [1] as amended, in Docket No. CP70-195 pursuant to Section 7 of the Natural Gas Act so as to reduce the contract transportation quanitity for the transportation of natural gas for NICOR Supply Inc. (Supply), from 1,350 Mcf per day to 775 Mcf per day, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by order issued July 13, 1970, as amended, it was authorized to transport gas for Supply from the Green No. 1 well in Beckham County, Oklahoma, to Supply's parent company, Northen Illinois Gas Company. It is stated that production from the Green No. 1 well has decreased and that Supply has requested from Petitioner a reduction in the daily transportation quantity Petitioner is obligated to transport to 775 Mcf per day.

Petitioner indicates that its Rate Schedule X-30 provides Supply with the right to change the contract transportation quantity only once.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 6, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary

[FR Doc. 82-35121 Filed 12-27-82; 8:45 am]

BILLING CODE 6717-01-M

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Docket No. ER83-184-000]

New England Power Pool; Filing

December 21, 1982.

The filing Company submits the following:

Take notice that on December 8, 1982, the New England Power Pool (NEPOOL) Executive Committee filed an Agreement Amending New England Power Pool Agreement (Amendment) dated as of June 1, 1982, which modifies the provisions of the New England Power Pool Agreement, dated as of September 1, 1971.

NEPOOL Executive Committee indicates that the Amendment (1) changes Section 8.13(c) to clarify and expand the authority of the pool's Operations Committee to adopt and implement uniform rules and procedures for determining when a participant's generating unit's outage for maintenance shall be approved for Scheduled Outage Service and to determine whether the applicable Capability for a unit to be used in determining the amount of a participant's Scheduled Outage Service shall be the unit's Seasonal Capability or its Temporary Capability and (2) modifies Section 12.6 to conform to the changes being made in Section 8.13(c) and to resolve various questions of interpretation which have arisen regarding the rights of the participants to receive Scheduled Outage Service pursuant to this section.

NEPOOL proposes that the Amendment become effective as of December 1, 1982, and has requested waiver of the Commission's notice requirements.

Copies of the filing were served upon all electric utilities furnishing or receiving service under the NEPOOL Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214) All such motions or protests should be filed on or before January 5, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35122 Filed 12-27-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-175-000]

Pennsylvania Power & Light Co.; Filing

December 22, 1982.

The filing Company submits the following:

Take notice that Pennsylvania Power & Light Company (PP&L) on December 3, 1982, tendered for filing as a rate schedule an executed agreement dated as of November 24, 1982 between PP&L and Orange and Rockland Utilities, Inc. ("Orange and Rockland"). The proposed rate schedule provides for the sale of interruptible power and energy by PP&L to Orange and Rockland.

The rate schedule provides for a maximum energy reservation charge rate of $24.70 per megawatt hour and an energy charge rate based upon the incremental cost of providing the energy.

PP&L requests waiver of the Notice requirements of Section 205 of the Federal Power Act and Section 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective December 3, 1982.

PP&L states that a copy of its filing was served on Orange and Rockland and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.212). All such motions or protests should be filed on or before December 30, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35123 Filed 12-27-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-102-000]

United Gas Pipe Line Co.; Application

December 21, 1982.

Take notice that on November 23, 1982, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP83-102-000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to the sales of natural gas to Natural Gas Pipeline Company of America (Natural) for resale at a delivery point in Polk County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it has been authorized to make sales of natural gas to Natural for resale in volumes of up to 75,000 Mcf per day since November 14, 1962, and that these sales are made pursuant to United's Rate Schedule PL-N. United states that the service agreement between United and Natural for these sales expires on December 31, 1982, and that Natural has informed United that it does not desire to purchase gas subsequent to that date and requests United to seek abandonment of service.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 7, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if

the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35124 Filed 12-27-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-104-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

December 22, 1982.

Take notice that on November 23, 1982, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in docket No. CP83-104-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) That Applicant proposes to install a 1-inch sales tap under the authorization issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to the terms of an April 17, 1979, service agreement with Entex, Inc. (Entex), a distributor, Applicant would install a 1-inch sales tap on Applicant's 10-inch Iowa-Franklin line in Lafayette, Louisiana, for Entex to redeliver natural gas averaging 11 Mcf per day to the Mobile Homes Estates for residential use. It is indicated that peak day and annual volumes to be delivered at the proposed tap would be 52 Mcf and 4,015 Mcf, respectively. Applicant would make the proposed gas sale pursuant to its Rate Schedule DG-S, it is explained.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35125 Filed 12-27-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OF83-85-000]

Coronado Shores Condominium Association #1; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 22, 1982.

On December 9, 1982, Coronado Shores Condominium Association #1, 1730 Avenida del Mundo, Coronado, California 92118, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to section 292.207 of the Commission's rules.

The topping cycle cogeneration facility will be located at the Applicant's address. The facility will consist of a reciprocating engine/generator set with heat recovery systems. The electric power production capacity of the facility will be 150 kilowatts. Recovered heat will be used in heating applications. The primary energy source to the facility will be natural gas. Installation of the facility is anticipated to begin in the spring of 1983. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35116 Filed 12-27-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-83-000]

Genstar Building Materials Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 22, 1982.

On December 7, 1982, Genstar Building Materials Company, 580 Decker Drive, Irving, Texas, 75062 filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to section 292.207 of the Commission's rules.

The topping-cycle cogeneration facility will be located adjacent to the Company's manufacturing facility in Savannah, Georgia. The facility will consist of two gas turbine generators from which discharged hot gas will be recovered and used in process applications. The primary energy source will be natural gas. Capacity of the facility will be 1600 kilowatts. Installation of the facility began in August 1982. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35118 Filed 12-27-82; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Proposal for "A Survey of Occupational Employment in Nuclear-Related Activities" (Form ER-828)

AGENCY: Office of Energy Research (OER) DOE.

ACTION: Notice of Proposed Form ER-828, "A Survey of Occupational

Employment in Nuclear-Related Activities".

SUMMARY: The Office of Energy Research of the Department of Energy (DOE) is proposing Form ER–828, "A Survey of Occupational Employment in Nuclear-Related Activities," designed to supersede Form ERDA–601, effective March 15, 1983. OER would implement Form ER–828 to continue the data series.

DATE: Written comments must be submitted on or before January 27, 1983.

ADDRESS: Comments should be sent to Ms. June S. Chewning at the address listed immediately below.

FOR FURTHER INFORMATION CONTACT: To obtain additional information or copies of the ER–828, contact Ms. June S. Chewning (ER–43), Senior Manpower Analyst, Office of Energy Research, Department of Energy, Mail Station: 3F–032, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 252–6641

SUPPLEMENTARY INFORMATION:

I. Current Action
II. Differences Between Form ERDA–601 and Form ER–828
III. Request for Comments

I. Current Action

OER proposes Form ER–828, "A Survey of Occupational Employment in Nuclear-Related Activities," designed to supersede Form ERDA–601 with a similar title, which expired effective April 1982. OER plans to implement Form ER–828 to continue the data series initiated by the Atomic Energy Commission and the Bureau of Labor Statistics in 1960. Form ER–828 would be conditional upon approval of the Office of Management and Budget. The data will be collected and processed by the Oak Ridge Associated Universities, Inc. OER will publish aggregated data from ER–828 in a highlights report of the findings, and will include information from the survey in publications incorporating data on other energy sources form various surveys conducted by OER. Publications will be distributed to requesters from industry, academia, the general public, DOE and other Federal and State government agencies. OER and other DOE components will use the information in conjunction with data from other sources in making projections of needs for nuclear trained manpower and for program planning. The respondent burden, defined as person-hours required to complete a form, varies depending on firm size and personnel data keeping methods. However, the burden is estimated to be slightly less than for the predecessor Form ERDA–601, i.e., 2.5 hours instead of 2.75.

II. Differences Between Form ERDA–601 and Form ER–828

The data collected on Form ER–828 and its predecessor Form ERDA–601 are identical. A copy of Form ERDA–601 is included. The only differences in the data collections are:

A. The survey will be conducted for the Office of Energy Research rather than for the Office of Light Water Reactors.

B. The survey has been renamed, "A Survey of Occupational Employment in Nuclear-Related Activities," and has been assigned a new form number, ER–828. All necesssary changes in the form required to incorporate the new sponsor, title, and number, will be made.

C. Section 2 ("Scope of Survey") will be revised. Questions concerning past establishment involvement in nuclear-related activities will be deleted. The wording and format of the question pertaining to present establishment involvement in nuclear-related activities will be reworded and redesigned to clarify that establishments not engaged in nuclear-related activities should complete section 2 and return the form. This allows deletion of out-of-scope establishments form the mailing list eliminating further contact.

D. Section 5 ("Occupational Employment in Nuclear or Nuclear-Related Activities") will be revised. The section title and references to the survey will be changed as per the new survey title. The section 5 instructions will be reworded to remove ambiguity as to which workers should be included in the section 5 occupational breakdowns for total nuclear-related workers and nuclear-related workers conducting R&D. Because of small employment totals in past survey years, the occupational group, "medical scientists" will be deleted, as will its definition in the "Occupational Definitions" section. Medical scientists will be reported under "All other life scientists."

E. Section 6 ("Employment in Nuclear or Nuclear-Related Activities by Industrial Segments") will be revised. The section title and references to the survey will be changed as per the new survey title. The instructions will be revised to clarify the identification of the establishment's principal nuclear-related activity. This revision will incorporate the methodology employed by Department of Labor and Department of Commerce establishment surveys by defining principal activities as that which involves the largest value of goods or services produced. The ambiguity of the present instructions concerning where the principal activity is to be listed will be clarified.

III. Request for Comments

Form ERDA–601 is reproduced following this notice. OER invites prospective respondents to comment on the planned revisions within 30 days of the publication of this notice. The following general guidelines are provided to assist in the preparation of responses:

(As a potential data provider)

A. Are the instructions and definitions clear and sufficient?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for preparation and administrative review, will your company require to complete and submit the form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as development, assembly, equipment, ADP and other administrative costs directly attributable to providing this information.

F. How can the form be improved?

(As a potential user)

A. Do you need data at the levels of detail indicated on the form?

B. For what purposes would you use these data? (Be specific)

C. How could the form be improved to better meet your specific data needs?

D. Are there alternative sources of data and do you use them? What are their deficiencies?

OER is also interested in receiving comments from persons as to their views on the need for the collection of this information at all.

Comments submitted in response to this Notice will be included in the request for Office of Management and Budget approval of this data collection and will become a matter of public record.

Issued in Washington, D.C., December 17, 1982.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

BILLING CODE 6450-01-M

Oak Ridge Associated Universities for
the Office of Light Water Reactors
U.S. Department of Energy

A Survey of Occupational Employment in Nuclear or Nuclear Energy-Related Activities, 1981

The information collected on this form will be held in confidence and will be used for statistical purposes only by the U.S. Department of Energy.

This report is authorized by the Energy Reorganization Act of 1974, Public Law 93438. Your voluntary cooperation is needed to make the results of this survey comprehensive, accurate and timely.

Form Approved
O.M.B. No. 38R-0191

Collection Agency for the U.S. Department of Energy

(This request for information relates to:)

(Please change address or ZIP code if incorrect.)

General Instructions

A questionnaire is provided for each establishment of your organization which presumably is engaged in nuclear or nuclear energy-related activities.

This questionnaire should be completed for the reporting unit identified on the address label above.

In case your organization has *other* establishments engaged in nuclear or nuclear energy-related activities, an additional questionnaire which provides no reporting unit identification is enclosed. In such cases, enter the name and address of the establishment in the address label area as above.

Additional questionnaires or information may be obtained on request from Oak Ridge Associated Universities, P.O. Box 117, Oak Ridge, TN 37830 or by telephoning Area Code 615-576-3410.

Please complete the questionnaire and return it to us in the enclosed addressed envelope, which requires no postage. The second blank copy is for your files.
PLEASE RETURN THIS QUESTIONNAIRE WITHIN 3 WEEKS.

Person to be contacted if questions arise concerning this report:

Name and Title *(Please print or type.)* Telephone *(Include Area Code.)*

1. Do you wish to receive a report on the findings of this survey? *(Check if yes.)* ☐

2. Scope of Survey

For the purpose of this survey, an establishment is considered to be in nuclear or nuclear energy-related activities if all or any part of the establishment is engaged in any of the activities listed in definition A on page 3. In most cases, an establishment is at a single physical location. This survey **excludes** mining and onsite facility construction (design and manufacture are included in the survey). On this basis—

Were any employees of this reporting unit engaged in nuclear or nuclear energy-related activities as of

April 15, 1981? Yes ☐ (21) No ☐ (22)

July 12, 1977? Yes ☐ (23) No ☐ (24)

July 12, 1975? Yes ☐ (25) No ☐ (26)

If you checked "Yes" as of April 15, 1981, please complete the remainder of the questionnaire.

If you checked "No", please return the questionnaire to avoid further correspondence.

3. Type of Establishment Identification *(Check one.)*

Type 1. Nonprofit Research Establishment ☐ (31)

Type 2. Private Industrial and/or Research Establishment ☐ (32)

Type 3. DOE-Owned Research Laboratory, Test Facility, and/or Production Facility ☐ (33)

4. Employment Summary

Data should relate to the payroll period including **April 15, 1981**

		Employment
4.1	**Total Employment.** Enter the total number of employees of the establishment (both full- and part-time; salaried and hourly, production, maintenance, office-clerical, administrative, managerial, etc.). Include all personnel whether or not engaged in nuclear or nuclear energy-related activities. **Exclude** temporary employees hired under a sponsored summer student or comparable program . . . . . (99999)	
4.2	**Total Employment in Nuclear or Nuclear Energy-Related Activities.** Of the total number of employees reported above, how many were working in nuclear or nuclear energy-related activities? **(Include a reasonable pro rata distribution of indirect employees of the establishment whose work is necessary to the conduct of nuclear or nuclear energy-related activities. Exclude persons working onsite in facility construction.)** . . . . . (88888)	

Remarks

ERDA-601 April 1981

5. Occupational Employment in Nuclear or Nuclear Energy-Related Activities *(As of the payroll including April 15, 1981)*

For the occupations listed below, classify employees who worked in nuclear or nuclear-energy related activities by the occupation in which they spent most of their time. Do not classify an employee in more than one occupation. Employees reported in column 1 who spend 50% or more of their time in research and development activities also should be reported in column 2. *Definitions are provided on page 4.*

Occupation	As of April 15, 1981 Occupation Code	Total (1)	R&D* (2)
MANAGERS (see definition)	10000		
TOTAL ENGINEERS (see definition)			
Chemical Engineers	21003		
Civil Engineers	21004		
Electrical and Electronics Engineers	21005		
Mechanical Engineers	21008		
Nuclear and Reactor Engineers (see definition)	21015		
Metallurgical Engineers	21016		
All Other Engineers	21900		
TOTAL MATHEMATICIANS (see definition)	22100		
TOTAL PHYSICAL AND EARTH SCIENTISTS (see definition)			
Chemists	22201		
Geologists and Geophysicists	22202		
Physicists	22205		
Metallurgists	22206		
All Other Physical Scientists	22299		
TOTAL LIFE SCIENTISTS (see definition)			
Biological Scientists (see definition)	22303		
Medical Scientists (see definition)	22305		
Health Physicists (see definition)	22307		
All Other Life Scientists	22399		
ALL OTHER PROFESSIONAL WORKERS (see definition)	29000		

Occupation	As of April 15, 1981 Occupation Code	Total (1)	R&D* (2)
TOTAL TECHNICIANS (see definition)			
Draftsmen	32003		
Electrical and Electronics Technicians	32004		
All Other Engineering Technicians	32900		
Physical Science Technicians	33001		
Life Science Technicians	33002		
Health Physics Technicians and Radiation Monitors	33003		
Senior Nuclear Reactor Operators (see definition)	34049		
Nuclear Reactor Operators (see definition)	34050		
Auxiliary Reactor Operators (see definition)	34051		
All Other Technicians	39000		
WELDERS WITH NUCLEAR CERTIFICATION (see definition)	58015		
ALL OTHER SKILLED CRAFT WORKERS (see definition)	59001		
CLERICAL WORKERS (see definition)	60000		
ALL OTHER WORKERS who spend more than 50% of their time in nuclear-related activities (service workers, sales workers, laborers, operatives, and all other workers not classified above) (see definition)	88999		

SUMMATION INSTRUCTIONS: The sum of all employment in nuclear or nuclear energy-related activities, by occupation, entered in column 1 above must equal the entry in item 4.2.

***RESEARCH AND DEVELOPMENT**

Include in this function employees who spend the greatest proportion of their time performing, managing, or administering basic and applied research in engineering, mathematics, physical, life (including medicine), and other sciences; and in the design and development of prototypes and processes. For purposes of this study, research and development includes the following types of activities: (a) Pursuit of planned research of new knowledge, whether or not the research has reference to a specific application. (b) Application of existing knowledge to problems involved in the creation of a new product or process, including work required to evaluate possible uses. (c) Application of existing knowledge to problems involved in the improvement of an existing product or process.

Remarks

6. Employment in Nuclear or Nuclear Energy-Related Activities by Industrial Segments

Distribute total employment in the Nuclear or Nuclear Energy-Related Activities (item 4.2) as of April 15, 1981, as follows:

Column 1 — List each industrial segment (see definition A) in descending order of the number or proportion of employees in each segment as of April15, 1981. The principal segment of the establishment should appear on line 6.1.

Column 2 — List the segment number for each activity shown in column 1. (See definition A.)

Columns 3 & 4 — Distribute the total employment reported in item 4.2 by segment in column 3, if available. If employment data are not available, show a percentage distribution by segment in column 4 of the total employment reported in item 4.2. There should be an entry in either columns 3 or 4 for every segment shown in columns 1 and 2. The total of column 4, if used in lieu of column 3, should equal 100%.

	Industrial Segment Name	Industrial Segment No.	Distribution of Employees Engaged in Nuclear or Nuclear Energy-Related Activities	
			Number of Employees	Percent of Total
	(1)	(2)	(3)	(4)
6.1				
6.2				
6.3				
6.4			Total = Item 4.2	100%

*Principal nuclear or nuclear energy-related activity

Definitions for the Survey of Occupational Employment in Nuclear or Nuclear Energy-Related Activities

A. Industrial Segments. Nuclear or nuclear energy-related activities are comprised of the following industrial segments:

Code *Description*

1. **Uranium Milling:** Reduction of uranium ores to concentrates. **Excludes** mining.
2. **Processing and Enrichment of Reactor Fuel Materials:** Refining of reactor fuel concentrates and conversion of refined fuel concentrates and recovered U-235/U-238 to uranium hexafluoride, enrichment of these fuel materials in the isotope U-235, followed by conversion to oxides, carbides, or other fuel compositions.
3. **Production of Special Materials for Use in Reactors:** Preparation and treatment of core structural and cladding materials such as zirconium, control rod materials such as hafnium and boron, and moderators such as heavy water and graphite.
4. **Reactor and Reactor Component Design and Manufacturing:** The design and/or manufacture of nuclear reactors and reactor components, including control rods and drives for power, test, and research purposes and missile and space applications. Includes the assembly, testing, and disassembly of reactors and the testing of materials for reactor use.
5. **Fuel Fabrication:** Production of fuel forms (pellets, coated particles, etc.), and encapsulation of fuel forms in fuel assemblies.
6. **Transportation of Nuclear Materials:** Packaging and interfacility transportation of special nuclear materials, fabricated fuel assemblies, irradiated fuel assemblies, and other radioactive materials.
7. **Chemical Reprocessing and Disposal of Irradiated Materials:** Separation and recovery of fertile and fissile fuel materials, and of by-product materials. Includes purification, concentration, and packaging of fuel and by-product materials; storage and solidification of high-level wastes; collection, packaging, and disposal of low-level wastes.
8. **Design and Engineering of Nuclear Facilities:** Design and engineering of all nuclear facilities with the exception of those included in segments 4 (reactor and reactor components), 5 (fuel fabrication), 11 (nuclear instruments, gauges, and control devices), and 12 (accelerators). **Excludes** persons working onsite in facility construction.
9. **Nuclear Reactor Operation and Maintenance:** Operation and maintenance of nuclear power production, test, and research reactors. Includes operation and maintenance of auxiliary systems for supply and treatment of power, air, water, etc.
10. **Radioisotopes:** Manufacture, processing, and packaging of radioisotopes, including radiochemicals, radiopharmaceuticals, and other radioactive labeled compounds. Includes irradiation of medical supplies, food, and agricultural products, and of commercial materials. **Excludes** in-plant processing incidental to another activity.
11. **Design and Manufacture of Nuclear Instruments, Gauges, and Control Devices:** Design and manufacture of hot cell and laboratory instruments and monitoring and control devices, radiographic and teletherapy equipment, activation analysis systems, etc.
12. **Accelerators:** The design, engineering, manufacturing and/or construction, operation/maintenance, and research and development conducted for all classes of accelerators.
13. **Environmental and Ecological Research and Evaluation:** Activities to preserve, improve, or restore the natural environmental and ecological balance. Types of activities covered are thermal effects and effects of irradiation on plants, animals, and marine life.
14. **Biology and Medical Research:** Research on the interaction of radiation with biological systems; use of radiation and radioisotopes in diagnosis and treatment of illnesses; study of effects of low-level radiation and ingestion of toxic and radioactive materials on biological systems.
15. **Reactor Research, Development, and Evaluation:** Activities relating to research, development, and demonstration of new fission reactor systems, components, fuels, moderators, etc. Includes development, conduct, evaluation, and analysis of reactor safety tests.
16. **Commercial Laboratory Services:** Provides laboratory service activities for other establishments. Examples of services are activation analysis, film badge service, mass spectrometry, radiography, and physical testing.
17. **Health Physics and Industrial Safety:** Establishes, evaluates, and monitors working conditions for compliance with industrial safety and radiation exposure standards.
18. **Weapons Development and Production:** Develops, designs, tests, and fabricates nuclear weapons.
19. **Research and Development in Nuclear Energy:** Investigations directed toward the development of new or fuller scientific knowledge of the subject. It also covers systematic application of scientific knowledge directed toward the creation of new or substantially improved processes, procedures, techniques, etc. It **excludes** research and development reported under segments 12, 13, 14, and 15, which are to be reported separately.
20. **Industrial Radiography:** Commercial radiographic services. **Excludes** in-plant radiography where its use is incidental to another activity.
21. **Miscellaneous:** Activities not classified in any of the above segments, such as consultant services, laundry services, and leasing services.

Definitions for the Survey of Occupational Employment in Nuclear or Nuclear Energy-Related Activities—*Continued*

B. Occupational Definitions

Employees in the specialized occupations covered by this survey should be counted on a "Working As" basis, as of the date of the report (April 15, 1981), regardless of field of degree or whether they hold a college degree. For example, an employee trained as an Engineer but working as a Mathematician as of the date of the report should be reported as a Mathematician. Similarly, an employee trained as a Life Science Technician but working as a Health Physics Technician as of the date of the report should be reported as a Health Physics Technician. Include all employees in research and development, production, management, technical service, sales, and other positions which require them to use the indicated level of knowledge in their work. **Exclude** persons working onsite in facility construction.

Managers (Occ. Code 10000): Include persons concerned with policymaking, planning, organizing, staffing, directing, and/or controlling activities that are common to many types of organizations, usually through subordinate supervisors who directly supervise the activities of the company or establishment work force and/or professional or technical management.

Engineers (Occ. Code 21000): Count all persons actually engaged in engineering work at a level which requires knowledge of engineering equivalent at least to that acquired through completion of a 4-year college course, regardless of whether they hold a college degree. **Exclude** persons trained in engineering, but currently employed in positions not requiring the use of such training.

Nuclear and Reactor Engineers (Occ. Code 21015): Count all engineers who are concerned with the release, control, and use of all types of energy from nuclear sources, including the design and development of fission or fusion reactors for the controlled release of nuclear energy, and the applications of radiation. **Exclude** Nuclear Reactor Operators.

Mathematicians (Occ. Code 22100): Count only those persons whose positions require a knowledge of mathematics equivalent at least to that acquired through a 4-year college course with a major in mathematics and who spend the greatest proportion of their time in development or application of mathematical techniques, regardless of whether they hold a college degree. **Include** Actuaries, Statisticians, and Computer Programmers **only** if they specialize in mathematical techniques. **Exclude** Accountants.

Physical and Earth Scientists (Occ. Code 22200): Count all Chemists, Physicists, Metallurgists, Geologists, Geophysicists, and other Physical and Earth Scientists who are actually engaged in scientific work at a level which requires a knowledge of the physical sciences equivalent to that acquired through completion of a 4-year college course with a major in one of the physical sciences, regardless of whether they hold a college degree. **Exclude** persons trained in the physical sciences but currently employed in positions not requiring the use of such training.

Life Scientists (Occ. Code 22300): Count all Health Physicists, Medical Scientists, Agricultural Scientists, Biological Scientists, and other Life Scientists who are actually engaged in scientific work at a level which requires a knowledge of the life sciences equivalent to that acquired through completion of a 4-year college course with a major in one of the life science fields, regardless of whether they hold a college degree. **Exclude** persons trained in the life sciences but currently employed in positions not requiring the use of such training. **Exclude** Psychologists. See definitions for Health Physicists and Biological Scientists.

Biological Scientists (Occ. Code 22303): Count all persons who meet the general requirements for "Life Scientists" and who spend the greatest proportion of their time in scientific work dealing with life processes other than those classified in the agricultural and medical sciences. **Include** Pathologists, Microbiologists, Pharmacologists, Toxicologists, Botanists, Zoologists, etc.

Medical Scientists (Occ. Code 22305): Count only those Physicians, Dentists, Public Health Specialists, Pharmacists, and members of other scientific professions who meet the general requirements for "Life Scientists" and who are concerned with the understanding of human diseases and improvements of human health, and spend the greatest proportion of their time in clinical or laboratory investigation or other research, production, technical writing, and related activities. **Exclude** from this category all practitioners—that is, those Medical Scientists who spend the greatest proportion of their time providing care to patients, dispensing drugs or services, or in diagnosis, etc. Persons working as Pathologists, Microbiologists, Pharmacologists, etc., should be **excluded** from the figures for Medical Scientists and **included** in the figures for Biological Scientists.

Health Physicists (Occ. Code 22307): Count all persons who meet the general requirements for "Life Scientists or Engineers" and who are concerned with programs to protect plant and laboratory personnel from radiation hazards; develop inspection standards, radiation exposure limits, and decontamination procedures, conduct tests to insure that radiation is not in excess of permissible limits; and design or modify such health physics equipment as detectors and counters to improve radiation protection.

All Other Professional Workers (Occ. Code 29000): Include all other workers concerned with such fields as law, education, labor, and business relations requiring a substantial educational preparation, usually at the university level.

Technicians (Occ. Code 30000): Count all persons actually engaged in technical work at a level which requires knowledge of engineering, mathematical, and physical or life sciences, comparable to that acquired either through study at technical institutes, junior colleges, or other formal post-high school training **less extensive than a 4-year college course** or through equivalent on-the-job training or experience. Some typical job titles are Draftsman, Surveyor, Laboratory Assistant, Physical Science Aide, and Electronic Technician. All persons in positions that require the indicated level of knowledge should be counted, regardless of job title or department in which employed. **Computer Programmers** who meet the above definition of Technicians should be reported under "All Other Technicians," Occupation Code 39000. **Exclude** those persons whose positions require knowledge of training consistent with the foregoing definitions of Engineers, Mathematicians, or Scientists, and report them in the appropriate occupational category on the questionnaire. Also, **exclude** all craftsmen such as Machinists and Electricians.

Nuclear Reactor Operators (Occ. Codes 34049, 34050, 34051): Count all persons who spend the greatest proportion of their time in (a) the actual manipulation of the controls of a nuclear reactor, or (b) directing others in the manipulation of such controls. Under Nuclear Regulatory Commission (NRC) licensing regulations, the former are referred to as "operators" and the latter as "senior operators." Count as "auxiliary operators," those persons who are not licensed operators but work under the supervision of either nuclear or senior operators while preparing to fulfill NRC requirements to become licensed operators. A nuclear reactor is an apparatus, other than a nuclear weapon, designed or used to sustain nuclear fission and self-supporting chain reaction (e.g., power reactors, test reactors, production reactors, research reactors, critical assemblies). **Exclude** persons who spend the greatest proportion of their time as Nuclear Reactor Engineers or in performing other functions of a professional, scientific, or engineering nature.

Welders with Nuclear Certification (Occ. Code 58015): Count all persons certified under NRC requirements who join surfaces, or otherwise make or repair structures or parts, using gas or electric welding, soldering, or brazing equipment with or without filler material; who fuse to join or shape lead products or parts, using a gas torch; who cut or perforate metal, using gas or electric welding equipment.

All Other Skilled Crafts and Kindred Workers (Instrument Repairer, Painter, Maintenance, Patternmaker, Metal Die Setter, Die Sinker, Etc.) Exclude persons working onsite in facility construction. **(Occ. Code 59001):** Include all other skilled crafts and kindred workers in production, maintenance, repair, power plant, and material handling occupations that predominantly require a thorough and comprehensive knowledge of processes involved in the work, the exercise of considerable independent judgment, usually a high degree of manual dexterity, and in some instances, extensive responsibility for valuable product or equipment. Workers in these occupations usually become qualified by serving apprenticeships or completing extensive training periods. **Occupations should be counted as skilled if the specific vocational preparation required to perform them involves training or other preparation of two years or more.**

Clerical Workers (Occ. Code 60000): Include office and plant clerical personnel. **Office clerical work** involves preparing, transcribing, transferring, systematizing, and preserving communications and records; collating accounts and distributing information. Typical examples are Secretaries, Stenographers, Typists, File Clerks, Office Machine Operators, Bookkeepers, Cashiers, Messengers, and Telephone Operators. **Plant clerical work** involves planning, coordinating, or expediting of production and the flow of work; or the clerical aspects of receiving, storing, issuing, or shipping of materials, merchandise, supplies, or equipment.

All Other Workers (Occ. Code 88999): Include service and sales workers, operatives, laborers, and all other workers not classified above. **Exclude** persons working onsite in facility construction.

[FR Doc. 82-35049 Filed 12-27-82; 8:45 am]

BILLING CODE 6450-01-C

GPO 919-621

FEDERAL HOME LOAN BANK BOARD

[No. 82-811-A]

Prices for Federal Home Loan Bank Services

Dated: December 16, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of prices for Federal Home Loan Bank services.

SUMMARY: The Office of District Banks and the Office of Policy and Economic Research of the Federal Home Loan Bank Board are publishing, pursuant to delegated authority, the prices charged by the Federal Home Loan Banks for (1) processing and setflement of items and (2) demand deposit services offered to member institutions.

FOR FURTHER INFORMATION CONTACT: Ashley C. Speir, Jr., Office of District Banks (202)-377-6656) or Jerry Hartzog, Office of Policy and Economic Research (202-377-6782), Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act (12 U.S.C. 1431(e)) authorizes the Federal Home Loan Banks: (1) To accept demand deposits from member institutions, (2) to be drawees of payment instruments, (3) to engage in collection and settlement of payment instruments drawn on or issued by members and eligible institutions, and (4) to engage in such incidental activities as are necessary to the exercise of such authority.

Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)(2)(B)) requires the Federal Home Loan Banks to charge fees for services authorized in that section, which fees are "to be determined and regulated by the Board consistent with the principles set forth in section 11A(c) of the Federal Reserve Act." Board regulations at 12 CFR 534.6 require that the Director of the Office of District Banks and the Director of the Office of Policy and Economic Research (or their designees) review, approve, and publish at least annually these fees. The regulations specify that the fees must be reviewed in accordance with the following pricing principles:

(1) In determining the fees for services provided under this Part, a Federal Home Loan Bank must take into account all direct and indirect costs of providing the services.

(2) Prices must reflect the imputed rate of return that would have been earned and the taxes that would have been paid if the Bank were a private corporation, by using a cost of capital adjustment factor applied to those assets used in providing services authorized under this part.

(3) All costs must be fully recovered within a period not exceeding five years. The prices charged for collection, processing, and settlement services must yield at least a competitive rate of return within a period not exceeding five years [1] after offering such services.

In accordance with these principles, the Director of the Office of the District Banks and the Director of the Office of Policy and Economic Research have reviewed and approved the current prices for Federal Home Loan Bank services, which are published herewith. The services and their prices are divided into two categories: (1) Services involved in the processing and settlement of items drawn on or issued by member institutions (Schedule A); and (2) services relating to demand deposit accounts maintained by member institutions with the Banks (Schedule B).

The services described in the attached schedules are not identical for any two Banks, as each Bank's program is tailored to meet the needs of the member institutions in the Bank's district. Furthermore, the volume of services rendered varies significantly among the districts, with the result that the costs of providing the services also vary from district to district. In light of these considerations, the Board continues its practice of approving separate district fee structures rather than adopting a uniform pricing scheme. This policy is consistent with the Congressional intent that pricing encourage competition.

It is not required that each processing step or transaction performed by a Bank be specifically priced. This policy permits the Banks to establish fee schedules that are in line with the marketing practices of providers of correspondent services in each district. However, total revenue from services must be sufficient to cover costs. In the case of item processing and settlement services, fees must be sufficient to recover all start-up costs within five years. Demand deposit service expenses must be recovered annually, because the Banks have provided these services for many years, and thus have attained mature service volumes.

The price analysis incorporates an imputed "cost of capital adjustment factor" of fifteen percent. This adjustment factor is required by 12 CFR 534.6(b)(2) in order to yield a fee structure competitive with prices charged by private-sector servicers. The current fifteen-percent figure was derived in accordance with a formula which is described in detail at 45 FR 64161 (September 29, 1980).

The directors of the Office of District Banks and the Office of Policy and Economic Research of the Federal Home Loan Bank Board hereby give notice of the following fee schedules for Federal Home Loan Bank services:

Sechedule A: Item Processing and Settlement Services

Federal Home Loan Bank of New York

Service	Fee
Settlement	[2]
Standard intercedpt (per item)	$0.020
Check safekeeping (per item)	.015
Bulk filing (per item)	.020
Statement rendering:	
Bulk filing (per statement)	.30
Safekeeping (per statement)	.05
Data Fax high dollar items (per item)	1.00
Automatic item returns (per item)	2.50
Stop payment and suspect item file (per entry)	1.00
Certified item file (per entry)	1.00
Photocopies (per copy)	2.00
Original item retrieval (per item)	4.00
Counter item sorting (per item)	.005
Counter item filming (per item)	.020
Held paid item filming (per item)	.020
Microfilm monthly history (per 100,000 items)	5.00

[2] No charges.

FEDERAL HOME LOAN BANK OF ATLANTA

Service	Fee
Settlement only (per month)	$50 (per item)
Daily delivery:	
Same day	$0.03
Next day	.03
Bulk filing	.04
Statement matching	.07
Truncation	.03
Return items	2.50
Caution/alert (stop payment)	2.00
Facsimile:	
Large Dollar	2.00
On Request	2.00
Bookkeeping & Account Number Rejects	2.00
Over-the-counter items	.01
Photocopies	2.50
Finesort (check number): Special Accounts	.01

Notes:

Prices for all services include data transmission to on-line or in-house processors.

Actual item delivery expense will be charged to the association as incurred, including postage under "Statement Matching" above.

Caution/Alert (stop payment) items that are ultimately returned will incur an additional charge of $2.50 each.

The minimum monthly billing for service options (other than Settlement Only) is $75.00.

[1] On December 16, 1982, the Board proposed to substitute a ten-year rule for this five-year requirement . . . Board Resolution 82-811, published in the Proposed Rules Section of the Federal Register of December 23, 1982.

Federal Home Loan Bank of Cincinnati

Items/month	Daily return (1) Unsorted	Daily return (2) Sorted	Daily return (3) Truncation	Bulk filing (4) Without statement stuffing	Bulk filing (5) With statement stuffing
a. 0 to 5,000	$0.0350	$0.0400	$0.0400	$0.0500	$0.0800
b. 5,001 to 25,000	.0300	.0350	.0350	.0450	.0750
c. 25,001 to 50,000	.0250	.0300	.0300	.0400	.0700
d. 50,001 to 75,000	.0200	.0250	.0250	.0350	.0650
e. 75,001 to 100,000	.0150	.0200	.0200	.0300	.0600
f. 100,001 to 125,000	.0125	.0175	.0175	.0275	.0575
g. 125,001 and over	.0100	.0150	.0150	.0250	.0550

Special Services

1. Check Retrieval of Original Item	$1.50
2. Photocopy (per item)	1.00
3. Advertising Insertion (per item)	.01
4. Posted—"on-us" (per item)	.05
5. Statement Stuffing Service for Truncated Statements (per statement)	.01
6. Statement Stuffing of Deposit Tickets and Dishonored Notices (per item)	.09
7. Return Items (per item)	2.50
8. Settlement of NOW Item	(1)
9. Settlement Only (per month flat fee)	50.00

[1] Current demand accounts utilizing I F T S.

Federal Home Loan Bank of Indianapolis

Monthly volume	Safekeeping (cents)	Turnaround, daily or cycled (cents)	Complete (cents)
0 to 5,000	4.5	5.3	7.7
5 to 10,000	3.7	4.8	7.5
10 to 15,000	3.6	4.4	7.3
15 to 25,000	3.1	3.7	7.2
25 to 50,000	3.0	3.3	7.0
50 to 75,000	2.6	3.0	6.6
75 to 100,000	2.3	2.7	6.5
100 to 125,000	2.1	2.4	6.4
125 to 150,000	1.9	2.2	6.3
150 to 175,000	1.7	2.0	6.2
175 and up	1.4	1.6	5.9

II. ANCILLARY SERVICE FEES

Over-The-Counter and Microfilm—$0.035.
Return Items—$2.75.
Exception Safekeeping Statements—$0.25.
Photocopies and Facsimiles—$2.00.
No Charge for Facsimile Items for Signature Verification on Day of Presentment.
Settlement Only—$40.00 Per Month.
Minimum Processing Fee of $40.00 Per Month Will Apply for Total NOW Services.

Federal Home Loan Bank of Chicago

Pricing	
NOW Account Service Fees	
Basic Service	
Daily Return Bulk File (per item)	$0.0200
Truncation (per item)	.0185
Additional Services	
Counter Items (per item)	.0250
Return Items (i.e. NSF) (per item)	4.00
Photocopies (per item)	3.00
Facsimile of Items (per item)	2.00
Cash Letter Facsimile (per item)	2.00
Special Sorts (per item)	.0150
Monthly Recap (per item)	.0025
Data Transmission (per item)	.0030

Notes:
- Large items of $1,000 and over will be facsimiled at no charge.
- All debits and credits will be settled through your daily investment deposit (D.I.D) account.
- Actual item delivery expenses will be charged as incurred.
- Members may elect to use a combination of the truncated and non-truncated systems. This enables you to offer options to your customers.
- Compensation balances are not required.

Federal Home Bank of Des Moines

Volume level	Basic fee (truncated)	Daily/Cycle [1]	Monthly [1]	Monthly/Film [1]
Item Processing:				
1 to 10,000	$.021	$.016	$.021	$.026
10,001 to 25,000	.019	.014	.019	.024
25,001 to 50,000	.017	.012	.017	.022
50,001 to 75,000	.015	.010	.015	.020
75,001 to 175,000	.0125	.0075	.0125	.0108
Bulk Pricing:				
(175,001-Over)	.012	.006		
Return items:				
1 to 2,000 per month			2.50	
2,001 to 3,000 per month			2.00	
3,001 to 4,000 per month			1.50	
4,001 to Over per month			1.00	
For those members who retrieve the return items themselves, the tier levels are:				
1 to 2,000 per month			1.25	
2,001 to 3,000 per month			1.00	
3,001 to 4,000 per month			.75	
4,001 to Over per month			.50	
Special processing:				
(1) Sort truncated items in account number order ($.012 per item with a $250. per month minimum)				
(2) Return of truncated items, non-sorted ($.002 per item)				
(3) Subsequent sort into serial number order ($.005 per item)				
(4) Other miscellaneous fine sorting requirements ($.005 per item)				
Other services:				
Tape and transmission preparation				$.0002
Key punch (rejects)				.04
Photo copies				2.75
Signatures verified				[2]70
Counter items with microfilm				.04
Facsimile transmission				1.00
Microfiche—monthly reports				1.50
Microfiche—copies				.18
Stop payments				2.00
Original item return				2.75
Certified checks				.50
Counter items without MICR encoding				.10
Facsimile transmission of daily cash letter				1.00
NOW transaction inquiry				1.00
Telephone advice on missing account number				.50
Microfilm copies for audit				10.00
Telephone check inquiry				1.00
Minimum processing fee of $40.00 per month will apply for total NOW services.				

[1] Fees for daily/cycle return, monthly return or monthly return with microfilm are in addition to the basic (truncated) fee.
[2] Dollar amount variable by association.

Federal Home Loan Bank of Little Rock

Basic service	1982 per item
* Check capture fee: Includes cash letter verification, settlement, data capture, storage and retrieval capability, transmission of data, microfilm, truncation	$.30
* Fine sort and forward checks to association:	
Daily (one day delay)	.006
Cycle (5 cycles per month)	.006
Monthly (month end)	.012
Checks will be sorted by your customer's account number.	
* Counter item integration: Receive, microfilm, and fine sort with your checks presently on hand at the Federal Home Loan Bank of Little Rock and store for truncation or delivery to association	.036
* Return items: Fee for sorting and returning any items (NSF's, stop payments, etc.)	3.00

Federal Home Loan Bank of Little Rock—Continued

Basic service	1982 per item
* Stop payment file: Fee for receiving and placing on file holds, stop pays, closed accounts, etc.	2.00
* Photocopies or original check retrieval	1.50
* Postage (for delivery of paid checks by association)	(1)

[1] Actual cost.

Federal Home Bank of Topeka

	Charge
Basic services:	
1. Settlement—with Federal Home Loan Bank PROCESSING (no charge)	
2. Settlement only (month)	$50.00
3. Truncation (per item)	0.02
4. Bulk filing and return (per item)	0.035
Special services:	
1. Item Retrieval or Photocopy (per item)	2.00
2. Return items (NSF, stop pay, etc.) (item 1st 50 per/mo./1.00 per item over 50)	2.50
3. Counter items (Microfilmed & filed) (per items)	0.03
4. Facsimile Transmission for NOW detail listing of items paid (per transmission)	1.50

The costs of bulk filing, sorting, storage and settlement for associations utilizing Federal Home Loan Bank processing are including in our pricing policy.

There are no transportation charges imposed by the Federal Home Loan Bank related to check delivery for processing.

There are no minimum monthly charges for NOW processing.

Fees will be adjusted to reflect any future charges that may be imposed by the Federal Reserve System.

Federal Home Loan Bank service prices may be changed with 90-day advance written notice to the user.

The Federal Home Loan Bank will not assume check printing expenses for NOW drafts.

Federal Home Loan Bank of San Francisco

	First increment fewer than 50,000 items/ month	Second increment 50,000–100,000 items/ month	Third increment 100,000–500,000 items/ month	Fourth increment 500,000 or more items/ month
Basic Capture Service				
Check Capture Fee: Includes cash letter verification, settlement, data capture, storage and retrieval capability, capture report and microfilm	$0.0250	$0.0225	$0.0200	$0.0175
Fine Sort and Forward Items: Items will be returned daily under basic service or on a one-day delay for associations wanting the Bank to handle return-item processing	.005	.005	.005	.005
Tape-to-tape Transmission: Includes tape presentation and transmission to the appropriate servicer	.002	.002	.002	.002
Comprehensive now Service				
Check Capture Fee	.0280	.0250	.0225	.0200
Tape-to-Tape Transmission	.0020	.0020	.0020	.0020
Non-check Debit Processing (over-the-counter items)	.0400	.0400	.0400	.0400
Filing Fee (truncated items)	.0050	.0050	.0050	.0050
Return-item Processing	2.00	2.00	2.00	2.00
Photocopies	3.00	3.00	3.00	3.00
Statements for Accounts on Truncation (per statement)	.100	.100	.100	.100
Standard Bar-encoded Statements (per statement)	.300	.300	.300	.300
Nonstandard Statements (per statement)	.500	.500	.500	.500
Standard Statement Inserts (per insert)	.030	.030	.030	.030
Nonstandard Statement Inserts (per insert)	.050	.050	.050	.050

Notes:

1. The Bank will absorb the cost of couriers and telephone lines to the Angeles are until Los Angeles center is established. Actual item delivery expense will be charged as incurred from either San Francisco or Los Angeles.
2. Controlling returns and photocopies, or making photocopies from Bank-supplied microfilm, can reduce costs.
3. Minimum charge for Basic Service is $250/month, and $500/month for Comprehensive Service.
4. Postage and courier fees will be as billed.
5. Micofiche fees will be $50/month for two microfiche per day.

Federal Home Loan Bank Of Seattle

	Pricing (items per month)
Standard Serivices	
A. Daily delivery of items:	
a. 0 to 50,000	$0.025
b. 50,000 and over	.020
a. 0 to 50,000 (on 1 day)	.035
b. 50,000 and over delay basis	.030
B. Truncation:	
a. 0 to 50,000	.030
b. 50,000 and over	.025
C. Cycle or month-end delivery:	
a. 0 to 50,000	.035
b. 50,000 and over	.0030
D. Cycle or month-end delivery with statement matching:	
a. 0 to 50,000	.060
b. 50,000 and over	.055
Special Services	
A. Return items	[1] $2.50
B. Stop payments entry	(N/A)
C. Facsimile	[1] $2.50
D. Over the counter on-us items (truncating):	
Cycle	.035
Statement stuffing	.060
E. Photocopy	[1] $2.50

Federal Home Loan Bank Of Seattle—Continued

	Pricing (items per month)
F. Check retrieval	[1] $2.50
G. Information inserts	[2]
a. $0.005/item transportation will be applied for institutions outside the Seattle Federal Reserve clearing zone.	

[1] $2.50 charge on aggregate of *items that exceed 2% of items processed.
[2] No charge.

Federal Home Loan Bank of Boston

Service	Fee per month
Account maintenance	$3.00
Checks cleared	.08
Deposits	.20
Debit/credit memos	.10
Stop payment orders	1.00
Nonroutine statements	1.00
Wire transfers-out	2.50

Federal Home Loan Bank of Boston—Continued

Service	Fee per month
Full reconcilement per issue	.04

Service includes master deposit account with additional disbursement accounts for checks writing purposes. Each disbursement account can be reconciled on a periodic basis. Service also includes line of credit to cover overdrafts or short term advances.

Description

Account Maintenance—cost of maintaining account on computer. Includes one member statement per month. *Checks Cleared*—checks paid on each disbursement account. *Deposits*—funds deposited to member accounts.

Debit/Credit Memos—internal debits/credits processed against member accounts. *Stop Payment Orders*—member request to stop payment on issued check. *Non-Routine Statements*—account statements other than one per month. *Wire Transfers Out*—electronic transfer of funds out of a member's account, to another financial institution. *Full Reconcilement Per Issue*—service provided to reconcile paid checks.

Federal Home Loan Bank of New York

Money Orders and Checks

First 10,000 items per month—$.195 each.

10,000 plus items per month—$.145 each.

This fee covers all aspects of the check service including the cost of the blank instruments, stop payment orders, inquiries, and photocopies of paid items stored on microfilm. Blank stock is resupplied automatically , and other forms such as stop payment orders, photo request cards, check control sheets, and address labels are supplied on request.

Wire Out—$7.00

This covers all the costs associated with the wire-out service, including compensating balances held at correspondent banks, third party call-back confirmations, and follow-up investigations.

Coupon Processing, Bond Redemption and Federal Recurring Payments—$4.00

Coupon Processing—This fee covers the costs passed on to the Bank by the custodian bank for processing coupons as they come due, and the Bank's costs related to control of the paper work, and crediting the proceeds to the member's demand account.

Bond Redemption—This fee is applied once for a group of bond received in one batch and covers the cost of handling and crediting the member for the proceeds.

Federal Recurring Payments—This fee is applied each time a credit is received from the Federal Reserve Bank on behalf of a member, and covers the cost of handling the credit.

Bulk Deposits—$.12

This fee represents the pass-through of costs from our correspondent bank at which the items are deposited. The correspondence MICR encodes the items, prepares cash letters, delivers the items to the clearance system, and transmits credit information to the Bank.

Depository Transfer Checks—$1.00

This fee represents the cost of processing checks drawn on member-designated depository banks. It covers the cost of receiving instructions from member, issuance of check, presentment and subsequent credit to member's demand account.

FEDERAL HOME LOAN BANK OF PITTSBURGH

Service	Fee
Deposit Processing:	
Deposit ticket entry (each entry)	$0.15
Deposit transfer voucher (each entry)	.25
Mail deposit ticket entry (each entry)	.25
Deposit item processing (each entry)	.02
Deposit item encoding (each item)	.03
Deposit item return (each item)	1.00
Deposit item photocopy (each item)	2.00
Deposit pickup (each pickup)	6.75
Check and Money Order Clearing:	
Clearing item processed (per item)	.0887
Clearing item reconciliation copy processing:	
By manual input (per item)	.0295
By magnetic tape input (per item)	.0098
Clearing item fine sorting for return with bank statements (per item)	.02
Stop payment orders (per item)	4.50
Imprinting checks and money orders	(1)
Wire Transfer of Funds	
Outgoing (per transfer)	3.75
Incoming (per transfer)	1.25
Lockbox Services:	
Lockbox item processing (per item)	.11
Deposit item processing (per item)	.02
Deposit ticket entry (each entry)	.15
Transportation (per month, per association)	20.00

[1] Direct cost passthrough from supplier.

The charge for each item paid included, but is not limited to, the following services: Cost of supplying checks and money orders; Stop payment order processing; Dollar amount reconciliation; Statement preparation and mailing; Register copy preparation and entry; Perpetual retention of records for accounts that are truncated; Special deposit arrangements with commercial banks; Miscellaneous debit and credit item entries; Inter-account transfers; Special non-routine statements; Photostatic retrieval of paid items.

Schedule B: Demand Deposit Services

FEDERAL HOME LOAN BANK OF ATLANTA

Service	Fee
1. Checks paid (includes at no additional charge: monthly account maintenance; internal transfers; special statement drops; and return of items not paid):	
a. Monthly statement; items finesorted into check number order (per item)	$0.12
b. Monthly statement; items truncated (per item)	.10
2. Stop payment (per item)	6.00
3. Deposit transfer checks (DTC) (per item)	2.50
4. Wire transfers:	
In (per item)	2.50
Out (per item)	3.30
5. Overdrafts (2 percent over current short-term variable rate advance—minimum charge $20.00)	
6. Account reconciliation service:	
a. Full reconciliation—magnetic tape ($20.00 min./month (per issue)	.30
b. Full reconciliation—paper issue ($20.00 min./month):	
With encoded amounts (per issue)	.0425
With unencoded amounts (per issue)	.06
c. Partial reconciliation ($10.00 min./month) (per item)	.03
7. Deposit processing service:	
a. Unencoded checks	.0525
b. Encoded checks	.0350
c. Foreign checks	2.50
d. Bond coupons (per envelope)	3.00
e. Deposited checks returned (per entry)	2.50
8. Automated clearinghouse (ACH):	
a. Originating—$15.00 per tape plus	.03
b. Receiving	.03
9. Settlement Only Services:	
a. Automated clearinghouse (ACH) (per month)	50.00
b. Coin and currency (per month)	50.00
c. Treasury tax and loan (TT&L) (per month)	50.00

FEDERAL HOME LOAN BANK OF ATLANTA—Continued

Service	Fee
d. Savings bonds (per month)	$50.00
e. Deposit of items at Fed (per month)	50.00

Cost of check printing will be charged directly to association.

Federal Reserve charges for wire transfers are reflected in the above schedule. Any other charges which the Federal Reserve System may impose in the future may result in adjustments to the above schedule.

Any special services will be charged on an hourly basis.

Federal Home Loan Bank of Cincinnati

The Federal Home Loan Bank of Cincinnati offers to its members a complete Demand Deposit Account program. The salient features of the program include account reconciliation, fine sorting of checks, safekeeping of money orders and reconciled checks, and the Idle Funds Transfer Program. The Bank pays for all member checks and money orders and only requires a compensating balance in return for item services. If the member decides to pay for the printing charge of the checks and money orders, an allowance will be made to the prices listed below:

Service	Fee (unit cost)
Cashier's checks	$0.135
General disbursement	.135
Money order	.105
Demand	.135
Dividend	.095
Special	.135
Christmas	.20
Escrow	.135
Construction	.135
Unreconciled	.20
Magnetic tape	.043
Advices	.06
Stop payments	2.00
Deposits	.07
Credits	.11
Wire transfers-out	4.00
Charges	.11
Photocopies	1.00
Depository transfer checks (DTC)	2.00

Overdrafts are charged at the 90-day advance rate plus a $25.00 fee.

Federal Home Loan Bank of Indianapolis

The Demand Deposit clearings will have the following service charges:

Quarterly transaction volume	Paid check charge	Advices	
		Paper	Tape
First 3,750	$0.13	$0.05	$0.025
Next 9,000	.11	.04	.020
Next 12,500	.09	.04	.020
Next 25,000	.08	.03	.015
All over 50,000	.07	.02	.010

Overdrafts are assessed a charge at 2% above the variable advance rate, with a minimum charge of $25.

Collected balances will earn at an interest rate that approximates the 91-day Treasury Bill rate.

Descriptions

Service fees include processing of checks, deposits, journal transactions and stop payment requests. Accounts may be established on an unreconciled or reconciled basis. An additional charge will be made for reconciliation advices.

Monthly statements are provided on or before the 25th day of each month containing information or daily collected balances, daily check and advice volumes, interest earned and transaction charges.

Service charges are as follows:

	Metropolitan Area	
	Detroit	Indianapolis
Transit Item Deposit Program		
Cash item deposited	$0.05	$0.06
Return item	.50	.75
Courier service:		
Courier charges are assessed for each delivery at various rates, depending upon the distance traveled and other cost considerations.		
Involves the pick-up and deposit of cash and non-cash items on a daily basis. Same-day ledger credit is posted, and funds are available for investment in accordance with an availability schedule.		
Coin and Currency Program		
Service charges are as follows:		
Metropolitan areas of Indianapolis and Detroit—per delivery by armored truck service	$25	
Outside metropolitan areas—fees vary depending on distances involved.		
Service Description:		
Coin and currency is delivered to the locations in the amounts and denominations requested. Excess funds are picked-up is desired		
Mortgage Remittance Service		
Service charge is as follows:		
Per deposit item received	0.17	
Service Description:		
Mortgage remittances involving checks or coupons are processed. Computer generated files are produced for transmittal to servicers.		

Federal Home Loan Bank of Chicago

Service	Fee
Checks and money orders paid:[1]	
Less than 7,500 items per association (per month)	$0.110
7,501–10,000 items per association (per month)	0.100
10,001–12,500 items per association (per month)	0.090
12,501–15,000 items per association (per month)	0.080
15,001–25,000 items per association (per month)	0.075
Over 25,000 items per association (per month)	0.070
Ancillary service fees:	
Fine sorting (per items)	0.015
Recons:	
—Non-encoded items (per item)	0.055
—Encoded items (per item)	0.035
—Magnetic tape items (per item)	0.025
Stop payments (per order)	7.00
Photocopies (per item)	3.00
Account maintenance (per account per month)	10.00
Additional statements (per statement)	5.00
Deposit processing:	
Checks deposit drawn on:	
Federal Home Loan Bank of Chicago, FHLB intercept customers	.0386
City of Chicago financial institutions postal money orders, U.S. Treasury checks	.0386
Chicago RCPC financial institutions (routing number 0711, 0712, 0719, 2711, 2712, 2719)	.0494
Transit items—other district financial institutions (items payable in other Federal Reserve office territories)	.0697
Ancillary service fees:	
Check encoding	.0350
Return items:	
Re-deposits	None
Charge backs	1.00
Food stamps	.02
Coupons deposited (per envelope)	2.50
Coin and currency orders (plus costs)	2.00
Money transfers:	
Wire transfers:	
Wire in	2.00
Wires out	4.00
Wires out/third party	6.00
Quick deposit drafts:	
Quick drafts	2.00

Checks supplied by the bank, requests for money order forms and postage courier services are provided at actual cost.

Federal Home Loan Bank of Des Moines

Service	Fee
Account maintenance	$5.00
Account reconciliation	5.00
Special cut-off statements	3.00
Printing costs	[1]
Stop payments	5.00
Drafts paid—truncated	.04
Drafts paid—non-truncated	.05
Issue encoding	.04
Account reconciliation—Tape	.02
deposited items—encoded:	
On us/local	.025
Regional/country	.035
Transit	.0475
Deposited items—unencoded:	
On us/local	.0375
Regional/country	.0475
Transit	.06
Deposited items returned	.80
Food stamps deposited	.02
Coupons deposited. (per envelope)	2.50
Lockbox—pass through	[1]
Lockbox—FHLB	.13
ACH transactions (per tape/.02 per item)	1.00
Bank wires—in	1.00
Bank wires—out	3.50
Safekeeping	10.00
Ledger entries—credits	.20
Ledger entries—debits	.10
Coin and currency orders (plus actual cost)	2.00
Miscellaneous charges	[1]
Retail repurchase (per month/.25 per transaction)	25.00
Electronic check transmission	.01
Miscellaneous Lockbox processing	[1]
Microfilm processing/200' roll	4.00
Microfilm duplicating/200' roll	5.00
Miscellaneous film processing	[1]

[1] Actual costs.

Federal Home Loan Bank of Little Rock

Service	Fee (per item)
Checks/money orders paid (standard check furnished)	$0.15
Truncation	(1)
Reconciliation of check/money order:	
Magnetic tape	.02
MICR	.07
Fine sort	.006
Deposits (per check)	.04
Credits/adjustments	(1)
Wires:	
In	2.00
Out	4.00
Check withdrawals	5.00
Stop payments	5.00
Exception item return	2.50
Depository transfer checks	4.00
Photocopy	2.50
Transmatic returns	2.50
Voids	(1)
Checks/money order forms	(1)
Paid items mailed to association	(1)
Overdrafts	(3)

[1] No charge.
[2] Actual costs above standard check.
[3] Per daily occurrence and interest penalty at category II advance rate plus 1 percent.

Federal Home Loan Bank of Topeka

Service	Fee (per item)
1. Standard service[1]	$0.15
2. Truncated standard service[2]	.12
3. Unreconciled service[3]	.11
4. Truncated unreconciled service[4]	.08

Descriptions:
[1] Standard Service—Includes check reconciliation as well as all other services associated with DDA. Checks are matched to a register file built by paper (maintenance) or magnetic tape data.
[2] Truncated Standard Service—Identical to No. 1 except that checks are not returned to the association. Checks are on file 90 days, then destroyed. The 3¢ discount from our standard service fee is possible through reduced filing, reader/sorter processing, postage and preparation for mailing.
[3] Unreconciled Service—The Bank merely debits the DDA statement for clearing checks. No register files are built or maintained by the system. At statement cycle date, a magnetic tape of paid checks is sent to the association as input for its own automated checks reconciliation system. The physical checks are fine—sorted by check number and returned with the statement. The 4¢ discount is made available since the Bank does not have to manually prepare and enter check maintenance data. Data files at the Bank are 25% smaller for this service.
[4] Truncated Unreconciled Service—This service is identical to No. 3 except that checks are not returned to the association.

Federal Home Loan Bank of San Francisco

Service	Fee
Checks paid (per item)	$0.060
Fine sorting (per item)	0.010
Recon issue:	
Tape (per item)	0.015
MICR (per item)	0.060
Photocopy (each)	1.000
Stop payment (each)	3.000
DDA maintenance	(1)
Recon maintenance	(1)
Wire Transfers:	
Incoming	(1)
Outgoing	(2)

[1] No charge.

Federal Home Loan Bank of Seattle

Service	Fee
Account maintenance (monthly)	$3.50
Wire transfers:	
In (per wire)	2.00
Out (per wire)	3.00

FEDERAL HOME LOAN BANK OF SEATTLE—Continued

Service	Fee
Pre-authorized deposit transfers (per pre-authorized check)	1.25
Stop payments (per stop)	3.25
Government recurring payments (per item)	.25
Unreconciled charges:	
Checks paid and fine sorted (per item)	.075
Reconciled Charges (per item):	
Checks paid and reconciled (tape entry)	.085
Checks paid and reconciled (register entry)	.095
Cost of check supplies:	
Cost pass-through from supplier	(1)

[1] Actual cost.

By the Federal Home Loan Bank Board.

James R. Silkensen,

Acting Director, Office of District Banks.

Charlotte A. Chamberlain,

Director, Office of Policy and Economic Research.

[FR Doc. 82-34815 Filed 12-27-82; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

December 20, 1982.

Background

When executive departments and independent agencies propose public use forms, reporting, or recordkeeping requirements, the Office of management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act [44 U.S.C. Chapter 35]. Departments and agencies use a number of techniques to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carring out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

List of Forms Under Review

Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report in published is the **Federal Register**. This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms revisions extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appear below. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Office-Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Reviewer—Richard Sheppard—Office of Information and regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

Request for Deletion of an Existing Report

1. Report title: Monthly Report of Outstanding Commercial and Industrial Loans to U.S. Addressees, by Industry

Agency form number: FR 2416a

Frequency: Monthly

Reporters: Commercial banks

SIC Code: 602pt.

Small businesses are affected.

General description of report:

Respondent's obligation to respond is voluntary [12 U.S.C. 248(a), (i) and 353 *et seq.*]; a pledge of confidentiality is promised [5 U.S.C. 552(b) (4) and (b) (8)].

The report collects data by business of borrower. The data are used for monitoring sources of demand for business loans at banks and the extent of only term lending by banks. For some time the Federal Reserve has been able to make only limited use of the 2416a data. It has become increasingly difficult to categorize loan data by type of industry given the rise in conglomerate activity that has occurred over recent years. Therefore, it was decided that the 2416a should be discountinued.

Board of Governors of the Federal Reserve System, December 21, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-35060 Filed 12-27-82; 8:45]

BILLING CODE 6210-01-M

Arthur Bancshares Corp. 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 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, indentifying 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 Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Arthur Bancshares Corp.*, Arthur, Illinois; to become a bank holding company by acquiring 100 percent (less directors' qualifying shares) of the voting shares of State Bank of Arthur, Arthur, Illinois. Comments on this application must be received not later than January 20, 1983.

B. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Revenswood Financial Corporation*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Ravenswood, Chicago, Illinois. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago. Comments on this application must by received not later than January 20, 1983.

Board of Governors of the Federal Reserve System, December 21, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-35060 Filed 12-27-82; 8:45 am]

BILLING CODE 6210-01-M

Mellon National Corp.; Merger of Bank Holding Companies

Mellon National Corporation, Pittsburgh, Pennsylvania, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with

The Girard Company, Philadelphia, Pennsylvania. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The Girard Company, Bala Cynwyd, Pennsylvania, also engages in the following nonbank activities: leasing personal property and equipment; providing data processing services; underwriting credit life and credit accident and health insurance and provide portfolio investment advice to individuals outside the United States. In addition to the factors considered under section 3 of the Act (banking factors), the Board will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

Mellon National Corporation would also acquire Girard International Bank, Miami, Florida, and New York City, New York, a corporation organized pursuant to section 25(a) of the Federal Reserve Act (12 U.S.C. 611 et seq.).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 17, 1983. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Govenors of the Federal Reserve System, December 21, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-35061 Filed 12-27-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Immunization Practices Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following Committee meeting.

Name: Immunization Practices Advisory Committee

Dates: January 24-25, 1983

Place: Conference Room 207, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333

Time: 8:15 a.m.

Type of Meeting: Open

Contact Person: Jeffrey P. Koplan, M.D., Executive Secretary of Committee (1-3035), Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333

Purpose:

The Committee will discuss such topics as influenza, Hepatitis B, Japanese B encephalitis, and smallpox vaccines; guidelines for hospital workers; and will consider other matters of relevance among the Committee's objectives.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: December 17, 1982.

William H. Foege,

Director, Centers for Disease Control.

[FR Doc. 82-35057 Filed 12-27-82; 8:45 am]

BILLING CODE 4160-18-M

National Institute for Occupational Safety and Health; Occupational Safety and Health Field Research Projects; Correction

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control, Public Health Service, HHS.

ACTION: Notice of Research Project Initiation; Correction.

SUMMARY: This document corrects a notice of research project initiation that appeared at page 49471 in the **Federal Register** of Monday, November 1, 1982 (47 FR 49471). This action is necessary to make the notice consistent with language used in the NIOSH criteria document on polychlorinated biphenyls (PCB's).

FOR FURTHER INFORMATION CONTACT: David P. Brown, Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, OH 45226, Telephone: (513) 684-2694.

SUPPLEMENTARY INFORMATION: Field work on a research project entitled "Reproductive History Study of Women Exposed to Polychlorinated Biphenyls in the Workplace" is scheduled to begin on December 13, 1982. A notice to that effect was published as FR Doc. 82-29883 appearing on page 49471 in the November 1, 1982, issue of the **Federal Register.**

On page 49471, column 3, in the first paragraph under the heading "Background", the following sentence should be deleted:

"In animals and humans, PCB's have been found to be carcinogenic."

In its place should be substituted the following language to be consistent with the NIOSH criteria document on PCB's:

"PCB's have also been found to induce tumors in experimental animals after repeated oral ingestion. Because of these findings, PCB's are considered to have carcinogenic potential in humans."

Dated: December 17, 1982.

J. Donald Millar,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 82-35063 Filed 12-27-82; 8:45 am]

BILLING CODE 4190-19-M

Food and Drug Administration

[Docket No. 82F-0364]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of tris(2,4-di-*tert*-butylphenyl)phosphite as an antioxidant and/or thermal stabilizer for polycarbonate resins.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B3664) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010(b) (21 CFR 178.2010(b)) be amended to provide for the safe use of tris(2,4-di-*tert*-butylphenyl)phosphite as an antioxidant and/or thermal stabilizer for polycarbonate resins complying with § 177.1580 (21 CFR 177.1580).

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no

significant impact and the evidence supporting that finding may be seen in 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: December 16, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-34917 Filed 12-27-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82F-0370]

M & T Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that M&T Chemicals, Inc. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of mono(*n*-octyl)tin,*S,S',S''* tris (isooctylmercaptoacetate) as a stabilizer in polyvinyl chloride and vinyl chloride copolymers intended for food-contact applications.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B3680) has been filed by M&T Chemicals, Inc., P.O. Box 1104, Rahway, NJ 07065, proposing that the food additive regulations be amended to provide for the use of mono(*n*-octyl)tin,*S,S',S''* tris (isooctylmercaptoacetate) as a stabilizer in polyvinyl chloride and vinyl chloride copolymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: December 16, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-34918 Filed 12-27-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82F-0026]

Toyo Seikan Kaisha, Ltd.; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the amendment of a filing notice published on March 19, 1982 (47 FR 11971) on behalf of Toyo Seikan Kaisha, Ltd. This notice amends the list of substances convered by the food additive petition to include an optional trimethoxysilane coupling agent.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given of the amendment of filing notice published on March 19, 1982 announcing the filing of a petition (FAP 2B3615) by Toyo Seikan Kaisha, Ltd., 3-1 Uchisaiwaicho 1-Chome, Chiyoda-ku, Tokyo 100, Japan. This amendment to the filing notice adds trimethoxysilane coupling agents containing amino, epoxy,ether and/or mercapto groups as optional coupling agents in the 2-component aliphatic polyurethane laminating adheasive for fabricating retortable pouches described in the filing notice.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: December 16, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-34915 Filed 12-27-82; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

New York District Office, chaired by George J. Gerstenberg, District Director.

DATE: Friday, January 14, 1983, 1:30 p.m. to 3:30 p.m.

ADDRESS: 26 Federal Plaza, Rm. 30-37A, New York, NY.

FOR FURTHER INFORMATION CONTACT: Marta De Arce, Consumer Affairs Officer, or

Carolyn L. Hommel, Consumer Affairs Officer, Food and Drug Administration, 850 Third Ave., Brooklyn, NY 11232, 212-955-5043.

Houston Station, chaired by Anthony J. Whitehead, Chief.

DATE: Thursday, January 27, 1983, 10 a.m.

ADDRESS: 1440 N. Loop, Suite #250, Houston, TX.

FOR FURTHER INFORMATION CONTACT: Sheryl Lunnon-Baylor, Public Affairs Officer, Food and Drug Administration, 1440 N. Loop Suite #250, Houston, TX 77009, 713-229-3530.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Officers, and to contribute to the agency's policymaking decisions on vital issues.

Dated: December 17, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-34916 Filed 12-27-82; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicare and Medicaid Programs; Tax Equity and Fiscal Responsibility Act of 1982; Information Notice on Medicare and Medicaid Amendments

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

ACTION: General notice.

SUMMARY: This notice describes briefly some of the provisions of Title I of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, enacted September 3, 1982) that affect eligibility, benefits, reimbursement, and

administration of the Medicare and Medicaid programs.

We wish to bring to the attention of the public several provisions that are, in large part, self-explanatory and that are now or will soon become effective. These provisions will be implemented on the dates indicated, even though specific regulations have not been published. We will incorporate these new provisions in regulations, program instructions, and other materials as appropriate.

DATES: The effective date of each statutory provision is given in the "Supplementary Information" section of this document.

Since this notice merely contains a brief description of statutory changes and does not contain policy interpretations or regulatory changes, we are not providing a specified period for receipt of comments. However, we will consider all comments received in future review of the need for departmental legislative initiatives, regulations, or administrative actions.

ADDRESS: Address comments in writing to: Health Care Financing Administration, U.S. Department of Health and Human Services, Attention: BPP–232–GN, P.O. Box 17073, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

In commenting, please refer to file code BPP–232–GN.

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

FOR FURTHER INFORMATION CONTACT: Thomas Falloon, (301) 594–9774.

SUPPLEMENTARY INFORMATION: .

Background

On September 3, 1982, the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, was enacted. Title I of this Act (the Medicare and Medicaid Amendments of 1982) added a variety of new provisions to encourage cost effectiveness and efficient operation among individuals and institutions furnishing services under Medicare and Medicaid.

This notice describes briefly some of the provisions of the new legislation relating to the Medicare and Medicaid programs that are sufficiently complete and clear that we believe they can take effect without issuance of regulations. We have provided a summary of these provisions to give notice to program administrators, providers of services, beneficiaries, and the general public that they are being implemented. We will also incorporate many of these provisions in conforming regulations and program issuances, as appropriate, at a later date.

There are provisions in the new law that conflict with current regulations, or portions of current regulations. To the extent that the new statutory provisions conflict with our existing regulations, the provisions of the new law supersede those portions of the regulations. Other portions of the same regulations and all other existing regulations remain in effect.

This Notice is not intended to be an exhaustive listing of new provisions that are self-implementing. We note that, with respect to all Medicaid provisions that are self-implementing, States may adopt any lawful interpretation of these new provisions until final regulations are adopted or interpretations are issued.

Summary of Specific Provisions

(The section numbers cited before each item refer to the provisions of the Tax Equity and Fiscal Responsibility Act of 1982.)

1. *Section 101(b)(3)—Prospective payments for hospitals and skilled nursing facilities.* The provision requires the Secretary to develop in consultation with the Senate Finance Committee and House Ways and Means Committee, Medicare prospective reimbursement proposals for hospitals, skilled nursing facilities and to the extent feasible other providers, and to report to the committees on the proposals by December 31, 1982.

Amends: Section 1135 of the Social Security Act (the Act).

2. *Section 112—Reimbursement for inpatient radiology and pathology services.* This amendment eliminates the special 100 percent reimbursement rate currently applicable to services to hospital inpatients that are furnished by radiologists and pathologists who accept assignment in all cases for these services. Thus, Medicare will pay for such services on the same basis as for other physicians' services; i.e., 80 percent of the reasonable charge after the Part B (Supplementary Medical Insurance) deductible has been met.

Amends: Sections 1833(a)(1) and (b)(1) of the Act.

Effective: This provision applies to services furnished on or after October 1, 1982.

3. *Section 115—Prohibition of payment for ineffective drugs.* This amendment provides for implementation of section 2103 of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35. Section 2103 prohibited the use of Federal funds under Medicare Part B and under Medicaid to pay for certain less than effective drugs. The regulations implementing this provision were published in the **Federal Register** on October 1, 1981 (46 FR 48550) and are located at 42 CFR 405.232(c), 441.10(f) and 441.25. However, subsequent legislation has led to delays in the implementation of this provision.

Repeals: Section 131 of Pub. L. 97–92, Joint Resolution Making Further Continuing Appropriations for Fiscal Year 1982 and for Other Purposes.

Suspends: Sections 209 and 210 of the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Act, 1982.

Effective: September 30, 1982.

4. *Section 121—Medicare coverage of Federal employees.* This amendment cross-refers to section 278 of Pub. L. 97–248 that makes Federal employment subject to the hospital insurance portion of the FICA tax. Therefore, Federal employees will earn credit toward, and may qualify for, full Medicare protection based on their Federal employment. This means—(1) Medicare protection will be available to Federal employees on the basis of age, disability, or end-stage renal disease requiring dialysis or a kidney transplant; and (2) spouses age 65 and over and disabled adult children of Federal employees may also be eligible for Medicare. Also, Federal employees who perform service during January 1983 will receive credit for their Federal service performed before January 1, 1983.

Amends: Sections 226(a)(2), 226(b) and (b)(2)(B), 226(g), 226A(a)(1) and 1811 of the Social Security Act; Sections 1402(b) and 3122 of the Internal Revenue Code of 1954.

Adds: Section 3121(u) of the Internal Revenue Code of 1954. Sections 210(p); 226(a)(2)(B), (a)(2)(C)(i) and (a)(2)(C)(ii), (b)(2)(C)(i), (b)(2)(C)(ii)(I) and (b)(2)(C)(ii)(II); and 226(h) of the Social Security Act.

Effective: January 1, 1983.

5. *Section 124—Part B premium as a constant percentage of costs.* This amendment suspends the current limitation on annual inreases in the Part

B (Supplementary Medical Insurance) premium and increases the premium on July 1, 1983, and on July 1, 1984 to a level that will result in monthly premiums being equal to 25 percent of the Supplementary Medical Insurance program costs for aged beneficiaries. During this period, premium increases would not be limited to, as required by section 1839(c)(2) of the Act, the lower percentage of—(1) the most recent increase in cash social security benefits; or (2) the increase in the costs of the Supplementary Medical Insurance program. The method of calculating premiums in effect before this amendment resumes July 1, 1985.

Amends: Sections 1839 (c)(2) and (c)(3); and 1844(a)(1)(A)(i) and (a)(1)(B)(i) of the Act.

Adds: Sections 1839 (g)(1) and (g)(2) of the Act.

Effective: These provisions are effective from July 1, 1983 through June 30, 1985.

6. *Section 125—Special Medicare enrollment without penalty for merchant seamen.* This provision establishes a special enrollment period for merchant seamen. During this period, merchant seamen who were eligible for both Medicare in September 1981 and services provided under the Public Health Service Act at any time during the period beginning on March 10, 1981 through September 30, 1981 (the last day merchant seaman were eligible for care at Public Health Service hospitals), may enroll in the Supplementary Medical Insurance program, with the option of entitlement beginning the month after enrollment, or October 1981. Premium amounts will not be subject to the usual increase for late enrollment. Those few seamen who are eligible for hospital insurance for which a premium must be paid will have the same options for month of entitlement.

Effective: October 1, 1982 through December 31, 1982.

7. *Section 128—Technical corrections relating to Medicare.* These provisions make technical changes in title XVIII of the Act, the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, and the Internal Revenue Code of 1954.

Amends: Sections 1842(b)(3)(B)(ii)(II); 1861 (e) and (cc)(1); 1862 (b)(1), (b)(2)(A), and (b)(2)(B); 1865 (b); 1866 (a)(1)(B) and (b); 1870(c) and 1884 of the Act; Section 162 of the Internal Revenue Code of 1954; Section 2143(b)(1) and 2203(f)(3) of the Omnibus Budget Reconciliation Act of 1981.

Effective: Amended sections 1842(b)(3)(B)(ii)(II); 1861(e); 1865(b); 1866(a)(1)(B); and 1870(c) of the Act are effective September 3, 1982.

Any other amendment made to the Act or to the Internal Revenue Code of 1954 made by these Medicare technical amendments are effective as if it had been originally included as a part of Pub. L. 97–35.

8. *Section 134—Medicaid coverage of home care for certain disabled children.* This provision gives States the option of covering under Medicaid certain disabled children age 18 or under who are living at home. A State could extend such protection to an individual who would be eligible for supplemental security income (or State supplemental income) payments, and therefore Medicaid, if that individual were in a medical institution. The State must determine that— (a) the child requires the level of care provided in an institution; (b) it is appropriate to provide such care outside of the institution; and (c) the estimated cost of care at home is no higher than the estimated cost of institutional care.

Amends: Section 1902(e) of the Act.

Effective: October 1, 1982.

9. *Section 136—Medicaid funding in American Samoa.* This amendment provides Medicaid funding to the territory of American Samoa. Federal matching of 50 percent of expenditures is authorized up to a maximum of $750,000 per year. Due to the unique circumstances in the health system in American Samoa, the Secretary may waive any Medicaid requirements, other than those relating to the Federal Medical assistance percentage, the $750,000 per year maximum, and the requirement that Federal matching payments be available only for amounts expended by American Samoa.

Amends: Sections 1101(a)(1), 1108(c), 1902(j), and 1905(b)(2) of the Act.

Effective Date: October 1, 1982.

10. *Section 137—Technical corrections relating to Medicaid.* These provisions make technical changes in title XIX of the Act, the Omnibus Reconciliation Act of 1980, Pub. L. 96–499, and the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35.

Among other changes, this section—

- Specifies that an exception to the effective date of October 1, 1981 can be made for the State plan requirement that States— (1) Inform all eligible children of EPSDT services, (2) provide or arrange for requested screening services, and (3) arrange for corrective treatment, if the Secretary detemines that action by the State legislature is required to make these plan changes. If State legislation is needed, EPSDT informing, screening, and treatment requirements that were paragraphs 403(g)(1), (2), and (3) of the Act (prior to their repeal) apply until the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after August 13, 1981–137(a)(4).
- Restates a State's authority to cover optional categorical groups and requires that at least the standard mandatory services in section 1902(a)(10)(A) of the Act be provided for these groups–137(b)(7).
- Requires States that provide Medicaid to the medically needy to use a single standard for income eligibility and a single standard for resource eligibility for all groups of medically needy. Also, this amendment requires that in determining income and resource eligibility for the medically needy, States must use the same methodology that is used for determining income and resource eligibility in the most appropriate cash assistance program. Thus, in States in which the supplemental security income program (SSI) is in effect and that provide Medicaid to all SSI recipients, the methodology for determining the income and resources of the aged, blind, or disabled medically needy must be that of the SSI program. For other medically needy individuals, the methodology must be the same as would be employed in determining cash assistance eligibility under the most appropriate State plan to which the medically needy group is most closely categorically related–137(b)(8).
- Revises minimum requirements for coverage of medically needy children to require States with medically needy programs to cover as medically needy, individuals under age 18, who, except for income and resources, would be eligible for Medicaid as a member of a categorically needy group whom the State is required to cover under section 1902(a)(10)(A)(i) (generally, cash assistance recipients)–137(b)(9).
- Exempts Federally qualified HMOs from utilization control penalty requirements–137(b)(11).
- Requires recertification of care every 60 days (rather than annually) for all individuals in intermediate care facilities, except for those individuals in intermediate care facilities for the mentally retarded for whom annual recertification still applies–137(b)(12).
- Clarifies Secretarial/State authority to inspect the records of an HMO that relate to either—(1) the ability of the HMO to bear the risk of financial loss; or (2) the services performed and reimbursement levels. Before this amendment, the statute may have appeared to allow inspection only of records containing both types of information–137(b)(14)(A).

• Clarifies that claims made before FY 82 (rather than FY 81) are excluded from the Medicaid reduction provision—137(b)(15)(A).

• Specifies that Indian Health Service payments and payments to State fraud control units are excluded from the Medicaid Reduction provision—137(b)(15)(B).

• Ensures that Arizona is excluded from the Medicaid reduction provisions—137(b)(15)(C).

• Clarifies that, in determining if States qualify for an offset to Medicaid reduction due to the hospital cost review program, the Secretary may specify the annual period to use in calculations rather than using calendar years—137(b)(15)(D).

• Includes definition of United States in determining increases in hospital costs in the United States—137(B)(15)(E).

• Modifies the target rate provision to exclude the Indian Health Service and State Medicaid fraud control unit payments—137(b)(16)(A).

• Removes, for purpose of calculating States' target rates only, the effect of changes after FY 1981 in States' Federal medical assistance percentages—137(b)(16)(E).

• Adds pregnant women as a discrete category of individuals who could receive medical assistance—137(b)(18).

• Revokes the Secretary's authority under section 1915(b) to waive the requirements for States contracting on a risk basis with Health Maintenance Organizations (HMOs) and other prepaid entities found at section 1903(m) of the Social Security Act. However, this limitation on the Secretary's waiver authority does not apply where a waiver was granted by the Secretary and the arrangement was in place before August 10, 1982. This exemption extends only for the period for which the waiver was initially approved—137(b)(19).

• The type of services that may be covered by a primary care case management system or a specialty physician services arrangement under section 1915(b) of Act has been changed from "primary care services" to "medical care services." This means that specialty physician services arrangements need not include primary care services—137(b)(20).

• Clarifies that in evaluating an individual's need for home and community-based services, the State must also look at an individual's eligibility for the services provided under the home and community-based waiver—137(b)(22).

• Clarifies that fraud and abuse recoveries greater than 1 percent can be carried forward for more than one quarter for determining whether a State achieves sufficient recoveries to have its reduction reduced by one percent under section 1903(s)(2)(C) of the Act—137(b)(26).

Amends: Sections 914 (b)(2)(A) and (c)(2) of the Omnibus Reconciliation Act of 1980, Pub. L. 96–499.

Sections 2161 (b), (c)(1) and (c)(2); 2171(a)(3); 2181(b); and 2193(c)(3)(B) of Pub. L. 97–35.

Sections 501 (b)(1)(D) and (b)(2); 505 (2)(B) and (2)(D); 1134(4); 1902 (a), (a)(10)(A), (a)(10)(C)(i), (a)(10)(C)(ii) and (b); 1903 (f)(3), (g)(1), (g)(1)(A), (k), (m)(2)(A), (s)(1)(A), (s)(1)(C), (s)(3)(D), (s)(4)(B), (s)(5)(B), (t)(1)(A), (t)(1)(B), (t)(1)(C), (t)(2)(A) and (t)(3); 1905 (a), (a)(1) and (h)(1)(C); and 1915 (b), (b)(1), (c)(1), (c)(2)(B), (c)(3), (c)(4) and (f) of the Act.

Adds: Section 1905(a)(vii) of the Act.

Effective: The amendments to Pub. L. 96–499 are effective September 3, 1982.

Except as provided in the following three sentences, any amendment to Pub. L. 97–35 made by this section is effective as if it had been originally included in the provision of Pub. L. 97–35 to which the amendment relates.

Section 1903(f)(3) of the Social Security Act is effective October 1, 1982.

The limitation on the Secretary's waiver authority applicable to section 1903(m) of the Act under section 1915(b) of the Act is effective August 10, 1982.

Except as otherwise provided, any amendment to the Social Security Act made by the preceding provisions of this section is effective as if it had been originally included in the provision of the Social Security Act to which the amendment relates, as such provision of the Social Security Act was amended by the Omnibus Budget Reconciliation Act of 1981.

In the September 29, September 30, and October 1, 1982 issues of the **Federal Register**, we publish proposed and final regulations concerning many other provisions of the Tax Equity and Fiscal Responsibility Act of 1982. Most of those provisions concern reimbursement to providers of medical services. We will also develop regulations, program instructions and other materials for the other provisions of the new legislation, as appropriate, over the next few months.

(Sections 101(b)(3), 112, 115, 121, 124, 125, 128, 134, 136, 137, and 278 of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248)

Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Programs; No. 13.773, Medicare-Hospital Insurance Program; and No. 13.774, Medicare-Supplementary Medical Insurance Program.

Dated: November 24, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: December 16, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-35064 Filed 12-27-82; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT-DES 82-78]

Yellowstone Diversion Project; Availability of Draft Environmental Statement and Public Hearing Notice

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement on Intake Water Company's proposed Yellowstone Diversion Project. This statement (INT-DES 82-78, dated December 22, 1982) was made available to the public on December 22, 1982.

The draft environmental statement describes the potential effects of the Bureau's proposal to permit Intake Water Company to construct facilities to divert water from the Yellowstone River near Intake, Montana, to an offstream reservoir site for subsequent municipal, industrial and possibly agricultural use. Intake Water Company holds a water right from the state of Montana for the diversion. Approximately 135 acres of land administered by the Bureaus of Reclamation and Land Management will be needed for the pumping plant, pipeline and reservoir.

Written comments must be submitted to the Regional Director by March 1, 1983.

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Room 7622, Bureau of Reclamation, Washington, DC 20240, Telephone: (202) 343–4991

Division of Management Support, General Services, Library Section, Code 950, Engineering and Research Center, Denver Federal Center, Denver, CO 80225, Telephone: (303) 234–3019

Regional Director, Bureau of Reclamation, Federal Building, 316 N. 26th, Billings, MT 59103, Telephone: (406) 657–6214

Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs, Bureau of Reclamation, or the Regional Director,

at the above addresses. Copies will also be available for inspection in libraries in the project vicinity.

A public hearing will be held February 16, 1983, at Glendive, Montana, Best Western Holiday Lodge, Holiday Lodge Basement, 7:00 p.m.

Oral statements at the hearing will be limited to a period of 15 minutes. Speakers will not be allowed to trade their time to obtain a longer oral presentation; however, the person authorized to conduct the hearing may allow any speaker to provide additional oral comment after all persons wishing to make comment have been heard. Speakers will be scheduled according to the time perference mentioned in their letter or telephone request, whenever possible, and any scheduled speaker not present when called will lose his or her privilege in the scheduled order and his or her name will be recalled at the end of the scheduled speakers. Requests for scheduled presentations should be received prior to 4:30 p.m., February 14, 1983. The final date for submission to the record for all supplemental comments will be March 1, 1983.

Organizations or individuals desiring to present a statement at the hearing should write the Regional Director, Bureau of Reclamation, Upper Missouri Region, P.O. Box 2553, Billings, Montana 59103, or telephone (406) 657–6605 or (406) 657–6558 and announce their intention to participate.

Comments will be accepted from other parties present following the presentation of all scheduled testimonies.

If further information is needed, phone (406) 657–6605 or (406) 657–6558.

Dated: December 22, 1982.

Robert N. Broadbent,

Commissioner of Reclamation.

[FR Doc. 82-35094 Filed 12-27-82; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications

The applicants listed below wish to conduct certain activities with Endangered Species:

Applicant: Leland B. Hayes, Quail Breeder's Society, Redmond, OR—PRT 2–9841.

The applicant requests a permit to export ten (10) captive-bred masked bobwhite quail (*Colinus virginanus ridgewayi*) to the World Pheasant Association, England, for enhancement of propagation.

Applicant: Walter B. Sturgeon, Durham, NH—PRT 2–9854.

The applicant requests a permit to purchase in interstate commerce six (6) captive-bred nene geese (*Branta sandvicensis*) from the San Diego Zoo, California, for enhancement of propagation.

Applicant: Denver Zoo, Denver, CO—PRT 2–9882.

The applicant requests a permit to import on a breeding loan one male lowland gorilla (*Gorilla gorilla*) for enhancement of propagation from the Rotterdam Zoo, the Netherlands.

Applicant: National Zoological Park, Washington, D.C., PRT 2–9879.

The applicant requests a permit to import two male Cuban crocodiles (*Crocodylus rhombifer*) for enhancement of propagation from the Havana Zoo, Cuba.

Applicant: Milwaukee County Zoo, Milwaukee, WI—PRT 2–9884.

The applicant request a permit to import one male gorilla (*Gorilla gorilla*) for enhancement of propagation from Osnabruck Zoo, West Germany.

Humane care and treatment during transport, if applicable, has been indicated by the applicants.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: December 22, 1982.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 82-35153 Filed 12-27-82; 8:45 am]

BILLING CODE 4310-55-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 December 17, 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 January 12, 1983.

Beth Grosvenor,

Acting Chief of Registration, National Register.

FLORIDA

Lake County

Eustis, *Pendleton, William Kimbrough, House (The Palms)*, 1208 Chesterfield Rd.

Nassau County

Fernandina Beach, *Merrick-Simmons House*, 102 S. 10th St.

Orange County

Winter Park, *Comstock-Harris House*, 724 Bonita Dr.

Polk County

Lakeland, *Lake Mirror Promenade*, Between Lemon St. and Lake Mirror Dr.

GEORGIA

Monroe County

Forsyth, *Forsyth Commercial Historic District*, Main, Lee, Johnston, Adams, Jackson, Kimball, and Harris Sts.

KENTUCKY

Lincoln County

Hubble vicinity, *Helm-Engleman House*, N of Hubble on Engleman Lane

LOUISIANA

Jefferson Parish

Gretna, *Crockett, David, Fire Hall and Pumper*, 205 Lafayette St.

Washington Parish

Bogalusa, *US Post Office*, 305 Avenue B

West Feliciana Parish

St. Francisville vicinity, *Solitude Plantation House*, NW OF St. Francisville on Tunica Rd.

MARYLAND

Baltimore (Independent City)
Federal Reserve Bank of Richmond, Baltimore Branch, 114 E. Lexington St.
Brown's Arcade, 322–328 N. Charles St.
Evergreen House, 4545 N. Charles St.

Garrett County

Grantsville vicinity, *Stanton's Mill*, E of Grants on MD 40

Harford County

Baldwin vicinity, *Hidden Valley Farm*, 2916 Green Rd.

Montgomery County

Poolesville vicinity, *Poole, Nathan Dickerson, House*, 15600 Edwards Ferry Rd.

Washington County

Burtner vicinity, *Search Well*, SE of Burtner on Manor Church Rd.
Hagerstown, *Hagerstown Commercial Core Historic District*, Potomac, Washington, Franklin
Antietam, Summit and Jonathan Sts.

MONTANA

Anaconda County

Anaconda, *Davidson Building*, 301–303 E. Park St.
Anaconda, *Barich Block*, 416–420 E. Park St.

Gallatin County

Bozeman, *Gallatin County Jail*, 317 W. Main St.
Three Forks, *Upper Madison School (One Room Schoolhouses of Gallatin County TR)*, Buffalo Jump Rd.

Silver Bow County

Butte vicinity, *Silver Bow Brewery Malt House*, W of Butte off US 91

Yellowstone County

Broadview vicinity, *Antelope Stage Station*, E of Broadview

NEBRASKA

Dodge County

Fremont vicinity, *Knoell, Christopher, Farmstead*

NEW JERSEY

Bergen County

Franklin Lakes, *Van Houten House (Stone Houses of Bergen County TR*, 778 Vee Dr.
Rutherford, *Yereance-Berry House (Stone Houses of Bergen County TR)*, 91 Crane Ave.

NEW MEXICO

Bernalillo County

Albuquerque, *Bottger, Charles A., House*, 110 San Felipe NW.

PENNSYLVANIA

Philadelphia County

Philadelphia, *WCAU Studios*, 1618–22 Chestnut St.

SOUTH CAROLINA

Abbeville County

Abbeville vicinity, *Harbison College President's Home*, N of Abbeville on SC 20

Carendon County

Manning vicinity, *Davis House*, S of Manning on SR 63

Greenville County

Simpsonville vicinity, *Cureton-Huff House*, SW of Simpsonville off SC 176

McCormick County

Trov vicinity, *Long Cane Massacre Site*, W of Troy of SC 10

Sumter County

Sumter vicinity, *Myrtle Moor*

TENNESSEE

Shelby County

Memphis, *Ashlar Hall*, 1397 Central Ave.

WISCONSIN

EauClaire County

EauClaire, *Barber, James, House (EauClaire MRA)*, 132 Marston Ave
EauClaire, *Barron, Martin Van Buren, House (EauClaire MRA)*, 221 Washington St.
EauClaire, *Brice, Orlando, House (EauClaire MRA)*, 120 Marston Ave.
EauClaire, *Christ Church Cathedral and Parish House (EauClaire MRA)*, 510 S. Farwell St.
EauClaire, *City Hall (EauClaire MRA)*, 203 S. Farwell St.
EauClaire, *EauClaire High School (EauClaire MRA)*, 314 Doty St.
EauClaire, *EauClaire Public Library (EauClaire MRA)*, 217 S. Farwell St.
EauClaire, *Eichert, Christine, House (EauClaire MRA)*, 527 N. Barstow St.
EauClaire, *Johnson, John, Saloon (EauClaire MRA)*, 216 Fifth Ave.
EauClaire, *Kaiser Lumber Company Office (EauClaire MRA)*, 1004 Menomonie St.
EauClaire, *Kenyon, A. L., House (EauClaire MRA)*, 333 Garfield Ave.
EauClaire, *Ottawa House (EauClaire MRA)*, 602 Water St.
EauClaire, *Owen, John S., House (EauClaire MRA)*, 907 Porter Ave.
EauClaire, *Phoenix Manufacturing Company (EauClaire MRA)*, Forest and Wisconsin Sts.
EauClaire, *Randall, Adin, House (EauClaire MRA)*, 526 Menomonie St.
EauClaire, *Schofied Hall (EauClaire MRA)*, 105 Garfield Ave.
EauClaire, *St. Patrick's Church (EauClaire MRA)*, 322 Fulton St.
EauClaire, *Union National Bank (First Wisconsin Bank) (EauClaire MRA)*, 131 S. Barstow St.
EauClaire, *Wilcox, Roy House (EauClaire MRA)*, 104 Wilcox St.

[FR. Doc. 82-35056 Filed 12-27-82; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Decision-Notice—OP3 MC-F-064]

Motor Carriers; Finance Application

The following applications 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.S. 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.

Decided: December 21, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 3 (202) 275–5223.

MC–F–15019, filed November 30, 1982. KUSKOKWIM TRANSPORTATION COMPANY d.b.a. KUSKOWIM TRANSPORTATION COMPANY (KTC) (429 D St., Suite 307, Anchorage, AK 99501)—PURCHASE—UNITED TRANSPORTATION, INC. (UTI) (Box 285, Bethel, AK). Representative: Michael Joseph, 1776 F St., NW., Washington, D.C. 20006. KTC, a joint venture, seeks authority to purchase the interstate operating rights and properties of UTI. Kuskokwim Transportation Services Corporation (Services), and in turn Kuskokwim Corporation, its noncarrier parent which controls 51 percent interest, and Puget Sound Tug & Barge Company (Puget) and in turn its noncarrier parent, Crowley Maritime Corp. which controls a 49 percent interest in KTC, seek to acquire control of said rights through the transition. KTC is seeking to acquire the operating rights contained in Certificate No. MC–123284, authorizing the transportation of *general commodities*, (1) between Bethel, AK, and points within 9 miles thereof, limited, in point of time expiring on December 21, 1985, to the extent that it authorizes the transportation of classes A and B explosives, and (2) *bulk petroleum products*, between Bethel, AK, and points within 25 miles thereof; and in Certificate W–1152: (Sub-Nos. 2 and 5) authorizing the transportation of *general commodities* by self-propelled vehicles, between specified points in Alaska on the Kuskokwim River, in seasonal operations from May 15 to October 15. KTC holds no authority from the Commission. Services and Puget (both noncarriers), control KTC. Services is a wholly owned subsidiary of The Kuskokwim Corporation (Kuskokwim), and Puget is a wholly owned subsidiary of Crowley Maritime Corporation (Crowley). Crowley owns all of the stock of (a) Crowley Towing and Transportation Co., which in turn, owns all of the stock of TMT Intermodal Transport, Inc. (MC–141323), (b) Puget, which in turn, owns the stock in Arctic Lighterage Company (MC–141642 and Subnumbers thereunder) and (W–1229 Sub–No. 1). Puget owns all of the stock of (a) Drummond Lighterage Company (W–580 Sub–No. 10), (b) Columbia Common Carriers, Inc. (W–1305), (c) Mukluk Freight Lines, Inc. (MC–118518 Sub–Nos. 8 and 12X), (d) North Star Forwarding Co. (FF–308 and Sub No. 1), (e) Northwestern Construction, Inc. (MC–145929). Crowley owns all of the stock of Harbor Tug & Barge Company, which in turn, owns all of the stock of Harbor Carriers, Inc. (W–379 Sub–No. 5).

Condition.—Kuskokwim Corporation, which controls Kuskokwim Transportation Services Corporation, and Crowley Maritime Corporation, which controls Puget Sound Tug & Barge Co., are necessary parties to the application and must each seek joinder, as such, in the application.

[FR Doc. 82–35072 Filed 12–27–82; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. OP3–MCFC–61]

Motor Carriers; Finance Applications; Decision Notice

Decided: December 16, 1982.

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find: Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered: The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 3, (202) 275–5223.

MC–FC 81017. By decision of December 16, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, Review Board Number 3 approved the transfer to Frank J. and Shirley Fratzola, doing business as Thomas Gerrity Moving and Storage, Taylor, PA, of Certificate No. MC–129539, issued April 30, 1968 to Scranton Moving Company, Inc., authorizing the transportation of household goods, over irregular routes, between Scranton, PA, and points within 25 miles thereof (except Wilkes-Barre, PA), on the one hand, and, on the other, points in MA, CT, NY, NJ, MD, DE, and DC. Representative: Peter P. Tayoun, Suite 611 Connell Building, Scranton, PA 18503.

[FR Doc. 82–35071 Filed 12–27–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

In the matter of Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers.

The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982, at 47 FR 53271. For compliance procedures see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications

may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated 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.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions 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 appplicant 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.

Agatha L. Mergenovich,

Secretary.

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." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

Please direct status inquiries to Team Five at (202) 275–7289.

Volume No. OP5–295

Decided: December 17, 1982.

By the Commission, Review Board No. 3, members Krock, Joyce, and Dowel.

MC 41098 (Sub-90), filed December 9, 1982. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K St. NW. Washington, DC 20006, 202–833–8884. Transporting *household goods,* between points in the U.S. under continuing contract(s) with Merrill Lynch Relocation Management, I Inc. of White Plains, NY.

MC 50069 (Sub-574), filed December 9, 1982. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlwood ave., Oregon, OH 43616. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114, 216–566–5639. Transporting *commodities in bulk,* between points in the U.S. under continuing contract(s) with Pressure Vessel Service, Inc. of Detroit, MI., and its subsidiary, PVS Chemicals, Inc. of Copley, OH.

MC 55898 (Sub-64), filed December 9, 1982. Applicant: DECATO BROS., INC., Heater Rd., Lebanon, NH 03766. Representative: David M. Marshall, 101 State St.-Suite 304, Springfield, MA 01103, 413–732–1136. Transporting *machinery* and *building materials* (except in bulk), between points in the U.S. (except AK and HI).

MC 114028 (Sub-51), filed November 29, 1982. Applicant: ROWLEY INTERSTATE TRANSPORTATION COMPANY, INC., 2010 Kerper Blvd., Dubuque, IA 52001. Representative: Carl L. Steiner, 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 Brooklyn, NY, East St. Louis, IL, Milwaukee, WI, points in Berkshire County, MA, Litchfield and New London Counties, CT, North Hampton County, PA, Vigo County, IN, Cook County, IL, Jackson County, MO, Dallas County, TX, Dekalb County, GA, Beaverhead County, MT, and points in CA, NC, and NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 116858 (Sub-22), filed December 9, 1982. Applicant: J & M CARRIERS CORP., North Shore Atrium, Suite 118 West, 6800 Jericho. Tpk., Syosset, NY 11791. Representative: Eugene M. Malkin, Suite 1832, Two World Trade Center, New York, NY 10048, 212–466–0220. Transporting *pulp paper and related products, furniture or fixtures, metal products, wood products* and *plastic articles,* between points in the U.S. (except AK and HI) under continuing contract(s) with Nyman Manufacturing Co. of East Providence, RI; All-Luminum Products Inc. of Philadelphia, PA; Daily Dreyer Company of Telford, PA and McGregor Printing Corporation of New York, NY.

MC 120228 (Sub-3), filed December 7, 1982. Applicant: OIL COUNTRY HAULERS, INC., P.O. Box 3270, Crosby, TX 77532. Representative: James W. Hightower, 5801 Marvin D. Love Freeway, Suite 301, Dallas, TX 75237–2385, (214) 339–4108. Transporting *Mercer commodities* between points in AR, CO, LA, KS, NM, OK, TX, and WY.

MC 134769 (Sub-8), filed December 9, 1982. Applicant: BILL BURTON & SONS, INC., P.O. Box 404, Newberry, MI 49868. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49685–0801, 616–941–5313. Transporting *coal,* between points in MI, MN, OH, and WI.

MC 144239 (Sub-15), filed December 7, 1982. Applicant: J.L.T. CORPORATION, Route 22, White House Station, NJ 08889. Representative: Charles J. Williams, P.O. Box 186, Scotch Plains, NJ 07076, (201) 322–5030. Transporting *such commodities* as are dealt in or used by grocery and food business houses, between points in the U.S. (except AK and HI).

MC 147198 (Sub-13), filed December 7, 1982. Applicant: P. & E. I. TRUCK LINES, INC., P.O. Box 175, Rossville, IL 60963. Representative: Paul J. Maton, 27 East Monroe St., Suite 1000, Chicago, IL

60603, 312–332–0905. 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 National Automotive & Rubber Marketing of Huntington Woods, MI.

MC 151878 (Sub-7), filed December 9, 1982. Applicant: THREE WAY CORPORATION, 1120 Karlstad Drive, Sunnyvale, CA 94086. Representative: Charles H. White, Jr., 1019 19th St., NW, Suite 800, Washington, D.C., 20036, (202) 785–3420. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with Hewlett Packard, of Boise, ID.

MC 161229 (Sub-1), filed December 6, 1982. Applicant: LOVE TRANSPORT COMPANY, INC., P.O. Box 546, Wichita, KS 67201. Representative: Robert W. Love (same address as applicant), (918) 832–1185. Transporting (1) *Rubber and plastic products,* between points in the U.S. under continuing contract(s) with Armin Plastic Oklahoma, Inc., of Tulsa, OK, Linear Films Inc., of Tulsa, OK, and Ritricia Plastic Corp. of Wichita, KS, (2) *salt and salt products,* between points in the U.S. under continuing contract(s) with Cargill Inc., of Minneapolis, MN, and (3) *pulp, paper and related products,* between points in the U.S. under continuing contract(s) with Weyerhaeuser Co., of Tacoma, WA.

MC 164609 (Sub-1), filed December 9, 1982. Applicant: WIEDERHOLT TRANSPORT, INC., Route 2, Box 426, Hazel Green, WI 53811. Representative: Richard A. Westley, 4506 Regent St., Suite 100, P.O. Box 5086, Madison, WI 53705–0086, (608) 238–3119. Transporting *Chemicals and related products,* between points in IL, IA, MN, and WI.

MC 165018, filed December 6, 1982. Applicant: HARVEY'S TRUCKING, INC., 912 Eicher, Springdale, AR 72764. Representative: Stanley W. Ludwig, P.O. Box 285, 529 S. Holcomb Street, Springdale, AR 72764, (501) 751–9452. Transporting *feed and feed ingedients,* between points in Washington and Howard Counties, AR, on the one hand, and, on the other, points in AR, IA, KS, LA, MO, NE, OK, TN and TX.

For the following, please direct status inquiries to Team 4 at 202–275–7669.

Volume No. OP4–085

Decided: December 20, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

FF–637, filed December 10, 1982. Applicant: AKIO FORWARDING, INC., 91–779A Makule Rd., Ewa Beach, HI 96707. Representative: Willard A. Hashimoto (same address as applicant), (808) 689–0440. As a *freight forwarder,* in connection with the transportation of *used household goods, unaccompanied baggage, and used automobiles,* between points in the U.S.

MC 124017 (Sub-12), filed December 10, 1982. Applicant: R. JEFFREY & SONS, INC., Rt. 61, Kulpmont, PA 17834. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108, (717) 233–5731. Transporting *commodities in bulk,* between points in the U.S. in and east of WI, IL, KY, TN and MS.

MC 148437 (Sub-8), filed December 13, 1982. Applicant: BORK TRANSPORT, INC., 2843 Ingersoll, Des Moines, IA 50312. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309, (515) 282–3525. Transporting *Petroleum and petroleum products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Ashland Oil, Inc., of Ashland, KY.

MC 156347 (Sub-2), filed December 10, 1982. Applicant: TOOTSIE ROLL EXPRESS, INC., 7401 S. Cicero Ave., Chicago, IL 60629. Representative: Edward G. Bazelon, 135 S. La Salle St., Chicago, IL 60603, (312) 236–9375. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with American Backhaulers Corporation and Leaf Confectionery, Inc., both of Chicago, IL.

MC 158996 (Sub-1), filed December 13, 1982. Applicant: BEULAH M. SEALS, 12343 Oak Dr., Orient, OH 43146. Representative: Frank L. Calvary, 3066 N. Star Rd., Columbus, OH 43221, (614) 459–4248. Transporting (1) *ramps,* between points in the U.S. (except AK and HI), under continuing contract(s) with KABS, Inc., of Cincinnati, OH, and (2) *food processing machinery,* between points in the U.S. (except AK and HI), under continuing contract(s) with De Francisci Machine Corp., of Brooklyn, NY.

MC 164407 (Sub-1), filed December 10, 1982. Applicant: M/A-COM TRANSPORTATION, INC., P.O. Box 199, Catawba, NC 28609. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168 (703) 629–2818. 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 Lowe's Companies, Inc., of North Wilkesboro, NC.

MC 165106, filed December 9, 1982. Applicant: RAY TRUCKING COMPANY, INC., P.O. Box 1206 Florissant, MO 63031. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400 St. Louis, MO 63105 (314) 727–0777. Transporting *beer, malt beverages, and malt beverage containers,* between points in the U.S. (except AK and HI), under continuing contract(s) with Griesedieck Beverage Company, Inc., and Ed Windler & Sons, Inc., both of St. Charles, MO.

MC 165126, filed December 10, 1982. Applicant: GEORGE M. ANDERSON, d.b.a. MACHINERY TRANSPORT, P.O. Box 60, Duvall, WA 98019. Representative: Robert G. Gleason 1127–10th E. Seattle, WA 98102 (206) 325–8875.. Transporting *those commodities* which because of their size or weight require the use of special handling or equipment, between points in the U.S. (except HI), under continuing contract(s) with N.C. Machinery Co., of Seattle, WA; Lennon Construction and Equipment Co., Inc., of Woodinville, WA; Calkins Equipment Co., of Everett, WA; Duvall Sand & Gravel, of Redmond, WA, Kiehl & Son Welding, of North Pole, AK, and Simlog Leasong Company, of Bellevue, WA.

MC 165146, filed December 10, 1982. Applicant: McINTOSH IMPLEMENT, INC., P.O. Box 367, McIntosh, SD 57641. Representative: J. Maurice Andren, 1734 Sheridan Lake Rd., Rapid City, SD 57701, (605) 343–4036. Transporting (1) *general commodities* (except classes A and B explosives and household goods), between points in ND and SD, on the one hand, and, on the other, points in CO, GA, ID, IL, IN, IA, KS, MN, MO, MT, NE, ND, OR, PA, SD, WA, WI, and WY: (2) *farm machinery and tractors,* between points in MT, NE, and WY, on the one hand, and, on the other, points in IN, IA, KS, MN, MO, and WI; and (3) *Lumber and wood products,* between points in ID, OR, MT, and WA, on the one hand, and, on the other, points in IL, IA, MN, NE, and WI.

MC 165166, filed December 13, 1982. Applicant: HUDD DISTRIBUTION SERVICES, INC., 2679 E El Presidio St., Long Beach, CA 90810. Representative: Milton W. Flack, 8484 Wilshire Blvd., No. 840, Beverly Hills, CA 90211, (213) 655–3573. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CA.

[FR Doc. 82–35078 Filed 12–27–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

In the matter of Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods).

The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested only on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated 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.

By the Commission, Review Board No. 2, Members Carleton, Williams, Ewing.

Agatha L. Mergenovich,

Secretary.

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 Four at (202) 275–7669.

Volume No. Op 4–083

Decided: December 17, 1982.

MC 28657 (Sub-6), filed December 7, 1982. Applicant: I–V COACHES, INC., 1600 Bayou St., Vincennes, IN 47591. Representative: Harry J. Harman, 700 Harrison Bldg., 143 W Market St., Indianapolis, IN 46204, (317) 634–4242. Transporting *passengers,* in special and charter operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 138297 (Sub-14), filed December 7, 1982. Applicant: CENTRAL FLORIDA COACH LINES, INC., P.O. Box 127, Mountaintop, PA 18707. Representative: Raymond Talipski, 121 S Main St., Taylor, PA 18517, (717) 344–8030. Transporting *passengers,* in charter and special operations, between points in Brevard, Orange, St Johns and Leon Counties, FL, Bartow and Chaltham counties, GA, Fayette County, KY, Cook County, MO, Orleans Parish, LA, Worcester County, MA, Hennepin County, MN, St Louis County, MO, Atlantic County, NJ, Robison County, NC, Summit, Allen and Wood Counties, OH, Columbia, York, Luzerne and Philadelphia Counties, PA, and Fredericksburg City, VA.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165147, filed December 10, 1982. Applicant: U.C. BROTHERS USA, INC. d.b.a., TRAVEL LINE, 415 S. Raymond, Alhambra, CA 91803. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702, (714) 667–8107. Transporting *passengers,* in charter and special operations, beginning and ending at points in Los Angeles, Orange, San Bernardino, Riverside and San Diego Counties, CA and extending to points in CA, OR, WA, ID, NV, AZ, UT, MT, WY, CO, and NM.

Note.—Applicant seeks privately-funded special and charter transportation.

Volume No. OP4–086

Decided: December 20, 1982.

MC 109687 (Sub-1), filed December 3, 1982. Applicant: KEITH STODOLA AND CECIL A. STODOLA, d.b.a. STODOLA BROTHERS TRUCKING, Route 1, P.O. Box 24, Sarona, WI 54870. Representative: Cecil A Stodola (same address as applicant), (715) 469–3281. Transporting *food and other edible products and byproducts intended for human consumption,* (except alcoholic beverages *and drugs), agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except HI and AK). Condition: Issuance of a certificate in the proceeding is subject to prior or coincidental cancellation, at applicant's written request, of Certificate of Registration No. MC–109687.

MC 114057 (Sub-5), filed December 13, 1982. Applicant: SAFETY TRANSIT TOURS OF EDEN, INC., P.O. Box 1058, Eden, NC 27288. Representative: Archie W. Andrews, P.O. Box 1166, Eden, NC 27288, (919) 635–4711. Transporting *passengers,* in charter and special operations, beginning and ending at points in NC and VA, and extending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 138146 (Sub-5), filed December 13, 1982. Applicant: OLYMPIA TRAILS BUS COMPANY, INC., Rear 30–116 Port St., Newark, NJ 07105. Representative: Eric Meiehoefer, 915 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004, (202) 737–1030. Transporting passengers, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 147047 (Sub-12), filed December 13, 1982. Applicant: CAPITAL WIRE & CABLE CORPORATION, d.b.a. C.W.C. TRUCKING COMPANY, P.O. Box 7, Plano, TX 75074. Representative: William Sheridan, P.O. Box 5049, Irving, TX 75062, (214) 255–6279. Transporting, (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), and (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 159116 (Sub-2), filed December 13, 1982. Applicant: FRONTIER TRAILS, INC., Rm. 1–G, 1126 E. Algonquin Rd., Schaumburg, IL 60195. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602, (312) 726–6525. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165096, filed December 7, 1982. Applicant: MURRAY BROS. TRUCKING, INC., P.O. Box 2000, Wapakoneta, OH 45895. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215, (614) 228–1541. Transporting for or on behalf of the United States Government *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 165116, filed December 9, 1982. Applicant: RAY CHAIN, d.b.a. RLC DIST. CO., 3814 Anton, San Antonio, TX 78223. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112, (817) 457–0804. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 165136, filed December 9, 1982. Applicant: JAMES R. CHRONISTER, P.O. Box 321, Lavaca, AR 72941. Representative: James R. Chronister (same address as applicant), (501) 674–5428. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

[FR Doc. 82-35079 Filed 12-27-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 318]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: December 20, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Review Board No. 2, Members Carleton, Williams and Ewing.

Agatha L. Mergenovich,

Secretary.

MC 228 (Sub-83)X, filed December 1, 1982. Applicant: HUDSON TRANSIT LINES, INC., 17 Franklin Turnpike, Mahwah, N.J. 07430. Representative: Michael J. Marzano, 99 Kinderkamack Rd., Westwood, NJ 07675. Sub 63: authorize service at all intermediate points on passenger carrier's specified alternate route between Poughkeepsie, NY and Fishkill, NY.

MC 85255 (Sub-74)X, filed November 22, 1982. Applicant: PUGET SOUND TRUCK LINES, INC., P.O. Box 24526, Seattle, WA 98124. Representative: James F. Walker, (same as applicant). Subs 23, 26, 60F, and 72F, (1) broaden to (a) "forest products, and lumber and wood products" from forest products, lumber lath, and shingles, in Sub 23; (b) "machinery, building materials, and metal products" from machinery, contractors' equipment, and structural steel, in Sub 26; (c) "building materials" from insulation, in Sub 60F; (d) "pulp, paper, and related products" from paper and paper products, in Sub 72F; (2) expand Kirkland, WA to King County, WA, Sub 60F; (3) change one-way to radial authority in Subs 26 and 60F.

MC 141236 (Sub-2)X, filed December 6, 1982. Applicant: TWINCO TRUCKING CO., INC., 145 Talmadge Rd., Edison, NJ 08817. Representative: Ronald I. Shapss, 450 Seventh Avenue, New York, N.Y. 10123. Lead and Sub 1 permits, broaden territorial authority to "between points in the U.S. (except Alaska and Hawaii), under continuing contract(s) with named shipper.

[FR Doc. 82-35074 Filed 12-27-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Republications of Grants of Operating Rights Authority Prior to Certification

[Decision Volume No. 081]

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this **Federal Register** notice. Such pleading shall address specifically the issue(s) indicated as the purpose for republication. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

Agatha L. Mergenovich,

Secretary.

MC 149267 (Sub-No. 3) (republication), filed February 9, 1982; published in the

Federal Register issue of March 1, 1982; and republished this issue. Applicant: SUPER TRUCK LINES, INC., 801 West Pershing Road, Chicago, Illinois 60609. Representative: William Shipley, P.O. Box 1585, Hot Springs, Arizona 71901, Phone: 501–262–3600. In a dicision, by the Commission, acting as an Appellate Division, decided November 10, 1982, and finds that performance by applicant: To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the United States; (2) *shipments weighing 100 pounds or less if* transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the United States and (3) *general commodities*, between Weston and Parriott, GA; Kahoka, Wayland, Memphis, Downing, and Lancaster, MO; Arm, Oakville, Hathorn, Columbia, Michigan City, Lamar, Hudsonville, Waterford, Abbeville, Oxford, Taylor, Water Valley, Velma, and Coffeeville, MS; Garwin and Toledo, IA; Equality and Shawneetown, IL; Nelson, NE; Benton, Thompsonville, Masonville, and Edgoten, KY; Kenwood, Hickory Point, Doddsville, Fox Bluff, Chapmansboro, Malesus, Medon, Toone, Boliver, Hickory Valley, and Lexington, TN; Hamilton, Helmer, Wolcottsville, and Wakarusa, IN; Edgefield, SC; and International, UT, on the one hand, and, on the other, points in the United States. To the extent this Certificate authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring five (5) years from its date of issuance.

Note: Applicant must submit to the Deputy Director, Section of Operating Rights, Interstate Commerce Commission, Washington, DC 20423, a statement certifying that all rail service has actually terminated in connection with authority granted in Part (3) herein.

The purpose of this republication is to delete territorial exclusions in parts (1), (2) and (3); and also to delete commodity exclusions in part (3).

[FR Doc. 82-35073 Filed 12-27-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30074]

Angelina & Neches River Railroad Co.: Trackage Rights Exemption Over Southern Pacific Transportation Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirement of prior approval under 49 U.S.C. 1143 the trackage rights agreement for Angelina and Neches River Railroad Company to operate over approximately 2.79 miles of Southern Pacific Transportation Company branch line trackage.

DATES: This exemption will be effective on December 28, 1982. Petitions to reopen must be filed by January 17, 1983.

ADDRESSES: Send pleadings to:

(1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, D.C. 20423

(2) Petitioner's representative: Peter A. Greene, 1920 N Street, NW, Washington, D.C. 20036.

Pleadings should refer to Finance Docket No. 30074.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, contact T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Decided: December 20, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-35077 Filed 12-27-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30045]

Chicago & North Western Transportation Co.—Abandonment—Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission, on its own initiative under 49 U.S.C. 10505(b), exempts the abandonment of a 250 foot segment of Chicago and North Western Transportation Company (C&NW) track in La Crosse, WI, from the requirement of prior approval under 49 U.S.C. 10903 *et seq.*

DATES: This exemption is effective on January 27, 1983. Petitions for reconsideration of this action must be filed by January 17, 1983, and petitions for stay must be filed by January 7, 1983.

ADDRESSES: Send pleadings to:

(1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423; and

(2) Mr. John T. Van Gessel, Law Dept. Chicago and North Western Transportation Co., One North Western Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Louis E.. Gitomer, (202) 275–7245; or Anne K. Quinlan, (202) 275–6458.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th and Consititution Ave., NW., Washington, DC 20423, (202) 289–4357—DC metropolitan area, (800) 424–5403—Toll free for outside the DC area.

Decided: December 20, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-35076 Filed 12-27-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30066]

SOO Line Railroad Co.—Abandonment Exemption—Between Wimbledon and Clementsville, ND

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the requirement of prior approval under 49 U.S.C. 10903 *et seq.* the abandonment by the Soo Line Railroad Company of 9.4 miles of track between milepost 314.4 at Wimbledon, ND, and milepost 323.8 at Clementsville, ND, subject to the standard labor protective conditions.

DATES: This exemption will be effective January 27, 1983. Petitions to stay the effectiveness of the decision must be filed by January 7, 1983 and petitions for reconsideration must be filed by January 17, 1983.

ADDRESSES: Send pleadings to:

(1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representative: C. Harold Peterson, 804 Soo Line Bldg., Box 530, Minneapolis, MN 55440.

Pleadings should refer to Finance Docket No. 30066.

FOR FURTHER INFORMATION CONTACT:
Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION:
Additional information is contained in the Commission's decision. To purchase a copy of the full decision, contact T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82–35075 Filed 12–28–82; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

National Advisory Committee for Juvenile Justice and Delinquency; Change of Location of Meeting

As announced in the **Federal Register** of November 30, 1982, (Vol. 47, No. 230, page 53959), the twenty-fifth quarterly meeting of the National Advisory Committee for Juvenile Justice and Delinquency Prevention will be held on January 17 and 18, 1983. This is to announce that the location of the meeting has been changed from San Diego, California to Washington, D.C.

The meeting will be held at the National Association of Counties, 440 First Street, NW., 8th floor Board Room, Washington, D.C. from 9:00 a.m. to 5:00 p.m. on both January 17 and 18. Members of the public are welcome.

Agenda items will include: The swearing in of three new members of the Committee; dissemination options for juvenile justice standards; juvenile probation; illegal juvenile immigrants; model code for constitutional standards for juveniles; and OJJDP's FY 83 program plan.

Further information regarding this meeting may be obtained by contacting Nancy L. Kujawski, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724–7655.

Dated: December 21, 1982.

Alfred S. Regnery,
Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 82–35100 Filed 12–27–82; 8:45 am]
BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

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 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period December 13, 1982—December 17, 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–13,555; Canton Malleable Iron Co., Canton, OH

TA–W–13,519; The Timken Co., Columbis, OH

TA–W–13,406; Philips ECG, Inc., Electronic Receiving Tube Plant, Emporium, PA

In the following case the investigation revealed that criterion (3) had not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–13,548; Pirelli Cable Corp., Allendale, NJ

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–13,553; Big Mountain Coals, Inc., Prenter, WV

Aggregate U.S. imports of coal are negligible.

TA–W–13,518; Taylor & Gaskin, Inc., Detroit, MI

Aggregate imports of conveyors are negligible.

TA–W–13,524; Consolidation Coal Co., Pageton Preparation Plant, Pageton, WV

Aggregate U.S. imports of coal or coke did not increase as required for certification.

TA–W–13,586; Pacific Machinery, Division of Theo H. Davies & Co., Inc., Hilo, HI

The investigation revealed that workers of the firm did not produce an article within the meaning of Section 222(3) of the Act.

TA–W–13,511; Medusa Cement Co., Charlevoix, MI

Aggregate U.S. imports of hydraulic cement and clinker did not increase as required for certification.

TA–W–13,411; Norris industries, Compressed Gas Cylinder Div., West Milwaukee, WI

Aggregate U.S. imports of high pressure gas cylinders did not increase as required for certification.

TA–W–13,189; Hermitage, Inc., Camden, SC

Aggregate U.S. imports of cotton gauge and most sponges are negligible.

TA–W–13,418; U.S. Steel Mining Co., Inc., #9 Mine, McDowell, WV

Imports did not increase as required for certification.

TA–W–13,419; U.S. Steel Mining Co., Inc., #10 Mine, McDowell, WV

Imports did not increase as required for certification.

TA–W–13,420; U.S. Steel Mining Co., Inc., #2 Mine, McDowell, WV

Imports did not increase as required for certification.

TA–W–13,421; U.S. Steel Mining Co., Inc., Alpheus Cleaning Plant, McDowell, WV

Imports did not increase as required for certification.

TA–W–13,421A; U.S. Steel Mining Co., Inc., District Maintenance Shop, McDowell, WV

Imports did not increase as required for certification.

TA–W–13,421B; U.S. Steel Mining Co., Inc., Contour Mine, McDowell, WV

Imports did not increase as required for certification.

TA–W–13,422; U.S. Steel Mining Co., Inc., #4 Mine, McDowell, WV

Imports did not increase as required for certification.

TA-W-13,423; U.S. Steel Mining Co., Inc., #14 Mine, McDowell, WV

Imports did not increase as required for certification.

Affirmative Determinations

TA-W-13,516; Rugi Industries, Inc., Miami, FL

A certification was issued in response to a petition received on April 30, 1982 covering all workers separated on or after April 26, 1981 and before March 31, 1982.

TA-W-13,503; Donner-Hanna Coke Joint Venture, Buffalo, NY

A certification was issued in response to a petition received on May 25, 1982 covering all workers separated on or after February 1, 1982.

I hereby certify that the aforementioned determinations were issued during the period December 13, 1982—December 17, 1982. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street, NW, Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 21, 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance

[FR Doc. 82-35110 Filed 12-27-82; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in State of Oregon

This notice announces the ending of the Extended Benefit Period in the State of Oregon, effective on December 18, 1982.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Extended Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the act and the State law. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Oregon on March 16, 1980 and has now triggered off.

Determination of "off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on November 27, 1982, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the state terminated with the week ending on December 18, 1982.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the end of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, D.C. on December 20, 1982.

Albert Angrisami,

Assistant Secretary of Labor.

[FR Doc. 82-35127 Filed 12-27-82; 8:45 am]

BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs, Labor

Proposed Exemptions

AGENCY: Office of Pension and Welfare Benefit Programs, Labor

ACTION: Notice of Proposed Exemptions

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions 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).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in

ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

[Application No. D–3681]

Retirement Plan of Girard Bank (the Plan) Located in Philadelphia, Pennsylvania

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 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: (1) The proposed 99 year lease by the Plan of a certain parcel of land and improvements thereon (the Property) from Girard Bank (the Bank), the Plan sponsor; (2) the proposed sublease, for ten years, of the Property by the Plan to Girard Realty Corporation (GRC), a party in interest with respect to the Plan; (3) the proposed sublease, for ten years, of the Property by GRC to the Bank; and (4) the possible purchase of the Property by the Plan from the Bank.

EFFECTIVE DATE: If granted, the exemption will be effective December 27, 1982.

Written Comments and Hearing Requests: All interested persons ae invited to submit written comments or requests for a hearing on the pending exemption within 33 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

1. The Plan is a defined benefit pension plan which had approximately 3600 participants and net assets of approximately $45,045,234 on December 31, 1981. The Bank is the trustee of the Plan as well as the Plan sponsor. The Bank and GRC are each wholly owned subsidiaries of The Girard Company. The Property, which includes a certified historic building located at the northeast corner of Second and Chestnut Streets in Philadelphia, is used by the Bank for retail banking services and office space. The Property underwent extensive exterior and interior renovations during 1976 and 1977 at a cost of approximately $1,500,000 to the Bank. A recent appraisal of the Property on August 12, 1982 by Mr. Harvey Zalesne (Zalesne) and Mr. Joel D. Kulick (Kulick) of the firm of Zalesne & Herd, Philadelphia, Pennsylvania, indicated a fair market value of $2,000,000 and a fair market rental value of $300,000 per year. Zalesne, Kulick and Zalesne & Herd are independent of The Girard Company and its affiliates, and have extensive experience in appraising commercial properties. Kulick is an M.A.I. certified appraiser.

2. The Bank proposes to lease the Property to the Plan pursuant to a 99 year lease (the Lease). The Plan will lease the Property for $2,000,000, payable in advance, plus one dollar per year. This amount is the fair market value of the Property as determined by Zalesne and Kulick and represents less than five percent of the Plan's current assets. The Lease will be triple net, i.e. the Plan will be responsible for all taxes, maintenance fees and expenses, utility charges, insurance premiums and similar charges incurred with respect to the Property. The Bank, however, will warrant to the Plan and hold the Plan harmless for the first ten years of the Lease term as to the structural soundness of the building on the Property and as to the fact that the building meets all applicable building codes. A purchase option provision in the Lease will permit the Plan to purchase the fee simple interest in the Property at any time during the Lease term for one dollar. The Plan will also have the unilateral right to terminate the Lease at any time by giving ninety days notice to the Bank, however, the Plan will have no rights to any refunds of any rent already paid to the Bank at the time of termination.

3. Upon execution of the Lease, the Plan will sublease the Property to GRC (the GRC Sublease), which will in turn sublease the Property back to the Bank (the Bank Sublease). Both subleases will also be triple net. The applicants state that they have been advised that use of the long term Lease, purchase option and leaseback arrangements may enable the Plan to command a higher price for the Property in any subsequent sale of the Property, should the Plan exercise its purchase option and sell the Property, because the Property will not be reappraised for local tax purposes until upward of a year after its purchase, thereby lowering a subsequent purchaser's initial carrying costs.

4. The GRC Sublease will have a term of ten years, but may be terminated by the Plan, as lessor, at any time after two years from its commencement. The initial rental to be paid to the Plan by GRC will be $300,000 per year, which is the fair market rental value of the Property as determined on August 12, 1982 by Zalesne and Kulick. An escalation clause in the GRC Sublease provides for an automatic increase of 2.5% of the prior year's rental rate each year, and additionally, the Property will be re-appraised every two years and the rent will be adjusted upward if necessary, to reflect at least the then current fair market value of the Property as determined by a qualified, independent appraiser. The GRC Sublease, which is triple net, provides that GRC will be responsible for all taxes, maintenance fees and expenses, utility charges, insurance premiums and similar charges incurred with respect to the Property.

5. GRC will then sublease the Property to the Bank for a ten year period. The Bank Sublease, which is also triple net, will have the same terms and conditions as the GRC Sublease. However, should the Plan decide to terminate the GRC Sublease, the Bank Sublease would be automatically terminated.

6. The real estate firm of Strouse, Greenberg & Co. (Strouse), Philadelphia, Pennsylvania, which is independent of all parties to the proposed transactions, has accepted appointment as an independent fiduciary for the Plan with respect to the subject transactions. Strouse will approve and monitor the Leases on behalf of the Plan, will be the sole party to authorize, on behalf of the Plan, the Plan's exercise of its rights to purchase the Property or to terminate the Lease from the Bank and/or the GRC Sublease, and additionally, will take any steps necessary to enforce the rights of the Plan with regard to all the subject transactions. Strouse has reviewed its undertakings as an independent fiduciary with attorneys at Dechert, Price & Rhoads, Philadelphia, Pennsylvania, who have extensive experience in matters involving fiduciary responsibility and employee benefit plans.

Strouse has reviewed the needs of the Plan, the Plan's most recent financial statements, the proposed Lease, the GRC Sublease and the Bank Sublease (collectively, the Leases), the appraisals of fair market value and fair rental value

of the Property and various financial studies and analyses of the real estate industry, and represents that the proposed transactions are fair to the Plan and in the best interest of the Plan's participants and beneficiaries because: (1) The price of the 99 year Lease from the Bank to the Plan is not more than the appraised fair market value of the Porperty; (2) the Plan's option to purchase the Property for one dollar permits the Plan to resell the Property at any time that Strouse and the Plan believe such a resale would be in the best interests of the participants and beneficiaries in the Plan, any such resale being subject to the sublease to GRC, which may be canceled any time after two years; (3) the rate of return to the Plan of 15% per annum under the GRC Sublease is favorable to the Plan and not less than the appraised fair rental value under a "triple net lease", where the sublessee, GRC, pays all expenses, taxes and the like; (4) the biannual adjustment of rental rates under the subleases will reflect increases in the appraised fair market rental value of the Property during the ten year term of the subleases; (5) the Plan had net assets as of December 13, 1981 of $43,045,234 and paid benefits in 1981 of $2,633,675, an assets to benefits ratio of 20.1. The investment of $2,000,000 in the Property, about one-twentieth of the Plan's fund, will yield an amount ($300,000) equal to more than one-tenth of the Plan's requirements for benefit payments; (6) the yield on the Plan's investment in the Property will be substantially in excess of the average yield on the Plan's other assets, when compared with the 1981 results; and (7) the Plan's sublessee, GRC, an affiliate of the Bank, will in turn sublease the Property to the Bank, which is a responsible financial institution. The most recent Federal Reserve Bank report available to Strouse, that of March 31, 1982, shows the total equity capital of the Bank was $276,780,000, and Strouse is advised that the Bank ranked 54th among United States commercial banks based upon its total equity capital.

7. In summary, the applicants represent that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (1) The fair market value and fair market rental value of the Property have been determined by a qualified, independent appraiser; (2) escalation clauses in the subleases to GRC and the Bank provide for automatic increases of 2.5% of the prior year's rental rate each year, and additionally, the fair market rental value of the Property will be reappraised once every two years to ensure that the Plan is always receiving at least the fair market rental value of the Property; (3) an independent fiduciary has reviewed the needs of the Plan and the proposed transactions and has determined that the proposed transactions are appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; (4) the independent fiduciary will monitor the Leases on the Plan's behalf, authorize the exercise of the purchase option and the termination of the Lease and/or the GRC Sublease on the Plan's behalf and will take any steps necessary to protect the rights of the Plan and its participants and beneficiarie; (5) the proposed transactions will involve less than five percent of the Plan's current assets; and (6) the Bank, as trustee of the Plan, has determined that the transactions are appropriate for the Plan and in the best interests and protective of the Plan's participants and beneficiaries.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8972. (This is not a toll-free number.)

[Application No. D–3719]

The Profit-Sharing Plan and Trust for Employees of the Havi Corporation and Its Subsidiaries (the Plan), Located in Hinsdale, Illinois

Progosed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in acccordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the purchase of certain real property (the Land) by the Plan and the lease of the Land to Messrs. Theodore F. Perlman and Robert E. Rocque (the Developers), who are principals of Havi Corporation (the Employer), provided the terms and conditions of the transactions are not less favorable to the Plan than those obtainable in similar transactions with an unrelated party.

Summary of Facts and Representations

1. The Employer is a Delaware corporation maintaining its principal place of business at 911 North Elm Street, Hinsdale, Illinois. The Employer is the parent of an affiliated group of corporations (the Havi Group) which includes the Perlman Rocque Company (North), a Minnesota corporation; the Perlman Rocque Company (P–R), an Illinois corporation; and Golden Arch Express, Inc. (GAX), an Illinois corporation. The Employer is engaged primarily in providing management and administrative services to its operating subsidiaries and affiliates, and in distributing foodstuffs, paper goods and supplies through its Perseco Company Division (Perseco). Both North and P–R supply foods and related foods products to McDonald's franchises. GAX is an interstate carrier and transports, by truck, the supplies of the Havi Group to the McDonald's franchises and performs transportation services for McDonald's independent of the Employer. A new wholly owned subsidiary of the Employer, the Perlman Rocque Company, Inc. of Indiana, has been formed and it will in the future provide food supply services to other McDonald's franchises. This corporation will also participate in the Plan. The stock of all of the corporations participating in the Havi Group is held by members of the Theodore F. Perlman and Robert E. Rocque families.

2. The Plan is a profit sharing plan covering all eligible non-union employees of the Employer and those corporations of the Havi Group which have adopted it. As of January 30, 1982, the Plan had an estimated 157 participants and total assets of $2,228,584. American National Bank and Truct Company of Chicago, located in Chicago, Illinois serves as the Plan trustee (the Trustee). The Trustee is responsible for all investment decisions with respect to the assets of the Plan.

3. The Employer desires to centralize its existing operations by causing it, Perseco and GAX to be housed in one facility. To accomplish this objective, the Employer proposes to have the Plan engage in several transactions, among which includes the lease for which it is requesting an exemption. Initially, it is proposed that the Plan purchase the Land for cash from an unrelated party. Then, the Plan will lease the Land to the Developers pursuant to the terms and conditions of a ground lease (the Ground Lease). Within an eighteen month period, the Developers will cause an office building (the Building) to be erected on the Land. Afterwards, the Developers will lease space in the Building to the Employer, its subsidiaries and affiliates.

4. The Land which the Plan will purchase for cash from an unrelated party consists of approximately four acres situated in Westmont, DuPage County, Illinois. The Land is specifically identified as "Lot 2, in Oakmont Centre,

Unit II." The purchase price for the Land is approximately $635,000 as determined by an independent appraisal. The purchase price represents nearly 25 percent of the Plan's total asets. To evidence its ownership of the Land, the Plan will receive a recorded warranty deed.

5. With respect to the Ground Lease executed between the Plan and the Developers, the Plan will receive base rent (payable semiannually in arrears commencing on its purchase of the Land) in an amount equal to 11½ percent of the purchase price (approximately $73,000). In addition to the base rent, the Plan will receive 20 percent of any cost-of-living increases received by the Developers from tenants leasing space in the Building. The Developers will pay, or cause to be paid, all real estate taxes and assessments levied upon and all operating expenses related to the Land and the Building.

The duration of the Ground Lease will be forty years, unless terminated sooner. Commencing on the twelfth year of the Ground Lease, and at the end of each five year period thereafter, and appraisal of the Land and Building will be made by an independent appraiser. Based on the appraisal, the base rent will bear the greater of the rent then being paid (which rent will include all cost-of-living adjustments to date) or 11½ percent of the appraised value. For a period of six months, commencing at the end of the twelfth year and each five year increment thereafter (the Put Option Period) the Plan may require the Developers to purchase the Land for the greater of its then appraised value or the original purchase price (the Put Option), provided an independent fiduciary designated to oversee the proposed transactions makes the decision relative to the exercise of the Put Option. The payment is to be made in four consecutive equal annual installments, with the balance of the principal bearing interest at the prime rate of Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois. In the event the Plan elects not to exercise the Put Option, the Developers, for a six month period commencing at the expiration of each Put Option Period may purchase the Land from the Plan at the greater of its purchase price or its then appraised value (the Call Option). Payment by the Developers is to be made within the six month Call Option period.

If a default occurs under the Ground Lease, the Plan will have all rights customarily granted to and/or reserved to ground lessors, including the right to terminate the Ground Lease and accelerate all payments due thereunder or seek indemnification from the Employer which has agreed to guarantee the Ground Lease. As of January 30, 1982, the Employer and members of the Havi Group had combined total assets of $36,254,944.

6. The purchase price and fair rental value of Land have been determined by Messrs. Frank A. Slivka, MAI appraiser and Thomas Rogers, a staff appraiser (the Appraisers) in an appraisal report dated August 6, 1982 and in an addendum to the appraisal report dated October 7, 1982.

The Appraisers are unrelated to the Plan, Employer and other parties in interest and are affiliated with Mid America Appraisal and Research Corporation, a real estate consulting firm located in Chicago, Illinois. Based on their analyses of the Land, the Appraisers have placed its fair market value at $635,000 as of May 31, 1982. The Appraisers also opine that based on their experience and judgment as well as their evaluation of all available data, the Ground Lease rental rate of 11½ percent is within the range of fair market rental, though it tends to be near the middle to lower end of the rental range. The Appraisers note that although the Ground Lease has a term of forty years, it may be considered a twelve year investment with a termination date in 1994 since either the Plan or Developers may exercise the Put or Call Options on the twelfth year the Ground Lease is in effect. Assuming either of the parties exercises their respective Option, the Appraisers state that the Plan will be free to make alternative investments.

7. The Trustee has agreed to serve as the independent fiduciary for the proposed transactions. By letter dated September 27, 1982, the Trustee states that although the Employer maintains deposits with the bank ranging between $500,000 to $1 million, these deposits represents an extremely small percentage of the Trustee's average deposits of some $1.9 billion. In addition, the Trustee states that no shareholder of the employer is represented on the Board of Directors of the bank.

As the independent fiduciary, the Trustee will review and monitor the purchase and lease transactions. The Trustee will also make the decision pertaining to the Plan's exercise of the Put Option and it will otherwise protect and enforce the interests of the Plan.

The Trustee believes the proposed transactions are prudent investments for the Plan and in the best interests and protective of the Plan's participants and beneficiaries. The Trustee will not cause the Plan to buy the Land unless it determines that the Land is purchased for its fair market value. With respect to the Put and Call Options, the Trustee has reviewed their terms and it considers them to be appropriate. The Trustee has also reviewed the provisions of the Ground Lease, including the cost-of-living features, and the leases the Developers intend to make to members of the Havi Group. Based on its evaluation of these leases, the Trustee is satisfied that the base rent to be paid the Plan plus the cost-of-living increments are appropriate and represent fair market value. The Trustee has further considered the propriety of not having the land reappraised for the first twelve years that the Ground Lease is in effect and it believes this condition is acceptable.

Concerning the 11½ percent base rental rate for the Ground Lease, the Trustee states that it is competitive with the market rate and it carries with it the possibility of a higher rate because of increases in the cost-of-living. Although the Ground Lease is for a forty year term, the Trustee notes that the Plan retains the right to recoup the entire investment in twelve years and in each five year increment thereafter. The Trustee also states that the proposed investment in the Land (which represents less than 25 percent of the Plan's current assets) along with a 15 percent investment in common stock will continue the Plan's conservative investment posture.

8. In summary, it is represented that the the proposed transactions satisfy the criteria of section 408(a) of the Act because: (a) the Trustee, as the independent fiduciary, has determined that the Plan's investment in the Land and the Ground Lease to the Developers is in the best interests of the Plan and its participants and beneficiaries; (b) the Trustee will monitor the terms of the Land acquisition as well as the provisions of the Ground Lease, including the Plan's exercise of the Put Option; (c) the Plan will purchase the Land at a cost equal to its fair market value under the direction of the Trustee; (d) the Plan will lease the Land for its fair rental value under the Ground Lease which will contain escalator clauses and require appraisals of the Land at five year intervals after the Ground Lease has been in effect for twelve years; and (e) the Employer will guarantee payments under the Ground Lease in the event of a default by the Developers.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department,

telephone (202) 523-8971. (This is not a toll-free number.).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be 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 of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 22nd day of December 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. 82-35147 Filed 12-27-82; 8:45 am]

BILLING CODE 4510-29-M

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Merit Systems Protection Board.

ACTION: Annual publication of systems of records.

SUMMARY: The Merit Systems Protection Board (MSPB) publishes this document pursuant to the requirements of the Privacy Act of 1974 at 5 U.S.C. 552a(e)(4). This Act requires agencies to publish annually in the **Federal Register** a notice of the existence and character of their systems of records.

ADDRESS: Office of the Secretary, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C., 20419.

FOR FURTHER INFORMATION CONTACT: Kathy Semone, Assistant Secretary, 202-653-7200.

SUPPLEMENTARY INFORMATION: MSPB previously published the full text of its systems of records at 46 FR 32530, June 23, 1981, and amended its system entitled MSPB/GOVT-1, Appeal and Case Records at 46 FR 42372, August 20, 1981. The Notice has been corrected to reflect the current addresses of the Board and its Regional Offices. References to "Field Offices" contained within the notice as originally published have been revised to reflect the change in designation of these offices to "Regional Offices" and identification of system locations and system managers has been revised to reflect changes in the position titles of the managers. The authority for maintenance of the system entitled MSPB/INTERNAL-6, Security Office Control Records, has been updated to reflect the issuance of Executive Order 12356 concerning national security information.

Finally, the system entitled MSPB/GOVT-1, Appeal and Case Records, has been modified to exclude appeals filed within agencies prior to September 9, 1974 from coverage. The retention period previously established for these records was seven years; that period has now expired. The MSPB provided notice of its intent to exclude such appeals from coverage in the preamble to the publication of its systems notice on June 23, 1981. Accordingly, any agency continuing to maintain records of appeals filed prior to September 9, 1974 now becomes responsible for publication of its own system notice with respect to those records.

This Notice contains no changes in routine uses for the systems contained herein. It does not contain any material which would require a new or altered systems report as described in Office of Management and Budget (OMB) Circular A-108.

Dated: December 15, 1982.

For the Board.

Herbert E. Ellingwood,

Chairman.

Table of Contents

MSPB/INTERNAL-1, Pay, Leave, and Travel Reports
MSPB/INTERNAL-2, Motor Vehicle and Accident Report Records
MSPB/INTERNAL-3, Grievance Records
MSPB/INTERNAL-4, Employee Incentive Award and Recognition Records
MSPB/INTERNAL-5, Individual Protection Reports
MSPB/INTERNAL-6, Security Office Control Records
MSPB/CENTRAL-1, Survey Mailing Lists
MSPB/CENTRAL-2, Panel Respondent Mailing Lists
MSPB/CENTRAL-3, Correspondence Control Records
MSPB/CENTRAL-4, General Correspondence Records
MSPB/CENTRAL-5, Freedom of Information Act/Privacy Act Case Records
MSPB/CENTRAL-6, Litigation and Claims Records
MSPB/GOVT-1, Appeal and Case Records
APPENDIX

MSPB/INTERNAL-1

SYSTEM NAME:

Pay, Leave, and Travel Records.

SYSTEM LOCATION:

Director, Office of Administration, Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, N.W., Washington, D.C. 20419, and MSPB Regional Offices (see list of Regional Office addresses in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Merit Systems Protection Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system, both manual and automated, contains various records relating to pay, leave, and travel. This includes information such as: name; date of birth; social security number; home address; grade; employing organization; timekeeper number; salary; pay plan; number of hours worked; leave accrual, usage, and balance; Civil Service Retirement contributions; FICA withholdings; Federal, State, and Local tax withholdings; Federal Employees' Group Life Insurance withholdings; Federal Employees' Health Benefits Withholdings; charitable deductions; allotments to financial organizations; garnishment documents; savings bond

allotments; union and management association dues withholding allotments; and travel expenses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1205, 5501 et seq., 5525 et seq., 5701 et seq., and 6301 et seq; 31 U.S.C. 66a.

PURPOSE(S):

These records are used to administer the pay, leave, and travel functions of the Merit Systems Protection Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records may be disclosed:

a. To the Department of the Treasury to issue checks and U.S. Savings Bonds.

b. To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness.

c. To State offices of unemployment compensation in connection with claims filed by former MSBP employees for unemployment compensation.

d. To Federal Employees' Group Life Insurance or Health Benefits carriers in connection with survivor annuity or health benefits claims or records reconciliations.

e. To the Interal Revenue Service and State and local tax authorities.

f. To the Social Security Administration in connection with FICA withholdings and benefits.

g. To the Office of Personnel Management in connection with payroll deductions for Civil Service retirement plans.

h. To the Combined Federal Campaign in connection with payroll deductions for charity.

i. To the authorized employees of another Federal agency that provides MSPB with manual and automated assistance in processing pay, leave, and travel records.

j. In the event the individual to whom the record pertains dies, to the person appointed as representative of the estate, or the person designated by the representative, or to a designated beneficiary. When a representative of the estate has not been appointed, the individual's next of kin may be recognized as the representative of the estate.

k. To officials of labor organizations recognized under 5 U.S.C. Chapter 71 as to the identity of Board employees contributing union dues each pay period and the amount of dues withheld from each contributor.

l. To officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

m. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the MSPB becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

n. To any source from which the MSPB requests additional information relevant to an MSPB determination concerning an individual's pay, leave, or travel expenses, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

o. To the Federal agency, at its request, for purposes connected with: the hiring or retention of an employee; the issuance of a security clearance; the conduct of a suitability or security investigation of an individual; the classification of a job; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

p. To the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

q. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

r. To another Federal agency or to a court when the Government is party ot a judicial processing before the court.

s. To the National Archives and Records Service (General Services Administration) pursuant to records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

t. In response to a request for discovery or for appearance of a witness, if the information is relevant to the subject matter involved in a pending judicial or administrative processing.

u. To officials of the Office of Personnel Management, the Federal Labor Relations Authority and the Equal Employment Opportunity Commission when requested in the performance of their authorized duties.

v. To the General Accounting Office for auditing purposes.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and loose leaf binders, and on cards, magnetic tapes and discs.

RETRIEVABILITY;

These records are retrieved by name, social security number, or Merit Systems Protection Board employee identification number.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or in a secured facility and are available only to authorized personnel.

RETENTION AND DISPOSAL:

These records are maintained for varying periods of time in accordance with GAS General Records Schedule 2. Disposal or manual records is by shredding or burning; magnetic tapes and discs are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administration, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about them should contact the System Manager indicated above or the MSPB Regional Office where the individual is or was employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Date of birth.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the MSBP's Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquires.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the System Manager indicated above or the MSPB Regional Office where the individual is or was employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Date of birth.

Individuals requesting access must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1201.11 regarding access to records and verification of identity.

CONTESTING RECORD PROCEDURES:

Individual wishing to request amendment of records about them should contact the System Manager indicated above, or the MSPB Regional Office where the individual is or was employed. Individuals must furnish the following information for their record to be located and identified:

a. Full name; and

b. Date of birth.

Individuals requesting amendment of their records must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

a. The individual to whom the record pertains;

b. Merit Systems Protection Board officials responsible for pay, leave and travel functions; and

c. Other official personnel documents of MSPB.

MSPB/INTERNAL-2

SYSTEM NAME:

Motor Vehicle and Accident Report Records.

SYSTEM LOCATION:

Director, Administrative Services Division, Office of Administration Merit Systems Protection Board (MSPB) 1120 Vermont Avenue, N.W., Washington, D.C. 20419, and MSPB Regional Offices (see list of Regional Office addressses in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Merit Systems Protection Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains documents related to the authorization and issuance to an individual of a Government motor vehicle operator's permit; also included are reports, correspondence, and fiscal documents concerning automobile accidents occurring in a Government-owned or leased automobile or in a privately-owned vehicle while on official business.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1205, 28 U.S.C. 2671 et seq.

PURPOSE(S):

The records serve to document issuance of a Government motor vehicle operator's accident reports and related document may be used in claims settlement litigation regarding an accident involving a Government motor vehicle or privately-owned vehicle while being used on official business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from these records may be disclosed:

a. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the MSPB becomes aware of a violation or potential violation of civil or criminal law or regulation.

b. To any source from which the MSPB requests additional information (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested) where necessary to obtain information relevant to an MSPB decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conduct of a security or suitability investigation of an individual, the classification of jobs, the letting of a contract, or the issuance of a grant or other benefit.

c. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

e. To the National Archives and Records Service (General Services Administration) pursuant to records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

f. To officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

g. To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conduct of a suitability or security investigation, the classification of jobs, or the award of a contract, license, grant or other benefit.

h. To the General Services Administration about accidents involving Government-owned or leased automobiles.

i. To insurance carriers about accidents involving privately-owned vehicles.

j. In response to a request for discovery or for the appearance of a witness, if the information is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on indexed application cards.

RETRIEVABILITY:

Records are retrieved by name of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Motor vehicle operator records are maintained for three years after the separation of the employee (operator) and are destroyed by shredding. Accident reports are maintained for three years after the date of the report and are destroyed by shreding, except in cases involving litigation. In cases involving litigation, these records are maintained until all litigation has been settled.

SYSTEM MANAGER(S) AND ADDRESSES:

a. For motor vehicle operator records: Director, Administrative Services Division, Office of Administration, Merit System Protection Board, 1120 Vermont Avenue, N.W. Washington, D.C. 20419.

b. For accident report records: General Counsel, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate office as follows:

a. For accident report records: Contact the System Manager indicated above;

b. For motor vehicles operator records for current or former MSPB employees: Contact the System Manager indicated above; or the MSPB Regional Office in which employed (see list of Regional Office addresses in the Appendix).

Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Date of birth.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the Board's Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the appropriate office as follows:

a. For accident report records: Contact the System Manager indicated above;

b. For motor vehicle operator records of current or former MSPB employees: Contact the System Manager indicated above or the MSPB Regional Office in which employed (see list of Regional Office addresses in the Appendix).

Individual must furnish the following information for their records to be located and identified:

a. Full name; and

b. Date of birth.

Individuals requesting access must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 concerning access to records and verification of identity.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the appropriate office as follows:

a. For accident report records: Contact the System Manager for these records indicated above;

b. For motor vehicle operator records for current or former MSPB employees: Contact the System Manager indicated above; or the MSPB Regional Office in which employed (see list of Regional Office addresses in the Appendix).

Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Date of birth.

Individuals requesting amendment must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

a. The individual to whom the record pertains;

b. MSPB employees and other parties involved in the accident;

c. Witnesses to the accident;

d. Police reports and reports of investigation; and

e. Officials of the MSPB and the General Services Administration.

MSPB/INTERNAL-3

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

Personnel Management Division, Office of Administration, Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, NW., Washington, D.C. 20419

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Merit Systems Protection Board who have filed grievances in accordance with the MSPB's procedures as established under 5 CFR 771, Subpart C.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by MSPB employees. The case files contain all documents related to the grievance, including statements of witnesses, reports or transcripts of interviews and hearings, the employee's written request for reviews of the initial grievance, designation of the grievance examiner, any written comments by the grievant or his/her representative upon review of the file at the completion of the inquiry, the examiner's report of findings and recommendations, the grievance decision, and correspondence and exhibits related to the grievance. The system does not include files and records of any grievance filed under negotiated procedures with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1205, 5 CFR 771.

PURPOSE(S):

These records are used to process grievance filed by MSPB employees for personal relief in matters of concern or dissatisfaction that are subject to the control of MSPB management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records may be disclosed:

a. To any source from which the MSPB requests additional information in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

b. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the MSPB becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. To the National Archives and Records Service (General Services Administration) pursuant to records management inspection conducted under authority of 44 U.S.C. 2904 and 2906.

g. To officials of the Office of Personnel Management; the Federal Labor Relations Authority; and the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

h. In response to a request for discovery or for appearance of a witness, if the information is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of three years after closing of the case. Disposal is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about them should contact the System Manager indicated above. Individuals who have filed grievances are aware of that fact and have been

given an opportunity to review the record. Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. Date of birth; and

c. Approximate date of closing of the case and kind of action taken.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.1 regarding such inquiries.

RECORDS ACCESS PROCEDURES:

Individuals requesting access to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. Date of birth; and

c. Approximate date of closing of the case and kind of action taken.

Individuals requesting access must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORDS PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasijudicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the officer ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified.

a. Full name;

b. Date of birth; and

c. Approximate date of closing of the case and kind of action taken.

Individuals requesting amendment must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

a. The individual on whom the record is maintained;

b. Witnesses;

c. Agency officials; and

d. Related correspondence from organizations or persons.

MSPB/INTERNAL-4

SYSTEM NAME:

Employee Incentive Awards and Recognition Records.

SYSTEM LOCATION:

Personnel Management Division, Office of Administration, Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Merit Systems Protection Board who have been nominated for special recognition for achievements either within or outside the employee's job responsibilities and for length of service to the Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information including or relating to the name, title, grade, duty station, and length of service; incentive award or quality step increase recipients; the recommendation, authorization disposition actions by approving officials; and related documentation and correspondence.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 1205, 5 U.S.C. 4501 et seq. and 5 U.S.C. 5336.

PURPOSE(S):

These records are collected and maintained to provide a basis for the recognition of MSPB employees through the granting of incentive awards and quality step increase.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records may be disclosed:

a. To other Federal agencies and other organizations to process and approve suggestions and nominations for awards or quality step increases for MSPB employees.

b. To the Office of Attorney General and the President of the United States in reviewing recommended awards.

c. To other government agencies to recommend whether suggestions should be adopted in instances where the suggestion made by an MSPB employee affects the functions or responsibilities of the agencies.

d. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To other public (Federal, State, or local) or private organizations, including news media, which grant or publicize employee awards or honors.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the office to which the employee is or was assigned at the time the award or nomination was made, and by the name of the recipient of each award or nomination for award.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

These records are retained for five years, then sent to a Federal Record Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about them should contact the System Manager indicated above or the Regional Office where the individual is or was employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. Date of the suggestion or nomination for award; and

c. Duty station at the time the suggestion or nomination for award was made.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.

RECORDS ACCESS PROCEDURES:

Individuals requesting access to their records should contact the System Manager indicated above or the Regional Office where the individual is or was employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. Date of the suggestion or nomination for award or quality step increase; and

c. Duty station at the time the suggestion or nomination for award was made.

Individuals requesting access must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about themselves should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. Date of the suggestion or nomination for award or quality step increase; and

c. Duty station at the time the suggestion or nomination for award was made.

Individuals requesting amendment must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

a. Individuals submitting suggestions or nominations for awards or quality step increases;

b. Supervisors of employees;

c. Evaluators of suggestions or nominations for awards or quality step increases;

d. Official Personnel Folders; and

e. Staff of the Personnel Management Division, General Accounting Office, and other Federal agencies.

MSPB/INTERNAL-5

SYSTEM NAME:

Individual Production Reports.

SYSTEM LOCATION:

Office of the Managing Director, Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, NW., Washington, D.C. 20419, and at MSPB Regional Offices (see list of Regional Office addresses in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former MSPB employees who have adjudicated appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain production information by type of appeal; number of cases decided; number of hearings held; calendar days elapsed on an average and median basis for each type of case; and the case disposition by type of appeal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 1205, 3301 et seq. 4103, 4302, 4501 et. seq.

PURPOSES:

Records are maintained in this system to provide an effective management tool in determining proper assignment, transfer, promotion, detail, training, reassignment, and other personnel actions affecting presiding officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from these recores may be disclosed:

a. To another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

b. To a congressional office in response to an inquiry from that office.

c. To the National Archives and Records Service (General Services Administration) pursuant to records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. In response to a request for discovery or for appearance of a witness, if the information is relevant to the subject matter involved in a pending judicial or administrative proceeding.

e. To officials of the Office of Personnel Management, the Federal Labor Relations Authority and the Equal Employment Opportunity Commission when requested in the performance of their authorized duties.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in binders and on computer tapes and discs.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained and by an appeals officer code number.

SAFEGUARDS:

Records are located in lockable cabinets. Access is restricted to those employees who have a need to use these records.

RETENTION AND DISPOSAL:

The record is maintained during the period of the individual's service with the Board and destroyed by shredding one year after the individual leaves the Board's employ.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Managing Director for Regional Operations and Director, Office of Appeals, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about them should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Date and location of the last appeal office assignment.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Date and location of last appeals office assignment.

Individuals requesting access must also comply with the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORD PROCEDURES:

Individuals requesting amendment of their records should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Date and location of last appeals office assignment.

Individuals requesting amendment must also comply with the MSPB's Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the records are maintained;

b. Case Control Records used as computer data input; and

c. Production information by the Regional Director.

MSPB/INTERNAL-6

SYSTEM NAME:

Security Office Control Records.

SYSTEM LOCATION:

Security Office, Office of Administration, Merit Systems Protection Board, 1120 Vermont Ave., N.W., Washington, D.C. 20419.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Merit Systems Protection Board employees for whom there is an investigative file. The system also contains cards on employees stationed in MSPB Regional Offices for whom the appointing authority is retained in Washington, D.C., and for whom there is an investigative file.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of cards, filed alphabetically, containing name, social security number, date and place of birth, position sensitivity, type and date of investigations, and date and level of clearance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1205 and E.O. 12356.

PURPOSE(S):

These records are used to document security investigations and clearances of MSPB employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

There are no disclosures of this information outside of the security office, except to provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on cards.

RETRIEVABILITY:

Records are retrieved by the name and date of birth of the individual on whom they are maintained.

SAFEGUARDS:

The cards are stored in locked file cabinets contained within a secured area. These cards do not leave the security office.

RETENTION AND DISPOSAL:

Records are maintained for one year after the individual leaves the Board and then are destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administration, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington. D.C. 20419.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Date of birth.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Date of birth.

Individuals requesting access must also follow the MSPB Privacy Act regulations set forth at 5 CFR 1201.11 regarding access to records and verification of identity.

CONTESTING RECORD PROCEDURES:

Individuals requesting amendment of their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Date of birth.

Individuals requesting amendment must also follow the MSPB Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

a. The individual to whom the information applies;

b. The investigative files maintained by the Investigations division, Associate Director/Staffing Systems and Services, Office of Personnel Management; and

c. Employment information maintained by the Board's Director of Personnel.

MSPB/CENTRAL-1

SYSTEM NAME:

Survey Mailing Lists.

SYSTEM LOCATION:

Office of Merit Systems Review and Studies, Merit Systems Protection Board (MSPB) 1120 Vermont Avenue, NW., Washington, D.C. 20419 or with private sector contractors participating in the conduct of MSPB surveys.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees who have responded affirmatively to MSPB inquiries regarding participation in confidential surveys conducted by the Office of Merit Systems Review & Studies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system includes the name and home address of federal employees who have responded affirmatively to inquiries of the Office of Merit Systems Review and Studies regarding participation in an MSPB survey or surveys.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1205

PURPOSE(S):

Information in this system is used to provide for the mailing of confidential survey questionnaires to survey participants. The questionnaires are used in conjunction with MSPB's performance of merit system studies, as required by 5 U.S.C. 1205, to determine the extent to which merit system principles effectively operate within the Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

There are no routine uses for this system which is used solely to provide for mailing of questionnaires to persons covered by this system in conjunction with their participation in confidential surveys conducted by the Office of Merit Systems Review and Studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on computer tapes and discs.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are stored in secured rooms. Access to and use of these records is limited to those specially designated MSPB or contractor personnel who are responsible for mailing the questionnaries to survey participants. Personnel screening is employed to prevent unauthorized access or disclosure.

RETENTION AND DISPOSAL:

These records are maintained until all questionnaries have been mailed. The records are destroyed by erasure upon completion of the mailing.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Merit Systems Review and Studies, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

NOTIFICATION PROCEDURE:

Individuals inquiring whether this system of records contains information about them should contact the System Manager indicated above. Individuals who have expressed an interest in participating in a Merit Systems survey are aware of that fact. It is necessary to furnish the following information when making inquiries about records:

a. Full name; and

b. Name of survey in which individual desired to participate.

Individuals making inquireies as to the existence of records pertaining to themselves must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Name of survey in which individual desired to participate.

Individuals seeking access must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORDS PROCEDURES:

Individuals requesting amendment should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Name of survey in which individual desired to participate.

Individuals requesting amendment must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

Information in this system is obtained initially from the Office of Personnel Management and is subsequently affirmed by the individual to whom the record pertains.

SYSTEM NAME:

Panel Respondent Mailing List.

SYSTEM LOCATION:

Office of Merit Systems Review and Studies, Merit Systems Protection Board (MSPB), 1120 Vermont Ave., N.W., Washington, D.C. 20419 or with private sector contractors participating in the conduct of MSPB surveys.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees who serve on a semi-permanent panel surveyed quarterly by the Office of Merit Systems Review and Studies by means of confidential questionnaires on issues relevant to the civil service and the merit system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system includes the name, address and duty station of Federal employees who have agreed to serve as panel members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1205.

PURPOSE(S):

Information in this system is used to provide for the mailing of confidential survey questionnaires to panel members. The questionnaires are used in conjunction with MSPB's performance of merit system studies, as required by 5 U.S.C. 1205, to determine the extent to which merit system principles effectively operate within the Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

There are no routine uses for this system which is used solely to provide for the mailing of confidential questionnaires to panel members approximately four times a year.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on computer tapes and discs.

RETRIEVABILITY:

These records are retrieved by the names of the individuals to whom they pertain.

SAFEGUARDS:

These records are stored in secured rooms. Access to and use of the records is limited to specially designated MSPB or contractor personnel who are responsible for mailing questionnaires to panel members. Personnel screening is employed to prevent unauthorized access or disclosure.

RETENTION AND DISPOSAL:

These records are retained for the life of the panel, a period not to exceed 1.5 years. Upon dissolution of the panel, the records are destroyed by erasure of the computer tape or disc on which they are stored.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Merit Systems Review and Studies, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

NOTIFICATION PROCEDURES:

Individuals inquiring whether this system of records contains information about them should contact the System Manager indicated above. Individuals who are members of a panel are aware of that fact. It is necessary to furnish the following information when making inquiries about records:

a. Full name; and

b. Panel on which individual served.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Panel on which individual served.

Individuals seeking access must also follow the MSPB's Privacy Act regulations set forth at CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORDS PROCEDURES:

Individuals requesting amendment of records pertaining to them should contact the System Manager indicated above.

Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Panel on which the individual served.

Individuals requesting amendment must also follow the MSPB's Privacy Act regulations set forth a 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

Information in this system is obtained initially from the Office of Personnel

Management and is subsequently affirmed by the individual to whom the record pertains.

MSPB/CENTRAL–3

SYSTEM NAME:

Correspondence Control Records.

SYSTEM LOCATION:

Office of the Secretary, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have written the MSPB on Official business and whose letters are controlled in order to assure appropriate and timely response; individuals who have written the White House or Congressional offices and whose letters are referred to MSPB for reply or response.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information identifying the correspondent, subject, date and disposition of the correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1205.

PURPOSE(S):

These records are used to control correspondence with the Board in order to assure appropriate and timely responses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records may be disclosed to another Federal agency to whom correspondence is referred for reply.

POLICIES AND PRACTICES FOR STROING, RETRIEVING, ACCESSING, RETAINING , DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on file cards.

RETRIEVABILITY:

These records are retrieved by the name of the correspondent or individual on whose behalf the correspondence is transmitted, and the date of the correspondence.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

These records are retained for two years, then destroyed by shredding.

SYSTEM MANAGERS AND ADDRESS:

Secretary, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Approximate date of the correspondence; and

c. Name of the person writing the correspondence if transmitted on behalf of the individual.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. Approximate date of the correspondence; and

c. Name of the person writing the correspondence if transmitted on behalf of the individual.

Individuals requesting access must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORDS PROCEDURES:

Individuals wishing to request amendment of records pertaining to them should contact the System Manager indicated above.

Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. Approximate date of correspondence; and

c. Name of the person writing the correspondence if transmitted on behalf of the individual.

Individuals requesting amendment must also follow the Board's Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual to whom the record pertains or by individuals or organizations writing on behalf of the individual.

MSPB/CENTRAL–4

SYSTEM NAME:

General Correspondence Records.

SYSTEM LOCATION:

Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, N.W., Washington, D.C. 20419 and MSPB Regional Offices (see list of Regional Office addresses in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees and members of the public who have written the MSPB seeking information, registering complaints, or making known their views.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the incoming correspondence and a copy of the MSPB's reply of referral.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C.1250.

PURPOSE(S):

These records are used to document correspondence with the Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records may be disclosed:

a. To another agency to whom the incoming correspondence is referred for reply.

b. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where there is an indication of a violation or potential violation of a civil or criminal law or regulation.

c. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by name and date of correspondence.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

These records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419, and the MSPB Regional Offices (see list of Regional Office addresses in the Appendix).

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and indentified:

a. Full name; and

b. Approximate date of correspondence with the Board.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Approximate date of correspondence with the Board.

Individuals requesting access must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORDS PROCEDURES:

Individuals wishing to request amendment of records should contact the appropriate System Manager indicated above.

Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Approximate date of correspondence with the Board.

Individuals requesting amendment must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

a. Individual to whom the record pertains;

b. Official documents relating to the correspondence; and

c. Related correspondence from agencies, organizations or persons.

MSPB/CENTRAL-5

SYSTEM NAME:

Freedom of Information Act/Privacy Act Case Records.

SYSTEM LOCATION:

Office of the Secretary, Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, NW., Washington, D.C. 20419, and MSPB Regional Offices (see list of Regional Office addresses in Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records and related correspondence on individuals who have filed with the MSPB:

a. Requests for information under the provisions of the Freedom of Information Act (5 U.S.C. 552) including requests for review of initial denials of such requests; and

b. Requests under the provisions of the Privacy Act (5 U.S.C. 522a) for records about themselves, including:

(1) Requests for notification of the existence of records;

(2) Requests for access to these records;

(3) Requests for amendment of these records; and

(4) Requests for review of initial denials of such requests for notification, access, and amendment.

Note.—Since these PA/FOIA case records contain inquiries and requests regarding any of the MSPB's other systems of records subject to the Privacy Act, information about individuals from any of these other systems may become part of this PA/FOIA Case Records system.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains correspondence and other documents related to requests made by individuals to the MSPB for:

a. Information under the provisions of the FOIA (5 U.S.C. 552) including requests for review of initial denials of such requests; and

b. Information under provisions of the Privacy Act (5 U.S.C. 552a) and requests for review of initial denials of such requests made under the MSPB's Privacy Act regulations including requests for:

(1) Notification of the existence of records;

(2) Access to records;

(3) Amendment of records;

(4) Review of initial denials of such requests for notification, access or amendment; and

(5) Requests for an accounting of disclosure of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 552a, 1205.

PURPOSE(S):

These records are maintained to process an individual's requests made under the provisions of the Freedom of Information and Privacy Act. The records are also used by the MSPB to prepare its annual reports to OMB and Congress required by the Privacy and Freedom of Information Acts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from these records may be disclosed:

a. To the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

b. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

c. To a Federal agency or to a court when the Government is a party to a judicial proceeding before the court.

d. To the National Archives and Records Service (General Services Administration) in record management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

e. To officials of the Office of Personnel Management, Federal Labor Relations Authority, and the Equal Employment Opportunity Commission in conjunction with the performance of their authorized duties.

f. To Federal agencies in order to obtain advice and recommendation concerning matters on which the agency has specialized experience or particular competence which the MSPB may use in making required determinations under the Freedom of Information Act or Privacy Act of 1974.

g. To any source from which the MSPB requests additional, information (to the extent necessary to identify the individual, inform the source of the purpose of the request and to identify the type of information requested), where necessary to obtain information relevant to an MSPB decision concerning a Privacy or Freedom of Information Act request.

h. In response to a request for discovery or for appearance of a witness, if the information is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where the MSPB becomes aware of an indication of a violation or

potential violation of civil or criminal law or regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by name of the individual on whom they are maintained and the date of request.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

These records are maintained for five years, then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary, Merit System Protections Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419, and MSPB Regional Offices (see list of Regional Office addresses in the Appendix).

NOTIFICATION PROCEDURE:

Idividuals wishing to determine whether this system of records contains information about them should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and indentified:

a. Full name; and

b. Approximate date of original request or appeal.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURE:

Individuals requesting access to their records should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Approximate date of original request or appeal.

Individuals requesting access must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Approximate date of original request or appeal.

Individuals requesting amendment must also follow the MSPB's regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity

Note.—The amendment provisions for this system are not intended to permit an individual a second opportunity to request amendment of a record which was the subject of the initial Privacy Act amendment request which created the record in the system. That is, after an individual has requested amendment of a specific record in an office system under provisions of the Privacy Act that specific record may itself become part of this system of Privacy Act/FOIA Case Records. An individual may not subsequently request amendment of that specific record again simply because a copy of the record has become part of the second system of Privacy Act/FOIA Case Records.

RECORD SOURCE CATEGORIES:

a. The individual who is the subject of the records;

b. MSPB officials who respond to Privacy Act/FOIA requests;

c. Official personnel documents of the MSPB, including records from any other MSPB system of records included in this notice;

d. Other sources whom the MSPB believes have information pertinent to an MSPB decision on a Privacy Act or Freedom of Information Act request; and

e. Other agencies referring the request to the MSPB.

MSPB/CENTRAL-6

SYSTEM NAME:

Litigation and Claim Records.

SYSTEM LOCATION:

Office of the General Counsel, Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

a. Individuals who file civil actions against the MSPB, its officials and employees.

b. Individuals who are parties to actions in which an MSPB final decision is involved but in which the MSPB is not a party to the proceeding.

c. Individuals who file claims against the MSPB under the Federal Tort Claims Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes the following kinds of records: documentation of litigation, including complaints, answers, motions, briefs, orders and decisions; claims and supporting documentation submitted under Federal Tort Claims Act, together with correspondence and records of final administrative determinations.

AUTHORITY FOR MAINTENANCE OF THE RECORDS:

5 U.S.C 1205, 7703; 28 U.S.C. 2672.

PURPOSE(S):

These records are maintained to defend the MSPB against lawsuits and to settle administrative claims brought against the MSPB.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records may be disclosed:

a. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where the Merit Systems Protection Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To any source from which the MSPB requests information relevant to an MSPB determination concerning one of the purposes for maintenance of the system.

c. To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conduct of a security or suitability investigation of an individual, the classification of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To a Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. To the National Archives and Records Service (General Services Administration) for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. To the insurance carrier of an employee of, or a claimant against, the MSPB under the Federal Tort Claims

Act in order to determine the proper assignment of any liability.

h. In response to a request for discovery or for appearance of a witness, if the information is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To officials of the Office of Personnel Management, Federal Labor Relations Authority, and the Equal Employment Opportunity Commission when requested in connection with the performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders in lockable metal filing cabinets.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Records are available only to authorized personnel of the General Counsel's Office and to other specially designated personnel of the MSPB.

RETENTION AND DISPOSAL:

These records are maintained for two years after completion of the litigation or claims settlement and then are destroyed by shredding.

SYSTEM MANAGERS AND ADDRESS:

General Counsel, Office of General Counsel, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system contains a record about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name;
b. Date of birth;
c. Description of type of record; and
d. Court action number if applicable.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their record should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name;
b. Date of birth;
c. Description of type of record; and
d. Court action number if applicable.

Individuals requesting access must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identify.

CONTESTING RECORDS PROCEDURES:

Review of request from individuals seeking amendment of their records which have been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the appropriate system manager indicated above. Individuals must furnish the following for their records to be located and identified:

a. Full name;
b. Date of birth;
c. Description of type of record; and
d. Court action number if applicable.

Individuals requesting amendment must also follow MSPB's Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

a. The individual on whom the record is maintained;
b. Agency officials and records;
c. Records of MSPB and Equal Employment Opportunity Commission administrative proceedings and court documents; and
d. Witnesses.

MSPB/GOVT-1

SYSTEM NAME:

Appeal and Case Records.

SYSTEM LOCATION:

Office of the Secretary, Merit System Protection Board (MSPB), 1120 Vermont Avenue, N.W., Washington, D.C. 20419, the MSPB Regional Offices (see list of Regional Office addresses in the Appendix), and various Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees and applicants for employment who have filed an appeal with the MSPB, or its predecessors, or with respect to whom the Special Counsel or a Federal agency has petitioned the MSPB, concerning any matter over which the MSPB has original or appellate jurisdiction.

b. Current and former employees of State and local governments who have been investigated by the Special Counsel and have had a hearing before the MSPB concerning possible violation of the Hatch Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents, including briefs, pleadings and motions, exhibits, hearing transcripts and MSPB decisions, which comprise the administrative records of appeals and other matters arising under the original and appellate jurisdiction of the MSPB.

This system includes records of appeals filed with the former Federal Employee Appeals Authority and the Appeals Review Board of the Civil Service Commission. This system also includes records of appeals and cases before the MSPB, the Federal Employee Appeals Authority and the Appeals Review Board which are maintained by Federal agencies that are parties to the proceedings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1205, 1206, 1207, 1208, 7701, and 7702.

PURPOSE(S):

These records are used to document and adjudicate appeals and other matters arising under the MSPB's original and appellate jurisdiction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from the record may be disclosed:

a. To officials of the Equal employment Opportunity Commission or the Special Panel convened under authority of 5 U.S.C. 7702 when requested in connection with the performance of their authorized duties.

b. To officials of the Office of Personnel Management and the Federal Labor Relations Authority in connection with the performance of their authorized duties.

c. To a member of Congress or the Government Accounting Office regarding the status of an appeal.

d. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To a person from the record of an individual in response to an inquiry

made by that person on behalf of the individual to whom the record pertains.

f. To an appropriate Federal, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule regulation, or order upon request of that agency where there is an indication of a violation or potential violation of civil or criminal law or regulation.

g. To the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

h. To another Federal agency or to a court when the Goverment is party to a suit before the court.

i. To any person making an inquiry regarding the status of a proceeding before the MSPB, the nature of the proceeding, and, if applicable, the MSPB decision in the matter.

j. To the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

k. In response to a request for discovery or for appearance of a witness, if the information is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM;

STORAGE:

These records are maintained in file folders, binders, docket cards, microfiche, and computer tapes and discs.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained or by docket control or decision numbers.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

These records are maintained up to two years after a final determination by the MSPB or, in some instances, other administrative authorities or the courts. Thereafter, they are transferred by GSA Regional Federal Records Centers. They are destroyed by the Federal Records Centers when the records are seven years old.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary, Merit System Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419, the MSPB Regional Offices (see list of Regional Office addresses in the Appendix), or the Personnel Officer of the agency within which the appeal arose.

NOTIFICATION PROCEDURES:

Individuals inquiring whether this system of records contains information about them should contact the appropriate System Manager indicated above. Individuals who have filed appeals or are parties to matters before the MSPB are aware of that fact and have been provided a copy of the record. It is necessary to furnish the following information respecting the individual when making inquiries about records:

a. Full name;

b. Date of birth;

c. Kind of action taken by the agency;

d. Date and location of the filing of the appeal or other matter with the MSPB; and

e. If appropriate, the respective MSPB docket or decision control number.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the Board's Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. Date of birth;

c. Kind of action taken by the agency;

d. Date and location of the filing of the appeal or other matter with the MSPB; and

e. If appropriate, the respective MSPB docket or decision control number.

Individuals seeking access must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORDS PROCEDURES:

Individuals requesting amendment should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. Date of birth;

c. Kind of action taken by the agency;

d. Date and location of the filing of the appeal or other matter with the MSPB; and

e. If appropriate, the respective MSPB docket or decision control number.

Individuals requesting amendment must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

These provisions for amendment of the record are not intended to permit the alteration of evidence presented in the course of adjudication before the Board, before or after the Board has rendered a decision on the appeal.

RECORD SOURCE CATEGORIES:

The source of these records are:

a. The individual to whom the record pertains;

b. The agency employing the above individual;

c. The Merit Systems Protection Board, the Office of Personnel Management, Equal Employment Opportunity Commission, the Office of the Special Counsel; and

d. Other individuals or organizations from whom the MSPB has received testimony, affidavits or other documents.

Appendix

Regional Offices of the Merit Systems Proctection Board

Atlanta Regional Office, Merit Systems Protection Board, 3rd Floor, North Wing, 1776 Peachtree Street, N.E., Atlanta, Georgia 30309

Boston Regional Office, Merit Systems Protection Board, 100 Summer Street, Room 1736, Boston, Massachusetts 02110

Chicago Regional Office, Merit Systems Protection Board, John C. Kluczynski Building, 31st Floor, 230 South Dearborn Street, Chicago, Illinois 60604

Dallas Regional Office, Merit Systems Protection Board, 1100 Commerce Street, Room 6F20, Dallas, Texas 75242

Denver Regional Office, Merit Systems Protection Board, Denver Federal Center, Building 46, Box 25025, Denver, Colorado 80225

New York Regional Office, Merit Systems Protection Board, New Federal Building, 26 Federal Plaza, Room 2341, New York, New York 10278

Philadelphia Regional Office, Merit Systems Protection Board, U.S. Customhouse, Room 501, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106

St. Louis Regional Office, Merit Systems Protection Board, 1520 Market Street, Room 1740, St. Louis, Missouri 63103–2692

San Francisco Regional Office, Merit Systems Protection Board, 525 Market Street, Room 2800, San Francisco, California 94105

Seattle Regional Office, Merit Systems Protection Board, Federal Building, 915 Second Avenue, Room 1840, Seattle Washington 98174

Washington, D.C. Regional Office, Merit Systems Protection Board, 5203 Leesburg

Pike, Suite 1109, Falls Church, Virginia 22041

[FR Doc. 82-34662 Filed 12-27-82; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL SCIENCE FOUNDATION

National Science Board; Commission on Precollege Education in Mathematics, Science and Technology; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: National Science Board Commission on Precollege Education in Mathematics, Science and Technology.

Date and Time: January 14, 1983; 9:00 a.m.-4:30 p.m., January 15, 1983; 9:00 a.m.-12:00 p.m.

Place: National Science Foundation, Room 540, 1800 G St., N.W., Washington, D.C. 20550

Type of Meeting: Open.

Contact Person: Dr. Richard S. Nicholson, Executive Director, Commission on Precollege Education in Mathematics, Science and Technology, Room 527, National Science Foundation, Washington, D.C. 20550.

Summary Minutes: Contact Dr. Richard S. Nicholson at the above address.

Purpose of Commission Meeting and Agenda: The Commission will define an agenda for activities leading to its final recommendations. In addition, presentations by experts on topics relevant to Commission concerns will take place. These will include discussions about current and emerging educational technologies, and implications from cognitive research for the improvement of science and mathematics learning and teaching.

M. Rebecca Winkler,

Committee Management Coordinator.

December 22, 1982.

[FR Doc. 82-35083 Filed 12-27-82; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Ad Hoc Committee for Review of Nuclear Reactor Licensing Reform Proposals; Meeting

Notice is hereby given in accordance with Section 10 of the Federal Advisory Committee Act that NRC's Ad Hoc Committee for Review of Nuclear Reactor Licensing Reform Proposals will hold its next meeting at 9:30 a.m., January 12, 1983. This meeting will take place at the office of Shaw, Pittman, Potts and Trowbridge, South Building, 9th Floor Lobby, 1800 M Street, NW, Washington, DC and will be open for public observation.

At this meeting, the committee will begin its review of administrative proposals for reforming the NRC's licensing process for nuclear plants. A transcript of the meeting will be made available for public inspection and copying at NRC's Public Document Room, 1717 H Street, NW, Washington, DC.

Further information on the meeting may be obtained from Mr. Rothschild, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. (Telephone 202/634-1465).

Dated: at Washington, D.C. this 22nd day of December, 1982.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 82-35105 Filed 12-27-82; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Nuclear Regulatory Commission, Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on January 6-8, 1983, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the **Federa Register** on November 17, 1982.

The agenda for the subject meeting will be as follows:

Thursday, January 6, 1983

8:45 A.M.-10:00 A.M.: Resolution of Generic Issues (Open)—The members of the ACRS will discuss the methodology proposed by NRC to establish priorities for resolution of outstanding generic issues applicable to light water reactors. Members of the NRC Staff will participate in this discussion to the degree considered appropriate.

110:00 A.M.-11:00 A.M.: Seismic Design of Nuclear Facilities (Open)—The ACRS will discuss a proposed report to the NRC regarding seismic margins in nuclear power plants.

11:00 A.M.-12:00 Noon: Hydraulic Control Unit Line Integrity (Open)—The members will hear and discuss a response from members of the NRC Staff regarding the recommendations of the ACRS for review of HCU piping integrity in the event of LOCA within the drywell of pressure suppression containment systems.

12:00 Noon-12:30 P.M.: Future ACRS Activities (Open)—The members of the Committee will discuss anticipated ACRS Subcommittee and proposed full Committee activities. Activities of individual ACRS members will also be discussed.

1:30 P.M.-6:00 P.M.: NRC Safety Research Program and Budget (Closed)—The members will discuss the proposed ACRS report to the U.S. Congress regarding the proposed NRC Safety Research Program and Budget for FY 1984-85. Representatives of the NRC Staff will participate to the degree considered appropriate.

This portion of the meeting will be closed to discuss information regarding the impact of proposed budget reductions on continuing the proposed research contracts.

Friday, January 7, 1983

8:30 A.M.-12:00 Noon and 1:00 P.M.-3:30 P.M.: Clinch River Breeder Reactor (Open)—The members of the Committee will hear and discuss details of the plant design regarding proposed construction of the Clinch River Breeder Reactor. ACRS consultants, representatives of the NRC Staff, the Department of Energy, and the Applicant will participate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

3:30 P.M. -6:00 P.M.: NRC Safety Research Program and Budget (closed)-The members will discuss the proposed ACRS report to the U.S. Congress regarding the proposed NRC Safety Research Program and Budget for FY 1984-85. Representatives of the NRC Staff will participate to the degree considered appropriate.

This portion of the meeting will be closed to discuss information regarding the impact of proposed budget reductions on continuing and proposed research contracts.

Saturday, January 8, 1983

8:30 A.M.-10:30 A.M.: ACRS Subcommittee Activity (Open)—The members will hear and discuss reports of designated subcommittees regarding ongoing safety related activities including proposed revisions of NRC Regulatory Guides, and the proposed NRC policy statement on Severe Accidents and Related Views on Nuclear Reactor Regulation.

10:30 A.M.-12:30 P.M. and 1:30 P.M.-3:30 P.M.: Proposed ACRS Reports (Open/Closed)—The members will discuss proposed reports to the NRC and the U.S. Congress regarding matters considered during this meeting.

The session on the NRC Safety Research Program and Budget will be closed to discuss information regarding the impact of proposed budget reductions on continuing and proposed research contracts.

3:30 P.M.–4:30 P.M. Concluding Session (Open)—Members will complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 1, 1982 (47 FR 43474). In accordance with these procedures, 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 Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a telephone call to the ACRS Executive Director (R.F. Fraley) prior to the meeting. In view of the possiblility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information (5 U.S.C. 552b(c)(4)) and information the premature disclosure of which would frustrate the Commission's ability to implement affected programs effectively. The authority to close this portion is Exemption 9(b) of the Sunshine Act (5 U.S.C. 552b(c)(9)(b)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M. EST.

Dated: December 22, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-35104 Filed 12-27-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 79 to Facility Operating License No. DPR–39, and Amendment No. 69 to Facility Operating License No. DPR–48 issued to the Commonwealth Edison Company (the licensee), which revised Technical Specifications for operation of Zion Station, Units 1 and 2 (the facilities) located in Zion, Illinois. These amendments were effective December 3, 1982.

The amendments revise the Technical Specifications for the penetrations pressurization system to accurately define the conditions of operation, applicable modes, and actions to be taken for inoperable systems.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) The application for amendments dated December 3, 1982, (2) the Commission's letter dated December 6, 1982, (3) Amendments Nos. 79 and 69 to License Nos. DPR–39 and DPR–48, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Zion-Benton Public Library District, 2600 Emmaus Avenue, Zion, Illinois 60099. A copy of items (2), (3) and (4) 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 20th day of December 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch #1, Division of Licensing.

[FR Doc. 82-35106 Filed 12-27-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Granting of Relief From Certain Requirements of ASME Code Section XI Inservice Inspection Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to the Connecticut Yankee Atomic Power Company. The relief relates to the Inservice Inspection Program for the Haddam Neck Plant (the facility) located in Middlesex County, Connecticut. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

The relief allows postponement of inservice inspection requirements involving volumetric and visual examinations of a reactor coolant pump casing, pursuant to 10 CFR 50.55a(g)(6)(i) of the Commission's regulations.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the letter granting relief. Prior public notice of this action was not required since the granting of relief from ASME Code requirements does not involve a significant hazards consideration.

The Commission has determined that the granting of relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this action.

For further details with respect to this action, see (1) The licensee's letter dated September 3, 1982, and (2) the Commission's letter to the licensee dated December 21, 1982, which contains the Commission's related evaluation. These items are available for public inspection at the

Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Russell Library, 119 Broad Street, Middletown, Connecticut 06457. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 21st day of December 1982.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch #5, Division of Licensing.

[FR Doc. 82-35107 Filed 12-27-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-311]

Public Service Electric and Gas Co. et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 15 to Facility Operating License No. DPR-75, issued to Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees), which revised the license for operation of the Salem Nuclear Generating Station, Unit No. 2 (the facility) located in Salem County, New Jersey. The amendment is effective as of the date of issuance.

The amendment authorizes deferral of an 18-month Technical Specification surveillance requirement from December 5, 1982, until the first refueling outage in January 1983.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see: (1) The application for amendment dated December 2, 1982, (2) Amendment No. 15 to License No. DPR-75, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 3rd day of December 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-35109 Filed 12-27-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443/444]

Public Service Company of New Hampshire, et al.*; Availability of the Final Environmental Statement for Seabrook Station, Units 1 and 2

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Final Environmental Statement (NUREG-0895) has been prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed operation of the Seabrook Station, Units 1 and 2, located in Rockingham County, New Hampshire.

Copies of NUREG-0895 are available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C., and at the Exeter Public Library, Front Street, Exeter, New Hampshire 03883. The document is also being made available at the Office of the Coordinator of Federal Funds, Room 124, State House, Concord, New Hampshire 03301 and at the Strafford Rockingham Regional Council, 1 Water Street, Exeter, New Hampshire 03833.

*The current construction permit holders for Seabrook Station are: Bangor Hydro-Electric Company, Canal Electric Company, Central Maine Power Company, Central Vermont Public Service Corporation, Connecticut Light & Power Company, Fitchburg Gas & Electric Light Company, Hudson Light & Power Department, Maine Public Service Company, Massachusetts Municipal Wholesale Electric Company, Montaup Electric Company, New England Power Company, New Hampshire Electric Cooperative, Inc., Public Service Company of New Hampshire, Taunton Municipal Lighting Plant, The United Illuminating Company, Vermont Electric Cooperative, Inc., and Washington Electric Cooperative, Inc.

The notice of availability of the Draft Environmental Statement for the Seabrook Station and request for comments from interested persons was published in the **Federal Register** on May 21, 1982 (47 FR 22264). Comments received from Federal, State and local agencies and interested members of the public have been included in an appendix to the Final Environmental Statement.

Copies of the Final Environmental Statement (NUREG-0895) may be purchased at current rates, from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, and by GPO deposit account holders by calling (301) 492-9530 or by writing to the U.S. Nuclear Regulatory Commission, Attn: Publication Sales Manager.

Dated at Bethesda, Maryland, this 20th day of December, 1982.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 82-35108 Filed 12-27-82; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202-632-6000.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on October 29, 1982 (47 FR 49119). Individual authorities established or revoked under Schedules A, B, or C between October 1, 1982 and November 30, 1982 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exceptions are established:

Department of Defense

Schedule A authority 213.3106(b)(6) has been revised to allow DOD to appoint dependents of all U.S. personnel assigned overseas (previously applied only to dependents of DOD personnel.) Effective November 1, 1982.

Department of the Interior

Schedule A authority 213.3112 (a)(1) has been revised to permit appointments to continuing, as well as time limited, positions for technical, maintenance, and clerical positions, at or below grades GS–7, WG–10, or equivalent. Effective November 8, 1982. The following exception is revoked:

Merit Systems Protection Board

One Paralegal Specialist, GS–9, Office of the Special Counsel; revoked effective November 22, 1982, because the authority is no longer needed.

Schedule B

The following exception is established:

Export-Import Bank of the U.S.

One position of Food Service Worker, WG–7804–3, in the Office of the President and Chairman. Effective November 12, 1983.

Schedule C

ACTION

One Deputy Assistant Director for Legislative and Governmental Affairs. Effective October 5, 1982.

One Staff Assistant to the Deputy Director. Effector October 6, 1982.

One Special Assistant to the Director. Effective October 15, 1982.

Department of Agriculture

One Private Secretary to the Deputy Assistant Secretary for Food and Consumer Services. Effective October 5, 1982.

One Special Assistant to the Manager, Federal Crop Insurance Corportation. Effective October 5, 1982.

One Special Assistant to the Deputy Assistant Secretary for Administration, Office of Administration. Effective October 6, 1982.

One Private Secretary to the Director, Office of Rural Development Policy. Effective October 6, 1982.

One Staff Assistant to the Special Assistant to the Secretary, Office of the Secretary. Effective October 6, 1982.

One Private Secretary to the Assistant Secretary for Food and Consumer Services. Effective November 1, 1982.

One Confidential Assistant to the Inspector General, Office of the Inspector General. Effective November 8, 1982.

One Secretary (Typing) to the Deputy Assistant Secretary for Administration, Office of the Secretary. Effective November 8, 1982.

One Secretary (Typing) to the Executive Assistant to the Secretary, Office of the Secretary. Effective November 8, 1982.

Department of the Air Force

One Assistant to the Administrator, Rural Electrification Administration. Effective October 22, 1982.

One Special Assistant to the General Counsel of the Air Force, Office of the Secretary of the Air Force. Effective October 28, 1982.

One Staff Assistant to the Secretary of the Air Force, Office of the Secretay of the Air Force. Effective November 22, 1982.

Department of Commerce

One Congressional Liaison Officer, Economic Development Administration. Effective October 5, 1982.

One Special Assistant to the Director, Office of Public Affairs. Effective October 5, 1982.

One Confidential Assistant to the Associate Administrator, National Oceanic and Atmospheric Administration. Effective October 13, 1982.

One private Secretary to the Under Secretary, Office of Economic Affairs. Effective October 15, 1982.

One Deputy director, Office of Business Liaison. Effective October 18, 1982.

One Confidential Assistant to the Associate General Counsel for Legislation and Regulation, Office of the Secretary. Effective November 8, 1982.

One Information Receptionist to the Executive Assistant to the Secretary, Office of the Secretary. Effective November 16, 1982

One Confidential Assistant to the Deputy Assistant Secretary for Industry Projects, International Trade Administration. Effective November 16, 1982.

One Private Secretary and Confidential Assistant to the Deputy Administrator, National Oceanic and Atmospheric Administration. Effective November 16, 1982.

One Secretary to the Deputy Assistant Secretary, International Trade Administration. Effective November 16, 1982.

One Confidential Assistant to the Assistant Secretary for Trade Administration. Effective November 22, 1982.

One Confidential Assistant to the Director General of U.S. and Foreign Commercial Services, International Trade Administration. Effective November 23, 1982.

One Special Assistant to the Secretary of Commerce, Office of the Secretary. Effective November 30, 1982.

One Confidential Assistant to the Deputy Assistant Secretary for East Asia and the Pacific, International Trade Administration. Effective November 30, 1982.

Department of Defense

One Executive Assistant to the Assistant Secretary of Defense (Research and Engineering). Effective October 6, 1982.

One Special Assistant to the Director, Defense Audiovisual Agency. Effective October 21, 1982.

One Private Secretary to the Assistant Secretary of Defense (Development and Support/PDUSD Research and Engineering). Effective November 15. 1982.

Department of Education

One Special Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs. Effective October 6, 1982.

One Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education. Effective October 6, 1982.

One Special Assistant to the Duputy Under Secretary for Planning, Budget and Evaluation. Effective October 6, 1982.

One Personal Assistant to the Duputy Under Secretary for Management. Effective October 8, 1982.

One Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective October 8, 1982.

One Personal Assistant to the Assistant Secretary, Office of Education Research and Improvement. Effective October 12, 1982.

One Confidential Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective October 13, 1982.

One Special Concerns Officer, Office for Civil Rights. Effective October 14, 1982.

One Personal Assistant to the General Counsel, Office of the General Counsel. Effective October 14, 1982.

One Confidential Assistant to the Assistant Secretary, Office of Educational Research and Improvement. Effective October 16, 1982.

One Special Assistant to the Assistant Secretry for Civil Rights. Effective October 28, 1982.

One Personal Assistant to the Deputy General Counsel, Office of the General Counsel. Effective November 16, 1982.

One Special Assistant to the Assistant Secretary, Office of Educational Research and Improvement. Effective November 22. 1982.

One Confidential Assistant to the Deputy Assistant Secretary, Office of Legislation and Public Affairs. Effective November 22, 1982.

One Confidential Assistant to the Assistant Secretary for Postsecondary Education. Effective November 23, 1982.

One Personal Assistant to the Secretary, Office of the Secretary. Effective November 23, 1982.

One Special assistant to the Deputy Assistant Secretary for Institutional Support and International Education, Office of Postesecondary Education. Effective November 23, 1982.

One Confidential Assistant to the Executive Assistant, Office of the Secretary. Effective November 23, 1982.

One Confidential Assistant to the Director, Regional Liaison Office, Office of the Under Secretary. Effective November 23, 1982.

Department of Energy

One Staff Assistant to the Administrator, Economic Regulatory Administration. Effective October 5, 1982.

One Chief, Secretarial Travel Branch, Office of Congressional, Intergovernmental, and Public Affairs. Effective October 5, 1982.

One Special Assistant to the Administrator, Bonneville Power Administration. Effective October 18, 1982.

Department of Health and Human Services

One Special Assistant to the Director, Office for Civil Rights. Effective October 6. 1982.

One Public Affairs Specialist, Office of Human Development Services. Effective October 21, 1982.

One Deputy Director, Office of Legislation and Policy. Effective November 16, 1982.

One Confidential Assistant to the Deputy Assistant Secretary for Planning and Evaluation (Health). Effective October 29, 1982.

Department of Housing and Urban Development

One Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity. Effective October 5, 1982.

One Staff Assistant to the Comptroller of the Solar Bank, Solar Energy and Energy Conservation Bank (SE&ECB). Effective October 6, 1982.

One Special Assistant to the Regional Administrator, Office of the Regional Administrator. Effective October 15, 1982.

One Special Assistant to the Assistant Secretary for Policy Development and Research. Effective October 20, 1982.

One Staff Assistant to the Deputy Assistant Secretary for Housing Studies. Effective October 21, 1982.

One Staff Assistant to the President, Government National Mortgage Association. Effective October 22, 1982.

One Staff Assistant to the Assistant Secretary for Policy Development and Research. Effective October 25, 1982.

One Special Assistant to the Secretary (Executive Secretariat Operations), Office of the Assistant Secretary for Administration. Effective October 26, 1982.

One Senior Assistant for Legislation to the Deputy Assistant Secretary for Legislation, Office of Legislation and Congressional Relations. Effective October 26, 1982.

One Senior Legislative Specialist, Office of Legislation and Congressional Relations. Effective October 26, 1982.

One Senior Legislative Specialist, Office of Legislation and Congressional Relations. Effective October 26, 1982.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations, Office of Legislation and Congressional Relations. Effective November 1, 1982.

One Special Advisor for Minority Programs, Office of the Deputy Secretary for Intergovernmental Relations. Effective November 10, 1982.

One Public Affairs Specialist, Office of Public Affairs. Effective November 15, 1982.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations, Office of Legislation and Congressional Relations. Effective November 19, 1982.

One Special Assistant to the General Deputy Assistant Secretary for Housing-Deputy Federal Commissioner, Office of the Assistant Secretary for Housing. Effective November 29, 1982.

One Staff Director to the Regional Administrator, Region II, in New York, Office of the Regional Administrator/Chairman. Effective November 29, 1982.

Department of the Interior

One Special Programs Liaison, Office of the Associate Director. Effective October 4, 1982.

One Special Assistant to the Assistant Secretary, Office of the Secretary. Effective October 6, 1982.

Department of Justice

One Assistant to the Director of Congressional and Public Affairs, Immigration and Naturalization Service. Effective October 6, 1982.

One Special Assistant to the Commissioner, Immigration and Naturalization Service. Effective October 6, 1982.

One Special Assistant to the Director, Women's Bureau. Effective October 6, 1982.

One Staff Assistant to the Counselor, Office of the Attorney General. Effective October 15, 1982.

One Confidential Assistant to the Assistant Attorney General, Office of Legal Policy. Effective October 19, 1982.

One Attorney-Advisor to the Assistant Attorney General, Civil Rights Division. Effective November 5, 1982.

One Special Assistant (Security) to the Associate Commissioner for Enforcement. Effective November 5, 1982.

Department of Labor

One Secretary to the Secretary of Labor. Effective October 12, 1982.

One Confidential Staff Assistant to the Director, Office of Workers' Compensation Programs. Effective October 20, 1982.

One Private Secretary to the Deputy Under Secretary, Office of the Deputy Under Secretary. Effective November 1, 1982.

Department of State

One Congressional Relations Specialist, Bureau of International Organization Affairs. Effective October 6, 1982.

One Member, Policy Planning Staff. Effective October 12, 1982.

One Special Assistant to the Assistant Secretary, Bureau of International Organization Affairs. Effective October 12, 1982.

One Special Assistant to the Assistant Secretary, Bureau of International Organization Affairs. Effective October 12, 1982.

One Staff Assistant to the Counselor, Counselor of the Department. Effective October 13, 1982.

One Assistant to the Under Secretary for Security Assistance, Science and Technology. Effective October 13, 1982.

One Protocol Officer (Visits), Office of the Chief of Protocol. Effective October 15, 1982.

One Deputy Assistant Secretary, Bureau of Human Rights and

Humanitarian Affairs. Effective October 25, 1982.

One Special Assistant to the Assistant Secretary, Bureau of Economic and Business Affairs. Effective November 3, 1982.

One Staff Assistant to the Assistant Secretary, Office of the Assistant Secretary for Congressional Relations. Effective November 18, 1982.

One Policy and Program Officer, Bureau of Human Rights and Humanitarian Affairs. Effective November 17, 1982.

One Special Assistant to the Under Secretary, Office of the Under Secretary for Management. Effective November 23, 1982.

One Special Assistant to the Assistant Secretary, Bureau of Ocean and International Environmental and Scientific Affairs. Effective November 29, 1982.

Department of Transportation

One Special Assistant to the Director, Office of Public Affairs. Effective October 1, 1982.

One Special Assistant to the Regional Representative of the secretary in Fort Worth, Texas. Effective October 4, 1982.

One Confidential Assistant (Senior Economic Advisor) to the Maritime Administrator. Effective October 6, 1982.

One Congressional Liaison Specialist, Office of Congressional Affairs. Effective October 26, 1982.

One Confidential Assistant to the Secretary, Office of the Secretary. Effective November 8, 1982.

One Special Assistant to the Administrator, in San Francisco, California, Urban Mass Transportation Administration. Effective November 8, 1982.

One Special Assistant to the Assistant Secretary for Budget and Program. Effective November 29, 1982.

Department of the Treasury

One Special Assistant to the Assistant Secretary, Office of the Assistant Secretary (Public Affairs). Effective October 14, 1982.

One Special Assistant to the Director of the Mint, Office of the Director. Effective October 21, 1982.

One Executive Assistant to the Commissioner of Customs, Office of the Commissioner. Effective November 8, 1982.

Appalachian Regional Commission

One Public Affairs Liaison. Effective October 4, 1982.

Commodity Futures Trading Commission

One Administrative Assistant to the Commissioner, Office of Commissioner West. Effective October 29, 1982.

Consumer Product Safety Commission

One Staff Assistant to the Commissioner. Effective November 17, 1982.

Equal Employment Opportunity Commission

One Public Affairs Specialist, Office of Public Affairs. Effective October 6, 1982.

Environmental Protection Agency

One Special Assistant to the Administrator, Office of the Administrator. Effective October 25, 1982.

One Special Assistant to the Chief of Staff, Office of the Administrator. Effective October 26, 1982.

Executive Office of the President

One Confidential Secretary to the General Counsel, Office of Administration. Effective October 4, 1982.

One Secretary (Typing) to the Deputy Director, Office of Science and Technology Policy. Effective October 15, 1982.

One Secretary to the Deputy Director, Office of Management and Budget. Effective October 20, 1982.

One Legislative Assistant to the Assistant Director for Legislative Affairs, Office of Management and Budget. Effective October 22, 1982.

One Secretary to the Assistant Director, Office of Management and Budget. Effective November 1, 1982.

One Secretary to the Deputy Director, Office of Management and Budget. Effective November 12, 1982.

One Clerk, Legislative Affairs, Office of Management and Budget. Effective November 22, 1982.

One Secretary to the Associate Director, NSIA, Office of Management and Budget. Effective November 22, 1982.

One Public Affairs Specialist, Office of Management and Budget. Effective November 30, 1982.

Export-Import Bank of the U.S.

One Staff Assistant to the Assistant Director for Multilateral Affairs, Office of Administration. Effective November 30, 1982.

Federal Maritime Commission

One Special Assistant to the Chairman, Office of the Chairman. Effective November 15, 1982.

Federal Mine Safety and Health Review Commission

One Secretary (Steno) to the Commissioner. Effective October 22, 1982.

General Services Administration

One Special Assistant to the Commissioner, Public Buildings Service. Effective October 4, 1982.

One Deputy Director, Office of Public Affairs. Effective November 15, 1982.

One Special Assistant to the Administrator, Office of the Administrator. Effective November 23, 1982.

Harry S. Truman Scholarhip Foundation

One Secretary (Stenography) to the Executive Secretary. Effective October 26, 1982.

National Endowment for the Arts

One Executive Director to the President's Committee on the Arts and Humanities. Effective October 8, 1982.

National Endowment for the Humanities

One Special Assistant to the Chairman, Office of the Chairman. Effective November 22, 1982.

National Credit Union Adminstration

One Special Assistant to the National Credit Union Administration Board Member. Effective October 15, 1982.

Office of Personnel Management

One Confidential Assistant to the General Counsel, Office of the General Counsel. Effective October 29, 1982.

One Regional Representative of the Director in New York, Office of the Director. Effective November 4, 1982.

One Regional Representative of the Director in Philadelphia, Pennsylvania, Office of the Director. Effective November 4, 1982.

One Regional Representative of the Director in Chicago, Illinois, Office of the Director. Effective November 4, 1982.

One Regional Representative of the Director in Denver, Colorado, Office of the Director. Effective November 4, 1982.

One Regional Representative of the Director in San Francisco, California, Office of the Director. Effective November 4, 1982.

President's Commission on Executive Exchange

One Staff Assistant to the Executive Director. Effective November 5, 1982.

One Secretary (Typing) to the Executive Director. Effective November 12, 1982.

Small Business Administration

One Special Assistant to the Administrator, Office of the Administrator. Effective October 15, 1982.

One Director of Congressional Relations, Office of Congressional and Legislative Affairs. Effective November 8, 1982.

One Director of Private Sector Initiatives, Office of Private Sector Initiatives. Effective November 12, 1982.

One Congressional Relations Specialist, Office of Congressional Relations. Effective November 15, 1982.

One Assistant Administrator for Public Communications, Office of Public Communications. Effective November 16, 1982.

One Confidential Assistant to the Associate Deputy Administrator for Special Programs, Office of the Administrator. Effective November 16, 1982.

One Special Assistant to the Director of Public Communications, Office of Public Communications. Effective November 22, 1982.

U.S. Information Agency

One Counselor for Press and Public Affairs in New York, New York, Office of Personnel. Effective October 6, 1982.

One Staff Assistant to the Associate Director for Programs, Office of Personnel. Effective October 5, 1982.

One Confidential Assistant to the Associate Director for Broadcasting. Effective October 25, 1982.

One Special Assistant to the General Counsel, Office of the General Counsel and Congressional Liaison. Effective November 22, 1982.

One Special Assistant to the Associate Director for Broadcasting, Bureau of Broadcasting. Effective November 30, 1982.

U.S. Arms Control and Disarmament Agency

One Congressional Affairs Specialist, Office of Administration. Effective November 29, 1982.

One Special Assistant to the Assistant Director for Multilateral Affairs, Office of Administration. Effective November 30, 1982.

One Staff Assistant to the Assistant Director for Multilateral Affairs, Office of Administration. Effective November 30, 1982.

One Private Secretary to the Principal Deputy Assistant Secretary (International Security Policy). Effective November 19, 1982.

Veterans Administration

One Confidential Assistant to the Administrator of Veterans Affairs, Office of the Administrator. Effective October 4, 1982.

One Confidential Assistant to the Associate Deputy Administrator for Administration, Office of the Administrator. Effective October 12, 1982.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

Office of Personnel Management

Donald J. Devine,

Director.

[FR Doc. 82-35055 Filed 12-27-82; 8:45 am]

BILLING CODE 6325-01-M

POSTAL SERVICE

Increase in Rates for Preferred-Rate Mailers Caused by Decrease in Congressional Subsidy

AGENCY: Postal Service.

ACTION: Notice of Increases in Preferred Postage Rates.

SUMMARY: This is to give notice that postage rates for preferred-rate mailers will be increased, as the result of the continuing resolution H.J. Res. 631, signed into law on December 21, 1982. The increase in postage rates is required to make up the difference between the amount of revenue forgone subsidy appropriated by Congress in the continuing resolution and the amount which is authorized to be appropriated by 39 U.S.C. 2401(c). The new rates are contained in the Appendix to this notice.

EFFECTIVE DATE: 12:01 a.m., January 9, 1983.

FOR FURTHER INFORMATION CONTACT: Don S. Allen, (202) 245–4418.

SUPPLEMENTARY INFORMATION: H.J. Res. 631 sets forth the revenue forgone appropriation for the Postal Service for free and reduced-rate mail. The amount appropriated is less than that authorized under 39 U.S.C. 2401(c). Therefore, in accordance with 39 U.S.C. 3627, the Board of Governors of the Postal Service met on December 21, 1982, and adopted the following Resolution.

In keeping with H.J. Res. 631 (97th Congress), Further Continuing Appropriations, 1983, which provides that postal rates for all preferred rate mailers covered by section 3626 of title 39, United States Code, shall be at step 14, the rates for all preferred rate categories will be adjusted to the step 14 level of the schedules contained in Appendix Two of the Governors' Decision of September 29, 1981 (46 FR 51691–92). The adjustments shall become effective at 12:01 A.M. on January 9, 1983.

Accordingly, effective at 12:01 a.m. on January 9, 1983, the rates for all preferred-rate categories are adjusted to the step 14 level. The new rates are contained in the Appendix to this notice (39 U.S.C. 401, 403, 404, 2401(c), 3626, 3627).

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

APPENDIX

Schedule 1.—Second-Class Rates: In-County

	In cents
Per pound	4.1
Per piece:	
Presorted to carrier route	2.1
Other	2.6

Schedule 2.—Second-Class Rates: Publications of Authorized Nonprofit Organizations, Outside County

	In cents
Editorial	8.0
Advertising:	
1 and 2	11.0
3	11.7
4	13.0
5	14.9
6	16.7
7	18.8
8	20.7
Pieces:	
A	5.9
B	4.3
C	3.3

Schedule 3.—Second-Class Rates: Classroom Publications

	In cents
Editorial	4.7
Advertising:	
1 and 2	6.2
3	6.9
4	8.2
5	10.1
6	12.3
7	14.5
8	16.6
Piece	2.6

Schedule 4.—Second-Class Rates: Regular Rate Publications Outside County

	In cents
Science of agriculture: Advertising to zones 1 and 2	11.0
Limited circulation:	
A	5.1
B	3.5
C	3.0

Schedule 5.—Third-Class Rates: Nonprofit Bulk

	In cents
Per pound[1]	23.3
Minimum per-piece:	
Required presortation	5.2
Presorted to 5-digits	4.3
Presorted to carrier route	3.3

[1] Less the amount of difference between the minimum per-piece rates for required presortation and the appropriate presortation level on a per-piece basis.

Schedule 6.—Fourth-Class Rates: Library

	In cents
1st pound	35
Each additional pound through 7 pounds	12

Schedule 6.—Fourth-Class Rates: Library— Continued

	In cents
Each additional pound	7

[FR Doc. 82-35096 Filed 12-27-82; 8:45 am]
BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 22771; (70-6791)]

Consolidated Natural Gas Co. and CNG Development Co.; Proposal To Finance Gas Exploration Operations of Newly Organized Nonutility Subsidiary

December 10, 1982.

Consolidated Natural Gas Company ("Consolidated"), 100 Broadway, New York, New York 10005, a registered holding company, and its nonutility subsidiary CNG Development Company ("CNGD"), Four Gateway Center, Pittsburgh, Pennsylvania 15222, have filed with this Commission an application-declaration and amendments thereto pursuant to Sections 6(a), 7, 9(a), 10 and 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(3), 86, 87, 90 and 91 promulgated thereunder.

Consolidated proposes to finance the start-up operations of its newly organized subsidiary CNGD, which will engage in natural gas and oil exploration in several Appalachian States including West Virginia, Pennsylvania, Ohio and New York. Consolidated intends to purchase, for an amount not to exceed $20 million, up to 200,000 shares of CNGD's common stock, $100 par value per share, during the period ending May 31, 1983. CNGD will use the proceeds from the sale of common stock for the drilling of wells, operation and maintenance expenses, working capital purposes, and the acquisition of gas exploration leases exclusively from nonaffiliated persons. By post-effective amendment, CNGD may seek authorization to acquire producing or undeveloped leases, in the Appalachian region, from affiliated subsidiaries. CNGD will sell the gas it produces primarily to Consolidated's utility subsidiaries and their suppliers.

Consolidated has advanced the following reasons for the proposed transactions: (1) A desire to centralize into one subsidiary all exploration, development, leasing and related activities in the Appalachian region; (2) Consolidated's only other production subsidiary, CNG Producing Company ("CNG Producing"), is currently focusing its primary exploration operations in the Gulf of Mexico where geology, operations and drilling techniques differ substantially from the Appalachian region; and (3) several operating subsidiaries of Consolidated possess personnel with many years of experience in Appalachian drilling activities.

It is anticipated that qualified management personnel, scientists and engineers involved in production activities will be transferred permanently to CNGD from various utility subsidiaries including Consolidated Gas Supply Corporation ("Supply"), The East Ohio Gas Company ("East Ohio"), and The Peoples Natural Gas Service Company ("Peoples"). Consolidated Natural Gas Service Company ("Service") will provide certain management and administrative services to CNGD under a service agreement in the same form as existing agreements between Service and other subsidiaries of Consolidated. Supply will render certain legal, accounting and other services to CNGD under an agreement in the same form as an existing agreement for such services between Supply and CNG Producing. All such services will be accounted for and charged in accordance with the cost reimbursement requirements of Rules 90 and 91 under the Act.

It also indicated that, because of the resulting concentration of engineering and technical personnel in CNGD, it may provide under contract to Supply, Peoples and East Ohio, certain technical services related to the production or drilling operations of these subsidiaries. CNGD will provide such services only at the request of the subsidiary and at cost in accordance with the above-cited rules. However, in no event will charges by CNGD exceed the total expense that would have been incurred by the subsidiary had the service been performed by that subsidiary's own internal staff.

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 January 5, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve copies 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 amended, 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.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 82-35086 Filed 12-27-82; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-19330; File No. SR-NASD-80-10]

Self-Regulatory Organizations; Proposed Rule Change; National Association of Securities Dealers, Inc., Relating to Options in NASDAQ NMS Index

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 December 1, 1982, the National Association of Securities Dealers, Inc. 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

This rule filing involves the addition of the NASDAQ NMS Indices to Exhibit A of the NASD's Options filing which designated those NASDAQ indices which the NASD proposes to trade options in.

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 purposes of, and basis for the proposed rule change. The texts 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 the Statutory Basis for, the Proposed Rule Change

The Association has determined to create various NMS Indices and to trade

options on them. The purpose of an NMS Index Option would be identical to that of the other NASDAQ Index Options, i.e., to provide an opportunity for investors and market makers to hedge their positions against the systematic risk associated with holding NASDAQ NMS securities.

Statutory Basis—The proposed rule change is consistent with the provisions of Sections 15A(b)(2), 15A)(b)(6) and 15A(b)(7) of the Act in providing a system of regulation for trading in NASDAQ Index Options Contracts.

B. Self-Regulatory Organization's Statement on Burden on Competition

As stated in Amendment No. 1, the NASD does not believe that the trading of options on NASDAQ indices, including NMS Indices, will impose any burden on competition, but will, in fact, increase competition by creating a market that does not exist.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

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 a much 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th 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. Copies of such 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: December 13, 1982.

George A. Fitzsimmons,

Secretary.

Exhibit A

NASDAQ NMS Composite Index
NASDAQ NMS Industrial Index
NASDAQ NMS Bank Index
NASDAQ NMS Insurance Index
NASDAQ NMS Other Financial Index
NASDAQ NMS Transportation Index
NASDAQ NMS Utilities Index

[FR Doc. 82-35087 Filed 12-27-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19351; (SR-Phlx-82-2)]

Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

December 20, 1982.

The Philadelphia Stock Exchange, Inc. ("Phlx") 1900 Market Street, Philadelphia, PA 19103, submitted on October 28, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend its by-laws and rules relating to the disciplinary procedures of the exchange. The proposed amendments would provide for the appointment on a case-by-case basis of hearing panels that would conduct the hearing of disciplinary cases and recommends decisions to the Phlx Business Conduct Committee; give the Phlx Business Conduct Committee exclusive jurisdiction to to render the initial decision in disciplinary cases; establish a new Phlx standing committee, the Disciplinary Review Committee, that would have jurisdiction to review on appeal decisions of the Business Conduct Committee; leave with the Phlx Board of Governors authority to review on its own motion all decisions in disciplinary cases; narrow the class of disciplinary cases that may give rise to Phlx's summary judgment procedures; clarify Phlx's pre-hearing procedures; and clarify when a respondent in a disciplinary case defaults and the consequences of such a default. In addition, the Phlx proposes to adopt a rule specifically prohibiting conduct inconsistent with just and equitable principles of trade.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 19225, November 8, 1982) and by publication in the **Federal Register** (47 FR 51979, November 18, 1982). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and the regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-35085 Filed 12-27-82; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-5833]

Sonat Offshore Drilling Inc. (5% Convertible Subordinated Debentures (due 12-1-92)); Application to Withdraw from Listing and Registration

December 20, 1982.

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 American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Sonat Offshore Drilling Inc. ("Company") has determined to remove its debentures for listing and registration on the Amex because during the calendar year 1981 and the nine months ended September 30 1982, only $86,000 and $61,000 principal amount, respectively, of the debentures were traded on the Amex. In addition, as of

September 14, 1982, there was $1,568,000 of the debentures outstanding and held by approximately 147 holders of record. In this regard, the Company believes that the cost and expenses of continued listing on the Amex is not justifies. The Amex has no objection to this matter.

Any interested person may, on or before January 12, 1983, 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. Fitzsimons,

Secretary.

[FR Doc. 82-35084 Filed 12-27-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice CM-8/588]

Modem Working Party of Study Group D, U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Modem Working Party of Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on January 6 and 7, 1983 at the Sheraton Sand Key Hotel, Clearwater, Florida. Meetings will start at 9:00 a.m. on both days.

Study Group D deals with telecommunication matters relating to the development of international digital data transmission services; the Modem Working Party reviews actual and proposed CCITT recommendations pertaining to the specifications and use of modems in data transmission.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chair. Requests for further information may be directed to Thijs de Haas, Chairman of U.S. CCITT Study Group D, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Boulder, Colorado 80303, telephone (303) 499-1000, ext. 3728.

Dated: December 9, 1982.

Arthur L. Freeman,

Director, Office of International Communications Policy.

[FR Doc. 82-35048 Filed 12-27-82; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/587]

Study Group A, U.S. Organization for the International Telegraph and Telephone Consultative Committee (OCITT); Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (OCITT) will meet on January 7 and 18, 1983, 10:00 a.m. in Room 856 of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. This Study Group deals with U.S. Government aspects of international telegram and telephone operations and tariffs.

The Study Group will discuss international telecommunications questions relating to telegraph, telex, new record services, data transmission and leased channel services in order to develop U.S. positions to be taken at upcoming international Study Groups I and III meetings.

Members of the general public may attend the meeting subject to the instruction of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Earl S. Barbely, Conference Staff, Federal Communications Commission, Washington, D.C. 20554, telephone (202) 632-3214.

Dated: December 9, 1982.

Arthur L. Freeman,

Director, Office of International Communications Policy.

[FR Doc. 82-35047 Filed 12-27-82; 8:45 am]

BILLING CODE 4710-07-M

SYNTHETIC FUELS CORPORATION

Synthetic Fuel Projects; Third Solicitation; Extension of Time for Submission of Microfiche Copies of Proposals

AGENCY: United States Synthetic Fuels Corporation.

ACTION: The time for submission of microfiche copies of proposals under Third Solicitation for Synthetic Fuel Project proposals extended from January 10, 1983 to February 10, 1983.

SUMMARY: Notice is hereby given that the Synthetic Fuels Corporation has extended from January 10, 1983 to February 10, 1983 the date by which microfiche copies of proposals under the Statement of Programmatic Objectives and Third Solicitation for Synthetic Fuels Projects issued August 19, 1982 must be submitted to the Corporation. This extension of time for the submission of microfiche copies does not affect the requirement contained in said solicitation that four print copies of complete proposals must be submitted to the Corporation by 5:00 p.m. (EST), January 10, 1983, addressed to: Projects Office, United States Synthetic Fuels Corporation, 2121 K Street, NW., Fourth Floor, Washington, D.C. 20586.

FOR FURTHER INFORMATION CONTACT: Ralph L. Bayrer, Vice President for Projects, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822-6436.

United States Synthetic Fuels Corporation.

Jimmie R. Bowden,

Executive Vice President.

[FR Doc. 82-35136 Filed 12-27-82; 8:45 am]

BILLING CODE 0000-00-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee Review; Review and Solicitation of Public Comment Regarding the Proposed Modification of the List of Articles Eligible For Duty-Free Treatment Under the U.S. Generalized System of Preferences to Remove High Carbon Ferromanganese

Notice is hereby given that the Trade Policy Staff Committee (TPSC) has initiated a review of the removal of high carbon ferromanganese classified under TSUS 606.30 of the Tariff Schedules of the United States Annotated from the list of products currently eligible for duty-free treatment under the U.S. Generalize System of Preferences (19 U.S.C. 2461-2465). Interested parties are requested to provide written comments to the TPSC regarding the removal of this product from the GSP not later than February 1, 1983. A public hearing on the proposed modification will not be scheduled unless specifically requested by an interested party.

All submissions should conform to 15 CFR 2003.2 and be submitted in twenty copies, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee. Information

submitted in connection with the proposed modification will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2007.7. Parties submitting briefs or statements containing confidential information must indicate clearly on the cover page of each of the twenty copies submitted and each page within the document, where appropriate, that confidential materials are included. Non-confidential summaries of all confidential material must be submitted in twenty copies, in English, at the same time that confidential submissions are filed.

All communications with regard to the proposed modification should be addressed to GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street NW., Room 316, Washington, D.C. 20506. The telephone number of the GSP Subcommittee is (202) 395–6971. Questions may also be directed to any member of the staff of the GSP Information Center.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 82-35091 Filed 12-27-82; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 42 (Rev. 17); Effective December 21, 1982]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The authority to execute consents fixing the period of limitations on assessment or collection under provisions of the 1939 and 1954 Internal Revenue Codes on cases under their jurisdiction can be redelegated by a Service Center Director but not below Returns Program Managers and by a District Director but not below Examination Support Staff/Section Revenue Agent (Tax Shelter), Grade GS–11. The text of the delegation order appears below.

EFFECTIVE DATE: December 21, 1982.

FOR FURTHER INFORMATION CONTACT: A. Duarte, OP:EX:G:E, 1111 Constitution Ave., N.W., Room 2010, Washington, D.C. 20224, Telephone number, 202–566–3632 (Not a Toll-Free telephone number)

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

Frederic P. Williams,

Deputy Assistant Commissioner (Examination).

Authority to Execute Consents Fixing the Period of Limitations on Assessment or Collection Under Provisions of the 1939 and 1954 Internal Revenue Codes

1. Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 120; Order No. 150–2; 26 CFR 301.6501(c)–1; 26 CFR 301.6502–1; 26 CFR 301.6901–1(d); and 26 CFR 301.7701–9; the authority to sign all consents fixing the period of limitations on assessment or collection is delegated to the following officials:

a. Chief Counsel
b. Regional Counsels
c. Regional Directors of Appeals
d. Service Center Directors
e. District Directors

2. This authority may be redelegated but not below the following levels for each activity:

a. Service Centers—Chief, Accounting Branch; Chief, Correspondence and Processing Section; Revenue Officers; Chief, Quality Review Staff; and Returns Program Managers;

b. Collection—Chiefs, Office Branches and Office Groups; Revenue Officers; Chiefs, Technical and Office Compliance Branches and Groups; Revenue Representative Supervisors;

c. Examination—Reviewers, Grade GS–11; Group Managers; Case Managers; Returns Program Managers; Classifiers/Screeners, Grade GS–11; and Examination Support Staff/Section Revenue Agent (Tax Shelter), Grade GS–11;

d. Criminal Investigation—Chiefs, Criminal Investigation Divisions, except this authority in streamlined districts is limited to the District Director;

e. Appeals—Appeals Officers;

f. Foreign Operations District—Representatives at foreign posts; Revenue Agents, Tax Auditors, and Special Agents on foreign assignments; and levels b, c, and d, above; and

g. District Employee Plans and Exempt Organizations—Reviewers, Grade GS–11; Group Managers.

3. No authority is delegated under this Order to the District Counsel.

4. This Order supersedes Delegation Order No. 42 (Rev. 16), issued March 21, 1982.

Issued: December 21, 1982.

James I. Owens,

Deputy Commissioner.

[FR Doc. 82-35066 Filed 12-27-82; 8:45 am]

BILLING CODE 4830-01-M

Office of the Secretary

[Number: 150–87]

Authority for Commissioner of Internal Revenue to Undertake Certain Tax Audits and Checks and to Furnish Tax Return Information Related Thereto to Assistant Secretary (Administration) and Others

November 23, 1982.

In accordance with the authority vested in me as Secretary of the Treasury, including 26 U.S.C. 7602, 26 U.S.C.6103(c) and (g)(2), 31 U.S.C. 321(b), Executive Order No. 11222, 31 CFR Part C, and for the purpose of promoting public confidence in the Department of the Treasury and its administration of the Federal tax system, it is hereby ordered that:

1. *Introduction*—The Commissioner of Internal Revenue shall conduct tax audits, tax checks and income tax filing record checks as provided for by this Order.

2. *Definitions*—As used in this Order, the term:

a. "Income tax filing record check" means a search by IRS of its records to verify that a tax return has been filed with it for the immediately preceding year.

b. "Tax Audit" means a review by IRS to determine the correct Federal income tax liability of an individual for the immediately preceding two years.

c. "Tax Check" means a search by IRS of its records to determine:

(1) Whether the individual has filed returns with respect to Federal income taxes for the immediately preceding three years;

(2) whether there has been a failure to pay any tax within 45 days after notice and demand, or whether there has been assessed a penalty under the Internal Revenue Code of 1954, as amended, for negligence in the current year or immediately preceding three years;

(3) whether there is a record of an investigation for possible criminal offenses under the Internal Revenue laws, and the results of any such investigation; and

(4) whether there is a record of a civil penalty assessed, or proposed for assessment, under the Internal Revenue Code of 1954, as amended, for fraud.

3. *Tax Audits*—a. Prior to the nomination by the President of a person to a position in the Department or an international financial institution, the Commissioner, upon request therefor as provided in section 6.b. of this Order, shall cause a tax audit to be performed.

b. Prior to the appointment by the Secretary (or as soon thereafter as practicable) of a person to a position:

(1) Of a confidential or policy determining character (Schedule C or Noncareer Executive Assignment) with the Department at Grades GS–14 through 18, inclusive, SES levels 1 through 6, or Executive Schedule Levels V and IV, or similar position on other pay systems compensated at comparable rates, or

(2) With an international financial institution, the Commissioner, upon request therefor as provided in section 6.b. of this Order, shall cause a tax audit to be performed.

c. Promptly after the effective date of this Order, the Commissioner, upon request therefor as provided in section 6.b. of this Order, shall cause a tax audit to be performed with respect to each person who was not audited under provisions of Treasury Department Order No. 150–87 of July 29, 1977 prior to this Order being issued, and who has entered on duty in a position described in subsection a. or b. of this section.

4. *Tax Checks*—a. On an annual basis, and as close to the anniversary date of the appointment to the position as is practicable, the Commissioner, upon request therefor as provided in section 6.b. of this Order, shall cause a tax check with respect to the immediately preceding year to be performed with respect to each person who then continues to serve in a position described in section 3. of this Order.

b. Prior to effectuation of a personnel action assigning a person to any category of positions as specified below, the Commissioner, upon request therefor as provided in section 6.b. of this Order, shall cause a tax check to be performed with respect to each person selected:

(1) By the President or the Secretary or his designees to a position described in section 3. of this Order;

(2) For initial entry into any position at any grade from GS–14 through 18, inclusive, SES levels 1 through 6 or Executive Schedule Levels V and IV, or similar positions in other pay systems compensated at comparable rates; and

(3) For initial appointment as an expert, consultant, or advisory committee member.

5. *Income Tax Filing Record Checks*—Prior to a person entering on duty in a position by appointment or promotion from within the Department and on an annual basis, as close to the anniversary date of the appointment to a position as is practicable, the Commissioner, upon request therefor as provided in section 6.b. of this Order, shall cause an income tax filing record check to be performed with respect to each person who then continues to serve in a position desribed in section 4.b.(2) or (3) of this Order.

6. *Procedure*—a. The Assistant Secretary (Administration), or his designee, shall request each person subject to a tax audit or tax check (or both) under this Order to execute an appropriate form providing the information necessary to identify the person and locate his or her tax records and authorizing the disclosure of tax return information as provided in this Order. The original of the executed form shall remain on file with the Assistant Secretary (Administration), or his designee. A copy of the executed form shall accompany each request to the Commissioner for a tax audit or tax check. If the person declines to execute the form, the tax audit or tax check (or both) shall nevertheless be performed as specified in this Order based on such information as is avilable from other sources.

b. The Commissioner shall cause a tax audit or check (or both), as appropriate under this Order, to be made upon receipt of a request therefor from the Assistant Secretary (Administration), or his designee.

c. Upon completion of such tax audit or check (or both), the results shall be forwarded (if an appropriate disclosure authorization has been executed), for information purposes, to the Assistant Secretary (Administration), or his designees; or as requested; or to IRS officers. This shall be done in a manner consistent with sections 7. and 8. of this Order.

d. In the case of income tax filing record checks, a list of the names and social security numbers of those persons for whom such checks are to be made shall be furnished to the Commissioner, or his designee, on a staggered basis throughout the year by the Assistant Secretary (Administration), or his designee. Upon receiving these lists, the Commissioner shall cause, as soon as is practicable, a tax filing record check to be made on each person listed.

e. Upon completion of such income tax filing record checks, the results shall be forwarded to IRS officers for appropriate tax administration enforcement action, if warranted, in accordance with section 8. of this Order.

7. *Disclosure*—To the extent permitted by the executed disclosure authorization, the Commissioner, or his designee, shall furnish the results of a tax audit or tax check in summary form to the Assistant Secretary (Administration), or his designee. The underlying documentation including audit reports, tax returns and return information shall also be furnished to the Assistant Secretary (Adminstration), or his designee, when specifically requested in writing by the Assistant Secretary (Administration). Any or all of the same information shall similarly be furnished directly to:

a. The President,

b. Representatives of the Executive Office of the President,

c. The Secretary, or

d. The Deputy Secretary,

when the Commissioner is requested to do so, in writing, by the Assistant Secretary (Administration). The Assistant Secretary (Administration) may also provide this information, on his own initiative, to any of the above persons or other Treasury officers who have a need to know such information, such as those exercising personnel administration functions in the various Bureaus or Offices of the Department.

8. *Non-disclosure*—In any instance in which a tax audit or tax check has been performed by the Internal Revenue Service, and no individually signed disclosure authorization has been provided, and in the case of income tax filing record checks, the results of such tax audit or tax check or income tax filing record checks shall not be disclosed under this Order to anyone not employed by the Internal Revenue Service, but such results shall be furnished to appropriate officials of the Internal Revenue Service for such tax administration enforcement action as is warranted.

9. *Circumstances Warranting Immediate Disclosure*—a. The Commissioner shall on his own initiative furnish to the Assistant Secretary (Administration), immediately following the event, the information that a civil penalty for fraud has been assessed, or is proposed for assessment, or an investigation for a possible criminal offense under the internal revenue laws has been commenced or completed with respect to any Treasury officer, employee, consultant, advisory committee member, or other person serving in the Department or an international financial institution and described in section 3. or 4. of this Order, who has provided a written disclosure authorization under section 6.a. of this Order. Such information shall not be furnished under this Order with respect to a person who has not provided an individually signed disclosure authorization.

b. The Commissioner shall on his own initiative furnish information that a civil penalty for fraud has been assessed, or is proposed for assessment, or an investigation for a possible criminal offense under the internal revene laws

has been commenced or completed with respect to any Treasury officer, employee, or other person serving in the Department described in section 3. or 4. of this Order. The Inspector General is also designated to receive any underlying documentation and same will be provided directly to the Inspector General by the Internal Revenue Service when the Inspector General specifically requests such information in writing.

Additionally, the Inspector General is authorized to furnish such information to any persons specified in section 7. of this Order or other Treasury officers who have a need to know such information to the same extent that I have authority under such order to furnish others with such information. Such information shall not be furnished under this Order with respect to a person who has not provided an individually signed disclosure authorization.

10. *Confidentiality*—It is the policy of the Department of the Treasury to make every effort to protect the privacy of all taxpayers, including its own officers and employees. Accordingly, disclosures under this Order shall be kept to the minimum necessary to promote public confidence in the Department and the administration of the Federal tax system.

11. *Effect on other regulations and programs*—a. Notwithstanding any other provisions of this Order:

(1) The Internal Revenue Service shall conduct and review tax audits, checks and income tax filing record checks in accordance with the Order with regard to its employees and those in the Office of Chief Counsel, IRS, at Grades GS–15 and below; but the results of such audits, checks, and income tax filing record checks shall not be forwarded to the Assistant Secretary (Administration), except as provided for by section 9. of this order. Each employee of the Internal Revenue Service or Office of Chief Counsel, who would otherwise be subject to a tax audit or tax check (or both) under the provisions of this Order, shall be asked to execute an appropriate disclosure authorization so that tax return information may be provided to persons authorized to receive it under section 7. of this Order.

(2) Information forwarded to the Assistant Secretary (Administration), with respect to the Internal Revenue Service officers and those in the Office of Chief Counsel, at SES levels 1 and above, or at Grades GS–16 and above, will, after the review process, be returned to the Commissioner or Chief Counsel, as appropriate, for safekeeping.

(3) All disclosure authorizations executed by employees or officers of the Internal Revenue Service or Office of Chief Counsel will remain on file with the Commissioner, or his designee, or the Chief Counsel, or his designee, as appropriate.

b. In addition, nothing in this Order precludes the Internal Revenue Service, or other Services, Bureaus or Offices of the Department which administer Federal tax or revenue laws, from adopting, with respect to their officers and employees, more stringent provisions than are provided for in sections 3., 4. and 5. of this Order, as may be allowed by law.

c. The requirements of this Order are in addition to any other audit procedures adminstered by the Internal Revenue Service and applicable to all taxpayers generally. Nothing in this Order is intended to affect, in any way, the process by which the Internal Revenue Service selects returns for audit under the usual procedures applicable to all taxpayers.

d. Nothing in this Order affects the authority of those Treasury officers, in individual Bureaus or Offices of the Department, who exercise personnel administration functions.

2. Supersession—This Order supersedes Treasury Department Order No. 150–87, dated July 29, 1977, and Treasury Department Order No. 150–87(A), dated November 2, 1978.

3. Effective Date—This Order is effective November 20, 1978.

Donald T. Regan,

Secretary of the Treasury.

[FR Doc. 82–35062 Filed 12–27–82; 8:45 am]

BILLING CODE 4810–215–M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 249
Tuesday, December 28, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Securities and Exchange Commission.	1

1

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 3, 1983, at 450 5th Street, N.W., Washington, D.C.

A closed meeting will be held on Tuesday, January 4, 1983, at 10:00 a.m.

An open meeting will be held on Thursday, January 6, 1983, at 10:00 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered a the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Commissioners Treadway, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 3, 1983, at 10:00 a.m., will be:

Access to investigative files by Federal, State, or Self-Regulatory authorities.

Institution of administrative proceedings of an enforcement nature.

Institution of injuctive action. Opinions.

The subject matter of the open meeting scheduled for Thursday, January 6, 1983, at 10:00 a.m., will be:

Consideration of whether to grant the application of John B. Licata to become an association person in an unsupervised, proprietary capacity with Argus Management Corporation. For further information, Please contact Mary Binno at (202) 272-2318.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Catherine McGuire at (202) 272-2401.

December 23, 1982.

[FR Doc. 82-1863 Filed 12-23-82; 3:34 pm]
BILLING CODE 8010-01-M

federal register

Tuesday
December 28, 1982

Part II

Department of Health and Human Services

Office of the Secretary

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From HHS

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 91

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From HHS

AGENCY: Health and Human Services Department.

ACTION: Final rules.

SUMMARY: These final regulations implement provisions of the Age Discrimination Act of 1975, and the general, governmentwide regulation published in the **Federal Register** on June 12, 1979, codified at 45 CFR Part 90.

The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age. The Act applies to persons of all ages.

These final regulations are designed to guide the actions of recipients of financial assistance from HHS. The regulations incorporate the basic standards for determining what is age discrimination that were set forth in the general regulations. They discuss the responsibilities of HHS recipients and the investigations, conciliation and enforcement procedures HHS will use to ensure compliance with the Act.

EFFECTIVE DATE: January 27, 1983.

FOR FURTHER INFORMATION CONTACT: Kathleen A. O'Brien, Office for Civil Rights, Office of Management & Policy, HHS, Room 5414 HHS North Building, 300 Independence Avenue S.W., Washington, D.C. 20201. (202) 245-6700.

SUPPLEMENTARY INFORMATION:

The preamble to the final regulations, containing supplementary information, is divided into the following six sections:

I. Background—provides a brief history of the development of the Act and these regulations.

II. Regulatory Procedures—explains compliance with various regulatory requirements.

III. Rulemaking History—describes the steps taken to secure public participation in the development of the age discrimination regulations.

IV. Overview of the Regulations—summarizes the contents of the final regulations and explains any changes made from the proposed regulations published on September 24, 1979.

V. Important Questions About the Regulations—answers some important questions raised during the development of these regulations.

VI. Examples of How HHS Interprets the Exceptions—illustrates how the exceptions might be applied to hypothetical situations involving HHS recipients.

I. Background

In November 1975 Congress enacted the Age Discrimination Act (42 U.S.C. 6101 *et seq.*) as part of the amendments to the Older Americans Act (Pub. L. 94-135). The Act prohibits discrimination on the basis of age in all programs and activities receiving Federal financial assistance.

The Act prohibits recipients of Federal financial assistance from taking actions that result in denying or limiting services or otherwise discriminating on the basis of age. The Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age.

Like other civil rights statutes, the Act applies only to programs or activities in which there is an intermediary (recipient) standing between the Federal financial assistance and the ultimate beneficiary of that assistance. The Act does not apply to programs of direct assistance (such as the Social Security program) in which Federal funds flow directly and unconditionally from the Federal government to the individual beneficiary of those funds.

Prior to the development of any regulations, the Act required the Commission on Civil Rights to conduct a study of age discrimination in federally funded programs and activities. The Commission transmitted its study to the President and the Congress on January 10, 1978. The Commission published the second part of its study in January 1979. The Act also required each affected Federal agency to respond to the Commission's findings and recommendations, and provided time for the Congress to consider amendments to the Act.

After receipt of the report from the Commission on Civil Rights and the Federal agency responses to that report, the Congress considered amendments to the Age Discrimination Act. In October 1978, Congress amended the Act (Pub. L. 95-478). The amendments: (1) Added a private right of action to the Age Discrimination Act; (2) provided a mechanism for the disbursal to alternate recipients of funds that have been withheld under the Age Discrimination Act; (3) added a requirement that the Department of Health, Education and Welfare (now HHS) approve the final regulations of other Federal agencies; (4) made the effective date of regulations implementing the Act no earlier than July 1, 1979; (5) required annual reports to the Congress on progress in implementing the Act; and (6) removed the word "unreasonable" from the Act's statement of purpose. The 1978 amendments left intact the exceptions to the general prohibition against age discrimination contained in the 1975 Act. The amended Act continues to apply to persons of all ages.

The Act requires HEW to issue proposed and then final general regulations setting standards to be followed by all Federal departments and agencies in implementing the Act. HEW issued proposed general regulations on December 1, 1978 and final general regulations on June 12, 1979. Those general regulations and the prohibition against age discrimination became effective on July 1, 1979.

The Act requires each department or agency which operates programs of Federal financial assistance to issue proposed and then final regulations which must be consistent with the general regulations. The Secretary of HEW (now HHS) must approve all agency and department regulations.

On September 24, 1979, HEW issued proposed age discrimination regulations governing the actions of recipients of HEW funds. In May 1980 HEW became HHS according to the Department of Education Organization Act (Pub. L. 96-88). These are the final HHS age discrimination regulations.

II. Regulatory Procedures

Impact Analysis Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules. A major rule is defined in the Order as any rule that has an annual effect on the national economy of $100 million or more—or certain other specified effects. The Department concludes that the regulations implementing the Age Discrimination Act are not major rules within the meaning of the Executive Order because they do not have an effect on the economy of $100 million or more, or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980:

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small

entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small nonprofit organizations, and small governmental entities. Based on the cost analysis of the age regulation, the Department finds that the effect of the age regulations on small entities is minimal. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act (Recordkeeping and Reporting Requirements)

These proposed rules place no new reporting or data collection requirements on recipients which require OMB clearance pursuant to the Paperwork Reduction Act.

III. Rulemaking History

HHS has been vitally concerned about the need for public participation in the development of these regulations because of the substantial impact the Age Discrimination Act could have on the operation of federally assisted programs.

As a first step in its obligation to issue general, government-wide regulations, HEW published in the **Federal Register** its Notice of Intent to Issue Age Discrimination Regulations (NOI) on March 2, 1978 (42 FR 5756). The NOI briefly identified some of the major issues addressed later in the regulatory process.

The Notice of Proposed Rulemaking (NPRM) for the general regulations was published in the **Federal Register** (42 FR 56428–56446) on December 1, 1978. At certain key places in the proposed general regulations, HEW presented options for public consideration and comment. Publication of the proposed rules was followed by a 90-day comment period.

HEW distributed more than 16,000 copies of the proposed general regulations. Copies were mailed to every member of Congress, every State governor, the head of every Federal agency that provides Federal financial assistance, administrators of federally assisted programs, recipients of Federal funds at the State and local levels, interested groups and individuals. In January and early February 1979, HEW held public hearings in Washington, D.C. and in each of HEW's 10 regions in order to obtain public comment on the proposed general regulations. A total of 170 witnesses made presentations at those hearings. In addition, 246 written comments were received. The comments and verbatim transcripts from the 11 hearings were analyzed and used in the development of the final general regulations published on June 12, 1979.

HEW published its own proposed regulations setting out the age discrimination requirements for its recipients on September 24, 1979. The Department, primarily through its Regional Offices, carried out a major distribution of the proposed regulations to HEW recipients and interested organizations and individuals. Over 40,000 copies of the proposed rules were distributed during the 60 day public comment period.

In addition, staff from the Age Discrimination Task Force conducted informational meetings in Wisconsin, Oregon, Florida and Washington, D.C. during October and early November 1979 to explain the requirements of both sets of regulations. Seventy-two persons sent written comments containing suggestions for improving the proposed regulations. Appendix A to these final regulations contains an analysis of the comments received and responses to those comments.

Implementation by HHS of the age discrimination regulations provides several more opportunities for public comment. Twelve months after the publication of these final regulations HHS will publish the results of a review of the age distinctions it imposes on its recipients by means of regulations, policies and administrative practices. The review, which will be published for public comment, is designed to determine whether each age distinction is permissible under the Act and implementing regulations. HHS will no longer adopt new age distinctions in the administration of its programs of financial assistance unless the age distinction meets the requirements of these regulations and has been published in a regulation after opportunity for public comment. Finally, HHS will examine the effectiveness of these regulations after 30 months, and publish its assessment for comment in the **Federal Register**.

IV. Overview of the Regulations

The following paragraphs summarize the text of the final HHS age discrimination regulations and explain any changes that have been made as a result of the public participation process. The final regulations are divided into 4 subparts:

Subpart A—General
Subpart B—Standards for Determining Age Discrimination
Subpart C—Duties of HHS Recipients
Subpart D—Investigation, Conciliation and Enforcement Procedures

There are also two appendices. Appendix A contains an analysis of the public comments; Appendix B contains a listing of the age distinctions found in statutes and regulations governing HHS assisted programs.

Subpart A—General

Subpart A explains the purpose of the HHS age discrimination regulations, which is to set out the Department's policies and procedures under the Act and the general regulations. (§ 91.1) These regulations apply to each HHS recipient and to all programs or activities receiving Federal financial assistance from HHS. (§ 91.2)

Although the Act generally covers all programs and activities that receive Federal financial assistance, it does not apply to any age distinction "established under authority of any law" which provides benefits or establishes criteria for participation on the basis of age or in age related terms. Thus, age distinctions that are "established under authority of any law" may continue in use. These regulations adopt without change the definition of "any law" established in the general regulations. Therefore, these regulations do not apply to age distinctions contained in Federal statutes, State statutes, or local statutes or ordinances adopted by elected, general purpose legislative bodies. (§ 91.2)

The Act also excludes from its coverage most employment practices, except in programs funded under the public service employment titles of the Comprehensive Employment and Training Act (CETA). However, the Age Discrimination in Employment Act (ADEA), administered by the Equal Employment Opportunity Commission (EEOC), continues to be the Federal statute that prohibits employment discrimination against most persons between the ages of 40 and 70 (except in Federal employment, where there is no upper age limit). Subpart A also defines terms used in these regulations. (§ 91.3)

Subpart B—Standards for Determining Age Discrimination

Subpart B of these regulations incorporates the basic standards for determining what is age discrimination, which are set out in the general regulations.

The regulations state that no person in the United States shall, on the basis of age, be denied the benefits of, be excluded from participation in, or be subject to discrimination under, any program or activity receiving Federal financial assistance. (§ 91.11)

The specific prohibited actions are patterned after the regulations issued under Title VI of the Civil Rights Act of 1964 (45 CFR Part 80). As a general rule, separate or different treatment which denies or limits service from, or participation in, a program receiving Federal funds will be prohibited by these regulations.

The Act does include some exceptions to the general rule against age discrimination. The regulations provide definitions for two terms that are essential to an understanding of these exceptions: "normal operation" and "statutory objective." (§ 91.12)

The regulations adopt the four-part test established in the general regulations to determine when an explicit age distinction is necessary to the normal operation of a program or to the achievement of a statutory objective of a program. The test (see § 91.13 of the regulations) requires that: The age distinction be used as a measure of another characteristic(s); the other characteristic(s) must be measured in order for the program to continue to operate normally or to meet a statutory objective; the other characteristic(s) can reasonably be measured by age; and the other characteristic(s) is impractical to measure directly on an individual basis.

All parts of the test must be met for an explicit age distinction to satisfy one of these exceptions and to continue in use in a federally assisted program. This four-part test will be used to scrutinize age distinctions that are imposed by recipients in the administration of federally assisted programs, when the recipient alleges the distinction is necessary to the normal operation or the achievement of a statutory objective of a program and when the age distinction is not specifically authorized by a Federal, State, or local statute.

Recipients of Federal funds are also permitted to take an action otherwise prohibited by the Act, if the action is based on *"reasonable factors other than age."* In that event, the action may be taken even though it has a disproportionate effect on persons of different ages. The regulations require, however, that the factor bear a direct and substantial relationship to the program's normal operation or statutory objective. (§ 91.14)

These regulations place on the recipient of HHS funds the burden of proving that an age distinction or other action falls within the exceptions discussed above. (§ 91.15)

There are three other instances in which an HHS recipient may use age distinctions that would otherwise be prohibited by the Act and these regulations: (1) a recipient may take voluntary affirmative action to overcome the effects of conditions that have resulted in limited participation in the recipient's program on the basis of age (§ 91.16); (2) a recipient may give special benefits to the elderly or to children (§ 91.17); and (3) a recipient may comply with age distinctions contained in HHS regulations. (§ 91.18)

Subpart C—Duties of HHS Recipients

Subpart C explains the duties of HHS recipients which are established by the General regulations.

HHS recipients have primary responsibility to ensure that their programs and activities are in compliance with the Act, the general regulations and these regulations. Recipients must also maintain records to the extent required to determine compliance with the Act and its regulations. (§ 91.31)

Where an HHS recipient passes on financial assistance to subrecipients, the recipient must notify subrecipients of their obligations under the Act and its regulations. HHS recipients must also inform beneficiaries about the protections provided by the Act and its regulations. (§ 91.32)

Each recipient of Federal financial assistance must sign an assurance that it will comply with the Act and its regulations. (§ 91.33)

HHS may require recipients employing the equivalent of 15 or more fulltime employees to examine their use of age distinctions under the Act as part of a compliance review or a complaint investigation conducted by the Department. (§ 91.33)

This self-evaluation requirement has been revised from the provision contained in the government-wide regulation and the Notice of Proposed Rule Making. The prior versions would have required all recipients employing 15 or more employees to complete a written self-evaluation. Section 91.33 states that such recipients *may* be required to undertake a self-evaluation as part of a compliance review and complaint investigation conducted by the Department. The change is based upon HHS' determination that to be consistent with the requirements of the Paperwork Reduction Act of 1980, enacted after the publication of the NPRN, the paperwork burden associated with the self-evaluation must be limited to recipients where circumstances indicate, in connection with a compliance review of complaint investigation, the need for the self-evaluation.

Each HHS recipient must keep records and make available to HHS upon request information that HHS determines is necessary to establish whether the recipient is in compliance with the Act and its regulations. Recipients must also allow HHS reasonable access to books and records to the extent HHS finds necessary to determine compliance with the Act and its regulations. (§ 91.34)

Subpart D—Investigation, Conciliation and Enforcement Procedures

Subpart D of these regulations establishes the procedures HHS will use in its investigation, conciliation and enforcement activities. These procedures are closely tied to requirements in the general regulations, primarily in Subpart D. Additional information on the filing of complaints and on mediation is provided in Section V of this preamble.

HHS may conduct compliance or pre-award reviews or use other similar procedures to ensure compliance with the Act and its regulations. These procedures may be used even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation has occurred. (§ 91.41)

Complaints of age discrimination may be filed with HHS by an individual or a class or by a third party. The complaint must allege discrimination occurring on or after July 1, 1979. A complainant must file a complaint within 180 days from the date the complainant first knew of the alleged act of discrimination, although HHS may extend this time limit for good cause. The filing date for a complaint will be the date upon which the complaint is sufficient to be processed. A complaint must identify the parties involved and the date the complainant first had knowledge of the alleged violation, describe generally the practice complained of, and be signed by the complainant. HHS will notify the recipient and the complainant of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the process. HHS will permit a complainant to add information to a complaint when necessary to meet the requirements of a sufficient complaint. HHS will return to the complainant any complaint that does not fall within the jurisdiction of the Act and will explain the reason(s) why the complaint is outside the jurisdiction of the Act. (§ 91.42)

HHS will refer to mediation all sufficient complaints that fall within the coverage of the Act. On June 12, 1979, the Secretary of HEW designated the Federal Mediation and Conciliation

Service (FMCS) to manage the mediation process which was established by the general regulations for all ADA complaints. Complainants and recipients are required to participate in the effort to reach a mutually satisfactory mediated settlement of the complaint, although they need not meet with the mediator at the same time. Generally, mediation may last no more than 60 days from the date a complaint is filed with HHS. The mediator will have the authority to terminate the mediation at any time before the end of the 60 day period if the process appears to have broken down. The mediator also has the authority to extend the 60 day mediation period where settlement is likely. A settlement based on terms satisfactory to both parties will be put in writing and sent to HHS. HHS will take no further action on a complaint that has been successfully mediated. The mediator will protect the confidentiality of all information obtained in the course of mediation. (§ 91.43)

HHS will investigate complaints that are unresolved after mediation or are reopened because the mediation agreement is violated. HHS will first attempt to resolve the complaint through informal fact-finding. An agreement reached during informal investigation will be signed by both parties and by an HHS official. The agreement will not affect any other enforcement effort by HHS. The settlement is not a finding of discrimination against a recipient. If these informal efforts do not succeed, HHS will develop formal findings through further investigation of the complaint. (§ 91.44)

A recipient may not intimidate or retaliate against any person who attempts to exercise a right protected by the Act or who participates in any aspect of the proceedings used to resolve allegations of age discrimination. (§ 91.45)

The procedures for securing compliance with the Act and these regulations are taken from the general regulations. The procedures include termination of Federal funds after an opportunity for a hearing on the record, referral to the Department of Justice, or the use of the services of any Federal, State or local government agency to correct a violation. These regulations include a provision for the deferral of new Federal financial assistance from HHS when termination proceedings are initiated. (§ 91.46)

HHS will use the procedural provisions contained in the regulations implementing Title VI of the Civil Rights Act of 1964 to enforce the HHS age discrimination regulations. These provisions are at 45 CFR 80.9–80.11 and 45 CFR 81. (§ 91.47)

Where HHS finds that a recipient has discriminated on the basis of age, HHS may require the recipient to take necessary remedial action to overcome the effects of the discrimination. (§ 91.48)

When HHS withholds funds from a recipient (according to the provisions of § 91.46), the Secretary may disburse those funds to an alternate recipient. The alternate recipient must demonstrate the ability to comply with these regulations and to achieve the goals of the Federal statute which authorizes the financial assistance. (§ 91.49)

Complainants may file civil actions when administrative remedies are exhausted. Administrative remedies are exhausted if either 180 days have elapsed since the complainant filed the complaint and HHS has made no finding, or if HHS issues a finding in favor of the recipient. The complainant may then file a suit in a U.S. district court where the recipient is found or transacts business. The complainant must indicate, at the time the suit is filed, if attorney's fees will be demanded in the event that the complainant is successful. No action can be brought if the same alleged violation by the same recipient is the subject of a pending action in any U.S. court. Complainants who wish to file an action must give 30 days notice to the Attorney General, the Secretary, and the recipient. (§ 91.50)

Appendices

These regulations contain two appendices. Appendix A is an analysis of the comments received on the proposed rules and the responses to those comments. Appendix B is a listing of age distinctions contained in the statutes and regulations governing the operation of HHS financial assistance programs. This appendix is designed to aid recipients by identifying those age distinctions which are derived from Federal statutes and regulations. The list of age distinctions in Appendix B is preceded by a more detailed explanation of the purpose of the listing and how it is organized.

V. Important Questions

This section of the preamble answers some important questions about these regulations. Some of the material first appeared in the general regulations published in June 1979, but is repeated here because it is important to an understanding of the provisions which HHS has incorporated in these regulations. The other questions were raised during the public comment period on the proposed HEW regulations.

1. *What Ages Does the Act Cover?*

Section 303 of the Act prohibits discrimination on the basis of age in federally assisted programs or activities. Although the legislative history indicates Congressional concern for the problems of the elderly in particular, the Congress made it clear in its conference committee report that the Act is intended to apply to persons of all ages. Nowhere in the amendment process was there any discussion of limiting or changing the coverage of the Act. It continues to extend protection to persons of all ages.

Various advocacy groups for older persons suggested that HHS construe the general regulations to protect only the elderly or to provide greater protection for older persons than for other age groups. This construction is not legally supportable in view of the legislative history and the plain language of the Act. Thus all regulations issued to implement the Act provide protection to persons of all ages.

2. *When Is the Prohibition Against Age Discrimination Effective?*

The Act provides that its prohibition of age discrimination becomes effective upon the issuance of regulations. Section 304 provides for the issuance of age discrimination regulations in two phases:

(a) HEW [HHS] publishes general, government-wide regulations to implement the prohibition against age discrimination in federally assisted programs; and

(b) Each Federal agency (including HEW [HHS]) then publishes regulations specific to its programs and consistent with general regulations.

The Act's prohibition of age discrimination became effective when the first set of regulations, the general regulations became effective on July 1, 1979. The general regulations established standards for determining what is age discrimination and procedures for enforcing the Act. All Federal agencies must adopt those standards in their agency specific regulations.

3. *Where Can Complaints of Age Discrimination Be Filed With HHS?*

Complaints involving HHS recipients and beneficiaries should be sent to: Office of Program Operations, Office for Civil Rights, Department of Health and Human Services, 330 Independence Avenue, SW., Washington, D.C. 20201.

The complaint must allege age discrimination occurring after July 1, 1979. The complaint should: (a) Identify the parties involved; (b) give the date of

the alleged violation or when the complainant first knew of the alleged violation; (c) generally describe what happened; and (d) be signed by the complainant.

HHS screens all complaints and refers those which describe actions covered by the Act and contain the necessary information to the FMCS for mediation. The FMCS began mediating age discrimination complaints on November 1, 1979.

The Act states that a complainant may file a civil action 180 days from the date the complaint was filed with the Federal agency if the agency has taken no action, or upon the date the agency makes a determination in favor of the recipient, whichever comes first. For purposes of exhaustion of administrative remedies within HHS, the 180 day period will run from the date the complaint is filed with HHS. In cases where HHS has not taken final action on a complaint and 180 days have passed, the complainant retains the option either to file a civil action, or have HHS continue to pursue the complaint through the administrative processes. HHS retains the option to continue its enforcement activities even if a private court suit is filed.

4. *What Are the Rules Against Age Discrimination?*

These regulations adopt without change the rules against age discrimination from the general regulations. The general regulations provide that, except as provided in the Act and its regulations, "* * * no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance." It means that, unless permitted by one of the exceptions, recipients of HHS assistance may not, either directly or indirectly, do anything to exclude persons from their programs or activities on the basis of age. Nor may recipients do anything that is not permitted by one of the exceptions to deny or limit persons on the basis of their age in their efforts to participate in HHS assisted programs or activities.

The prohibition against age discrimination does not include an absolute prohibition against separate treatment on the basis of age. As a general rule, separate or different treatment which denies or limits services from, or participation in, a program receiving financial assistance from HHS would be prohibited by these regulations. Separate or different treatment which does not deny or limit services is allowable. Separate or different treatment may be necessary to normal operation or to the achievement of a statutory objective by the recipient and may qualify as an exception under these regulations.

5. *What Is the Meaning of the Exception for Age Distinctions "Established Under Authority of Any Law"?*

The Age Discrimination Act applies to all programs and activities that receive Federal financial assistance. However, the Act does not apply to age distinctions "established under authority of any law" that provide benefits or establish criteria for participation on the basis of age or in age related terms. Age distinctions that qualify under this exemption do not require further scrutiny under these regulations.

The regulations define the term "any law" to mean a Federal, State or local statute or ordinance adopted by an elected, general purpose legislative body. This provision does *not* provide an automatic exemption for age distinctions that are contained in regulations or in ordinances enacted by bodies which are not elected or are special-purpose even though elected, such as State or local school boards. The first part of Appendix B of these regulations contains a list of the age distinctions found in Federal statutes administered by HHS.

The exemption for age distinctions "established under authority of any law" applies to both explicit uses of age (e.g. a statute that defines an adult to be a person over age 18) and the use of age-related terms (e.g. statutes that refer only to "adults" or "children" or "youths" without defining those terms explicitly). When a statute (Federal, State or local) uses, but does not define, an age-related term, HHS will accept reasonable definitions of those terms in regulations without further scrutiny. Thus, for example, HHS would not ordinarily question a definition of "child" as a person up to age 18, but would seek further justification of a regulation which defines "child" as a person up to age 30.

6. *When Is An Age Distinction Necessary to the Normal Operation or to the Achievement of a Statutory Objective of a Program or Activity?*

These regulations incorporate from the general regulations the four-part test for determining when an explicit age distinction is necessary to the normal operation of a program or activity, or to the achievement of a statutory objective. HHS will use this four-part test to scrutinize age distinctions imposed in the administration of federally assisted programs, but which are not explicitly authorized by a Federal, State or local statute or ordinance adopted by an elected, general-purpose legislative body. If the age distinction in question fails any part of the four-part test, the recipient of HHS funds may not continue to use that age distinction.

The four-part test is designed to require careful scrutiny of age distinctions in programs receiving Federal financial assistance and to weed out age distinctions that are neither directly related to an essential characteristic of a program nor based on explicitly stated objectives of a law. It is not intended to serve as a basis for permitting continued use of age distinctions for the sake of administrative convenience, if this results in denial or limitation of services on the basis of age.

HHS encourages its recipients to apply every age distinction flexibly; that is, to permit a person who demonstrates eligibility to participate in the activity or program even though he or she would otherwise be barred by the age distinction. Other things being equal, a distinction under review is more likely to qualify under any of the exceptions if it does not automtically bar all those who do not meet the age requirements.

7. *When Is the Use of a Factor Other Than Age Exempted From the Coverage of These Regulations?*

The Age Discrimination Act permits a recipient of Federal funds to examine its use of factors other than age which have a disproportionate effect on the basis of age in light of the individual facts and circumstances surrounding their use. This examination will determine whether use of the factor other than age is sufficiently related to achieving a legitimate program purpose and therefore justifies limiting or denying services or participation to persons disproportionately excluded because of age.

8. *What Are "Special Benefits" for the Elderly or Children?*

These regulations incorporate the provision of the general regulations permitting a recipient of a program to provide special benefits for children or the elderly.

The special benefits provision resulted from HHS' belief that Congress did not intend to disturb the practice of providing special benefits to children or the elderly. These special benefits often take the form of special discounts or reduced fees for the elderly in a federally funded program.

The provision allowing special benefits has been revised somewhat from that contained in the government-wide regulations and the Notice of Proposed Rule Making to make it clear

that special benefits are presumed to be within the statutory exemption applicable to actions necessary to the normal operation of a program. The earlier versions stated that special benefits to the elderly or to children shall be presumed to be voluntary affirmative action to overcome the effects of past underparticipation in the recipient's program by the elderly or children so long as the special benefits do not have the effect of excluding otherwise eligible persons from participation in the program. HHS has determined that the new wording is more consistent with the Congressional intent that the normal operation of programs properly designed to provide for special benefits for the elderly or children not be disturbed. Thus, such special benefits are entitled to a presumption of validity. In reviewing such special benefits in specific cases to insure that they are in fact consistent with the Act and Congressional intent, HHS will consider the rationale for the special benefit, the effect on other individuals, and all other relevant factors.

The regulations leave to the reasonable discretion of the recipient the definition of who qualifies as "children" or "the elderly" for purposes of receiving a special benefit.

9. *What Is the Effect of Age Distinctions Contained in HHS Regulations?*

A new § 91.18 has been added to make explicit what is implicit in § 90.32 of the government-wide regulation. Section 90.32 of the government-wide regulation established the mechanism for determining that age distinctions imposed by government agencies are consistent with the Age Discrimination Act and implementing regulations. Under this Section, agencies must within 12 months, review age distinctions imposed on recipients by regulations, policies and administrative practices. Each agency must then publish, for public comment, in the **Federal Register** a comprehensive accounting of all such age distinctions, listing those to be continued, the justification for their continuance, those to be adopted by regulations, and those to be eliminated. After this 12-month period, agencies may not continue any age distinction that has not already been adopted by regulation or is adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553. In addition, beginning with the effective date of an agency's final regulations, an agency may not impose a new age distinction unless it is adopted by regulation under the Administrative Procedure Act using these notice and comment procedures.

This comprehensive mechanism for carefully scrutinizing age distinctions imposed by Federal agencies on recipients to insure their consistency with the Age Discrimination Act and implementing regulations is based upon public participation and the rulemaking process of the Administrative Procedure Act, through which the appropriateness and validity of any age distinctions can be thoroughly evaluated. Implicit in this far-reaching mechanism is that age distinctions contained in regulations adopted under the Administrative Procedure Act are entitled to a very strong presumption of permissibility. The new § 91.18 makes this explicit by providing that any age distinction contained in a rule or regulation issued by HHS will be presumed to be within the statutory exemption applicable to actions necessary to the achievement of a statutory objective of the program to which the rule or regulation applies. This does not mean that such age distinctions are immune from additional scrutiny to insure their consistency with the Age Discrimination Act and implementing regulations, but that such further scrutiny will be under the general standards of the Act, rather than under the process established for previously unreviewed age distinctions, in which the recipient has the burden of proving that the detailed standards contained in § 91.13 of the regulation have been met. Since the review process or rulemaking proceeding subjected the age distinctions to scrutiny on all possible bases, it is appropriate that any subsequent review be limited to determining violations of fundamental statutory requirements. This provision thus reaffirms that recipients upon whom age distinctions are imposed by HHS regulations adopted pursuant to statutory authority and under the Administrative Procedure Act, as well as the public, can be assured that such age distinctions have been carefully considered and are believed by HHS to be permissible under the Age Discrimination Act and implementing regulations.

10. *Do the Regulations Require Proportional Allocation of Services and Funds by Age?*

Some believe that certain age groups, especially the elderly, do not get their "fair share" of funds or program slots in certain federally funded programs. These persons argue that the serious underrepresentation of certain age groups in the allocation of program funds or services *is* age discrimination and should be prohibited by these regulations.

These regulations do *not* require proportional program participation by age or the proportional allocation of funds by age. However, disproportionate allocation of funds or program participation may be one element that triggers an examination of whether age discrimination exists in the federally funded program or activity. If further inquiry is necessary, the recipient may show that the disparity in rates of participation, fund allocation, or services has nondiscriminatory causes.

11. *How Do These Regulations Affect the Relationship Between Similar General and Age-Targeted Programs?*

Federal funds are used to support a number of programs that provide similar services or benefits both to the general population and to a selected age group within the population. Does the existence of an age-targeted program in any way relieve the general program of its obligation to serve the age group eligible for the age-targeted program?

HHS believes that any deviation from a policy of serving all eligible persons regardless of age that results in a denial or limitation of service on the basis of age is only permissible if that action can satisfy one of the exceptions in these regulations. A general program can focus its services by referring persons to existing age-targeted programs only if those actions do not result in the denial of services to the individual or in the provision of lesser or different services.

12. *Why is Mediation a Required Step in Resolving Complaints of Age Discrimination?*

HHS supports mediation as an important innovation in the resolution of age discrimination complaints. The mediation process represents an effort to provide faster and more creative resolution of complaints through informal methods of dispute resolution. While mediation does represent a new step in the complaint resolution process, the experience in resolving complaints under other civil rights statutes indicates that the 60 days allowed for mediation will not significantly delay the enforcement process.

Mediation is being used with increasing success to resolve disputes between parties outside the traditional area of labor management negotiations. The most important feature of the mediation process is that it will be under the supervision of an impartial third party, a mediator assigned by the FMCS. FMCS was designated by the Secretary of HEW to mediate age discrimination complaints for all Federal departments and agencies which

distribute Federal financial assistance. The mediator is in no way connected with HHS or the funding agency in the age discrimination dispute. Instead, mediators have been recruited and selected by the FMCS. Each mediator is assigned to the dispute by the FMCS without consultation with HHS.

The mediators have been specially trained in procedures for resolving disputes and in the requirements of the Age Discrimination Act and its implementing regulations. The mediator will contact the two parties and explain the procedures to both the complainant and the recipient. Mediation does not necessarily mean that the two parties to the dispute must meet face-to-face; each may meet separately or otherwise discuss the matter with the mediator. Since the mediated settlement must be satisfactory to both parties, neither the complainant nor the recipient is compelled to settle the complaint. A complainant who believes that he or she is not receiving full satisfaction in the mediation process need not agree to a settlement of the dispute. A complainant will have to wait no more than 60 days for the complaint to be returned to HHS for its investigation to begin.

This 60 day period will count as part of the 180 days which HHS has to resolve the complaint before a court action can be filed by the complainant. The 60 day period may be extended by the mediator with the concurrence of HHS, for not more than 30 days if the mediator determines that agreement will likely be reached during the extended period.

The mediation process has been designed to minimize expenses to the parties. The mediator can travel to the location of the parties and the services of the mediator will be paid for by the Federal government. The mediation itself is conducted in an informal atmosphere in which both sides attempt to resolve the dispute in a mutually satisfactory manner. This should encourage the parties to discuss their dispute without resort to efforts to build a formal legal case.

HHS believes that the Age Discrimination Act offers a unique opportunity to try this innovative approach to the resolution of disputes. The mediation process is being monitored very closely as it is used to resolve age discrimination complaints received by all recipients of Federal financial assistance. The results of this evaluation will be reported as part of the required review of the effectiveness of the general age discrimination regulations.

VI. Examples of How HHS Interprets the Exceptions to the Prohibition Against Age Discrimination

This section illustrates how HHS would apply the exceptions to the prohibition against age discrimination in situations involving recipients of HHS funds. The examples are intended to illustrate how HHS would apply the standards in these regulations to analyze whether use of any age distinction or a factor other than age is permissible or impermissible under these regulations. The examples are purely hypothetical. Each assumes that the institution involved received funds from HHS and that no exception to the prohibition against age discrimination applies other than the one being discussed. The reader should keep in mind that even slightly different factual situations may require a different analysis and may result in a different conclusion. Thus, recipients of HHS funds should realize the need still exists for case-by-case analysis of any action that raises questions of compliance with the requirements of these regulations.

A. Actions Involving Separate Treatment (§ 91.11)

Examples—*Permissible Separate Treatment:*

1. A hospital which receives funds from HHS treats children under 16 years of age in a separate unit from the adults served by the hospital. However, essentially comparable services are provided both age groups, including laboratory facilities, specialized care and treatment, and access to the facilities. This separate treatment of the two age groups does not result in a denial or limitation of services, and the practice, therefore is *permissible.*

2. A sports league sponsored by a local youth program which receives Federal Title XX funds separates children into three or more age groupings for sports which require physical development or emotional maturity. Essentially comparable sports programs are provided for each age group. The groupings by age *are permissible* because no denial or limitation of service results.

Example—*Prohibited Separate Treatment:*

1. A State mental hospital has a separate geriatrics wing. Patients in this wing have less supervision, receive fewer therapeutic visits, have fewer recreational opportunities, and receive less rehabilitation. Because a denial or limitation of service results, this separate treatment would be prohibited (unless it could be justified under one of the Act's exceptions).

B. Age Distinctions "Established Under Authority of Any Law" (§ 91.2)

Examples—*Age distinctions in HHS-administered Federal statutes:*

1. The Health Maintenance Organization (HMO) Act limits enrollment of beneficiaries entitled to benefits under Title XVIII of the Social Security Act (SSA). The SSA requires "* * * each health maintenance organization with which the Secretary enters into a contract under this section shall have an enrolled membership at least half of which consists of individuals who have not attained *age 65."* (42 U.S.C. 1395mm) [Emphasis added]

2. The Aid to Families with Dependent Children (AFDC) program enables "each State to furnish financial assistance or rehabilitation and other services to needy dependent *children* and the parents or relatives with whom they are living. The term * * * *child* is defined * * * as * * * (A) under the *age of 18;* or (B) at the option of the State under the *age of 19* and a full-time student * * *." (42 U.S.C. 601 *et seq.*) (Emphasis added)

3. The Older Americans Act authorizes the provision of "assistance in the development of new or improved programs to help *older persons."* Specifically, it requires States in their State plans to "provide with respect to nutrition services that each project providing nutrition services will be available to individuals *aged 60 or older,* and to their spouses * * *" (42 U.S.C. 3027) (Emphasis added)

Examples—Age distinctions in State and local statutes which may affect HHS funded programs:

1. Age limits for requiring parental consent for medical procedures.

2. Age limits for services to those in the "juvenile" justice system.

3. Age limits for compulsory health procedures, such as particular vaccinations against disease.

4. Maximum age limits for "under age" wards of the State.

C. Age Distinctions That Are Necessary To Normal Operation or to the Achievement of a Statutory Objective. (§ 91.13)

To qualify for the normal operation or statutory objective exception, an explicit use of age must meet all four parts of the test set out in § 91.31 which requires that:

(a) the age distinction must be used as a measure of another characteristic(s);

(b) the other characteristics(s) must be measured for the program to operate normally or to meet its statutory objective;

(c) the other characteristic(s) can be reasonably measured by using age; and

(d) it is impractical to measure the other characteristic(s) for each individual participant.

Examples—*Permissible Uses of Age Related To Normal Operation:*

1. Head Start grantees operate programs which provide comprehensive health, nutritional, educational, social, and other services for children who have not reached compulsory school age. Neither the statute creating Head Start nor its implementing regulations specifies a minimum age limit for Head Start participants.

A local Head Start grantee operates a center that offers a highly structured program stressing group activities to promote the educational, social and nutritional development of the children enrolled. Because of the nature of the center's program, its physical layout, and the training and experience of its staff, the center generally

limits enrollment in its program to children who are at least 3 years old.

Anaylsis of the Use of Age:

(a) The minimum age restriction is used as an approximation of the level of development and the capacity for self-discipline that the child must possess in order to profit from this particular center's pre-school child development program; and

(b) A child's readiness for this pre-school child development program must be measured for the Head Start center to meet its objectives. The enrollment of younger children who are not ready for this program would require significant changes in the program such as providing greater assistance in feeding, changing diapers, clothes, etc., which would impair the center's ability to meet its objectives; and

(c) Age 3 reasonably approximates the level of development at which children are able to respond to simple commands, move about without assistance, feed themselves, control body functions and perform other basic activities that are an essential part of this center's pre-school child development activities; and

(d) It is impractical to measure directly and individually each child's level of physical, mental and emotional development.

The minimum age restriction passes all four parts of the test and, therefore, *is necessary* for the normal operation of the Head Start center.

2. A community organization receiving Federal financial assistance provides a drug and alcohol education program to young people between the ages of 12 and 20. The organization claims that its objective is to prevent young people from first taking drugs.

Analysis of the Use of Age:

(a) Ages 12–20 are used as a measure of the period when persons are first confronted with the decision of whether or not to use particular drugs; and

(b) This period of decision must be measured in order for the organization's objective (prevention rather than treatment) to be met; and

(c) Ages 12–20 are a reasonable measure of when youth are confronted with decisions to use particular drugs: and

(d) It is impractical to measure on an individual basis the point in time when an individual is first faced with the decision about whether or not to use drugs.

The use of age passes all parts of the four-part test, and therefore, *is necessary* for the normal operation of the program.

Examples—*Prohibited Uses of Age Related to Normal Operation:*

1. A medical school generally does not admit persons age 35 and over. This practice results in turning away qualified applicants over 35.

The school claims that it has as an objective, the teaching of qualified medical students who, upon graduation, will practice as long as possible. The school believes that this objective requires it to select younger applicants over older ones.

Analysis of the Use of Age:

(a) Age is used as an approximation of the potential years of medical practice after graduation;

(b) The approximation of the potential years of practice after graduation is not necessary to the normal operation of the medical school. The basic objective of the medical school is to train competent and qualified medical doctors. The achievement of a high average longevity of practice for its graduates cannot be considered a medical school's program objective under the Act. The admission of qualified persons over age 35 does not require significant changes in the medical school program which would impair its ability to educate physicians. (The use of age *fails* this part of the test.)

(c) The age of an applicant may be a reasonable approximation of the longevity of practice; and

(d) It is not possible to measure directly the actual longevity of a graduate's practice.

The use of age to restrict medical school applicants for the purpose of achieving greater longevity of practice does not pass part (b) of the test. Therefore, the use of age *is not necessary* to the normal operation of this medical school's program.

2. A university which receives funds from HHS for its graduate social work program limits fellowships in the program to persons under age 25. The university claims that the fellowship program is designed to encourage talented but inexperienced and untrained individuals to pursue graduate training in social work.

Analysis of the Use of Age:

(a) Age is used as an approximation of lack of experience and training in social work.

(b) Measurement of the lack of experience and training is necessary to the normal operation of the department's graduate fellowship program.

(c) Age, however, is not a reasonable measure of an individual's experience or training. Talented but inexperienced and untrained individuals of all ages may be seeking graduate aid through the social work program. (The use of the age *fails* this part of the test.)

(d) Lack of experience and training in the field of social work can reasonably be measured directly on an individual basis. (The use of the age *fails* this part of the test.)

The age limitation on the university's graduate social work fellowships does not pass either parts (c) or (d) of the four-part test. The use of age, therefore *is not necessary* to the normal operation of the graduate fellowship program.

3. A CPR program run by a local health department does not train anyone over age 65 to do CPR. The program claims that its objective is to train individuals who have the physical capability to perform CPR on heart attack victims, and that persons over 65 are unlikely to have that capability.

Analysis of the Use of Age:

(a) Age is used as an approximation of the physical ability to perform CPR.

(b) The physical ability to perform CPR must be measured for the program to achieve its objective.

(c) Age, however, is not a reasonable measure of an individual's ability to perform CPR. (The use of the age *fails* this part of the test.)

(d) Physical ability to perform CPR can be measured directly. Trainees can be tested for strength and endurance and can be screened for medical problems. (The use of the age *fails* this part of the test.)

The use of age 65 by the CPR training program does not pass parts (c) and (d) of the four-part test. The use of age, therefore, is *not necessary* to the normal operation of the CPR program.

Examples—Permissible Uses of Age Related to Statutory Objectives:

1. Applications for grants for disease control programs under the Public Health Service Act can only be approved if they "contain assurances satisfactory to the Secretary that * * * the applicant will conduct such programs as may be necessary (i) to develop an awareness in those persons in the area served by the applicant who are most susceptible to the disease or conditions * * * of appropriate preventive behavior and measures (including immunization) and diagnostic procedures for such disease, and (ii) to facilitate their access to such measures and procedures." (42 U.S.C. 247b).

A local public health program generally gives priority in immunizations to age categories most susceptible to the disease (e.g. the immunizaton program is directed to children under 15).

Analysis of the Use of Age:

(a) Age is used as a measure of susceptibility to a particular disease; e.g. ages 1–14 is a measure of susceptibility to measles;

(b) Susceptibility to the disease must be measured for the statutory objective to be met;

(c) Age is a reasonable measure of susceptibility to the particular disease; e.g. epidemiological evidence shows that children ages 1–14 are more susceptible to measles; and

(d) Susceptibility to the disease is impractical to measure directly on an individual basis.

The use of age passes all parts of the four-part test. Thus, age *is necessary* to the achievement of the explicit statutory objective to give priority in immunization to age categories most susceptible to the disease in question.

Examples—*Prohibited Uses of Age Related to Statutory Objectives:*

1. The statutory objective of the Federal Work Incentive Program (WIN) is to provide job training and placement services to individuals receiving Aid to Families with Dependent Children (AFDC) so that they may be employed and ultimately become self-sufficient. A local WIN office takes the age of the applicant into account and gives a lower priority for the older person who will be more difficult to place in employment.

Analysis of the Use of Age:

(a) Age is used as an approximation of the individual's employability after training has been completed.

(b) The selection of applicants most likely to be employed following the training is necessary to achieve the statutory objective.

(c) Age is not a reasonable measure of the employability of an applicant. (The use of age *fails* this part of the test.)

(d) Employability can reasonably be measured on an individual basis. (The use of age *fails* this part of the test.)

The use of age as a factor in screening applicants for training under the WIN program does not pass parts (c) and (d) and, therefore, *is not necessary* to achieve the objective of the Federal WIN program.

2. Title IV of the Social Security Act defines child welfare services as "public social services which supplement, or substitute for, parental care and supervision for the purpose of * * * protecting and promoting the welfare of children, including * * * where needed, the provision of adequate care of children away from their homes in foster family homes."

A State welfare agency sets a maximum age limit of 65 for foster parents. They claim that to meet their statutory objective of providing "adequate care" they cannot select anyone over 65 to be a foster parent.

Analysis of the Use of Age:

(a) Age is used as an approximation of the physical stamina and emotional maturity required to provide parental supervision to children.

(b) It is necessary to assess ability to provide parental supervision to achieve the program statutory objective of "adequate" foster care.

(c) Age is not a reasonable measure of the physical and emotional ability to provide parental supervision to a child. Physical stamina and emotional maturity are highly variable in adults and while there might be variations as people age, there is no specific age beyond which an individual does not have sufficient physical stamina or emotional resources to be an "adequate" foster parent. (The use of age *fails* this part of the test.)

(d) Applicants to be foster parents are screened individually—there is no reason why an individual's physical stamina and emotional maturity cannot be assessed directly at that time. (The use of age *fails* this part of the test.)

D. *The Use of Factors Other Than Age* (§91.14)

Example— *Permissible Uses of Factors Other than Age:*

1. A skills training program which receives Federal Work Incentive Program (WIN) funds uses a physical fitness test as a factor for selecting participants to train for a certain job. The job involves frequent heavy lifting and other demands for physical strength and stamina. Even though older persons might fail the test more frequently than younger persons, the physical fitness test measures a characteristic that bears a *direct and substantial relationship* to the job which persons are being trained and, therefore, *is permissible* under the Act.

Example—*Prohibited Uses of Factors Other than Age:*

1. A training program which receives WIN funds uses a physical fitness test to select participants for a clerical training program. It is claimed that persons who pass the test are likely to do better work than those who are unable to pass the test. Even if this were true, the relationship between the requirements of the test and the requirements of the type of job for which training is being offered *is not direct and substantial.* It is so tenuous and limited that it will not justify the test's age discriminatory effect. In this situation, use of the test would *violate* the Act.

List of Subjects in 45 CFR Part 91

Aged, Civil rights.

Dated: December 1, 1982.

Betty Lou Dotson,

Director Office of Civil Rights Department of Health and Human Services.

Approved: December 6, 1982.

Richard S. Schweiker,

Secretary, Department of Health and Human Services

The Department of Health and Human Services adds Part 91 to Title 45 of the Code of Federal Regulations as set forth below:

PART 91—NONDISCRIMINATION ON THE BASIS OF AGE IN HHS PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General

Sec.

91.1 What is the purpose of the Age Discrimination Act of 1975?
91.2 What is the purpose of HHS' age discrimination regulations?
91.3 To what programs do these regulations apply?
91.4 Definitions of terms used in these regulations.

Subpart B—Standards for Determining Age Discrimination

91.11 Rules against age discrimination.
91.12 Definitions of "normal operation" and "statutory objective."
91.13 Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.
91.14 Exceptions to the rules against age discrimination: Reasonable factors other than age.
91.15 Burden of proof.
91.16 Affirmative action by recipients.
91.17 Special benefits for children and the elderly.
91.18 Age distinctions contained in HHS regulations.

Subpart C—Duties of HHS Recipients

91.31 General responsibilities.
91.32 Notice to subrecipients and beneficiaries.
91.33 Assurance of compliance and recipient assessment of age distinctions.
91.34 Information requirements.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

91.41 Compliance reviews.
91.42 Complaints.
91.43 Mediation.
91.44 Investigation.
91.45 Prohibition against intimidation or retaliation.
91.46 Compliance procedure.
91.47 Hearings, decisions, post-termination proceedings.
91.48 Remedial action by recipient.
91.49 Alternate funds disbursal procedure.
91.50 Exhaustion of administrative remedies.

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq. (45 CFR Part 90)

Subpart A—General

§ 91.1 What is the purpose of the Age Discrimination Act of 1975?

The Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

§ 91.2 What is the purpose of HHS' age discrimination regulations?

The purpose of these regulations is to set out HHS' policies and procedures under the Age Discrimination Act of 1975 and the general age discrimination regulations at 45 CFR Part 90.[1] The Act and the general regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the general regulations permit federally assisted programs and activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

§ 91.3 To what programs do these regulations apply?

(a) The Act and these regulations apply to each HHS recipient and to each program or activity operated by the recipient which receives or benefits from Federal financial assistance provided by HHS.

(b) The Act and these regulations do not apply to:

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or

[1] Published at 44 FR 33768, June 12, 1979.

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act (CETA), (29 U.S.C. 801 et seq.)

§ 91.4 Definition of terms used in these regulations.

As used in these regulations, the term:

"Act" means the Age Discrimination Act of 1975, as amended, (Title III of Pub. L. 94–135).

"Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of admininstration.

"Age" means how old a person is, or the number of years from the date of a person's birth.

"Age distinction" means any action using age or an age-related term.

"Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

"Agency" means a Federal department or agency that is empowered to extend financial assistance.

"Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(a) Funds; or

(c) Services of Federal personnel; or

(c) Real and personal property or any interest in or use of property, including:

(1) Transfers or leases of property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

"HHS" means the United States Department of Health and Human Services.

"Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

"Secretary" means the Secretary of Health and Human Services, or his or her designee.

"Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

"United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

Subpart B—Standards for Determining Age Discrimination

§ 91.11 Rule against age discrimination.

The rules stated in this section are limited by the exceptions contained in §§ 91.13 and 91.14 of these regulations.

(a) General rule: No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(b) Specific rules: A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual licensing, or other arrangements, use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 91.12 Definitions of "normal operation" and "statutory objective."

For purposes of §§ 91.13 and 91.14, the terms "normal operation" and "statutory objective" shall have the following meaning:

(a) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(b) "Statutory objective" means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

§ 91.13 Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by § 91.11, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

§ 91.14 Exceptions to the rules against age discrimination: Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by Section 91.11 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only is the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 91.15 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 91.13 and 91.14 is on the recipient of Federal financial assistance.

§ 91.16 Affirmative action by recipient.

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

§ 91.17 Special benefits for children and the elderly.

If a recipient operating a program provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program, notwithstanding the provisions of § 91.13.

§ 91.18 Age distinctions contained in HHS regulations.

Any age distinctions contained in a rule or regulation issued by HHS shall be presumed to be necessary to the achievement of a statutory objective of the program to which the rule or regulation applies, notwithstanding the provisions of § 91.13.

Subpart C—Duties of HHS Recipients

§ 91.31 General responsibilities.

Each HHS recipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and these regulations, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford HHS access to its records to the extent HHS finds necessary to determine whether the recipient is in compliance with the Act and these regulations.

§ 91.32 Notice to subrecipients and beneficiaries.

(a) Where a recipient passes on Federal financial assistance from HHS to subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations.

(b) Each recipient shall make necessary information about the Act and these regulations available to its program beneficiaries in order to inform them about the protections against discrimination provided by the Act and these regulations.

§ 91.33 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from HHS shall sign a written assurance as specified by HHS that it will comply with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under § 91.41 or complaint investigation under § 91.44, HHS may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Department official, of any age distinction imposed in its program or activity receiving Federal financial assistance from HHS to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the HHS regulations, the recipient shall take corrective action.

§ 91.34 Information requirements.

Each recipient shall:

(a) Keep records in a form and containing information which HHS determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to HHS, upon request, information and reports which HHS determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(c) Permit reasonable access by HHS to the books, records, accounts, and other recipient facilities and sources of information to the extent HHS determines is necessary to ascertain whether the recipient is complying with the Act and these regulations.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

§ 91.41 Compliance reviews.

(a) HHS may conduct compliance reviews and pre-award reviews or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. HHS may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, HHS will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, HHS will arrange for enforcement as decribed in § 91.46.

§ 91.42 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with HHS, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, HHS may extend this time limit.

(b) HHS will consider the date a complaint is filed to be the date upon which the complaint is sufficent to be processed.

(c) HHS will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact HHS for information and assistance regarding the complaint resolution process.

(d) HHS will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

§ 91.43 Mediation.

(a) HHS will promptly refer to a mediation agency designated by the Secretary all sufficient complaints that:

(1) Fall within the jurisdiction of the Act and these regulations, unless the age distinction complained of is clearly within an exception; and,

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The mediator shall send a copy of the agreement to HHS. HHS will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior

approval of the head of the mediation agency.

(e) The mediation will proceed for a maximum of 60 days after a complaint is filed with HHS. Mediation ends if:

(1) 60 days elapse from the time the complaint is filed; *or*

(2) Prior to the end of that 60-day period, an agreement is reached; *or*

(3) Prior to the end of that 60-day period, the mediator determines that an agreement cannot be reached.

This 60-day period may be extended by the mediator, with the concurrence of HHS, for not more than 30 days if the mediator determines that agreement will likely be reached during such extended period.

(f) The mediator shall return unresolved complaints to HHS.

§ 91.44 Investigation.

(a) *Informal investigation.* (1) HHS will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation HHS will use informal fact finding methods, including joint or separate discussions with the complainant and recipient, to establish the fact and, if possible, settle the complaint on terms that are mutually agreeable to the parties. HHS may seek the assistance of any involved State program agency.

(3) HHS will put any agreement in writing and have it signed by the parties and an authorized official at HHS.

(4) The settlement shall not affect the operation of any other enforcement effort of HHS, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If HHS cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations HHS will attempt to obtain voluntary compliance. If HHS cannot obtain voluntary compliance it will begin enforcement as described in § 91.46

§ 91.45 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, investigation, hearing, or other part of HHS' investigation, conciliation, and enforcement process.

§ 91.46 Compliance procedure.

(a) HHS may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from HHS under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) HHS will limit any termination under § 91.46(a)(1) to the particular recipient and particular program or activity or part of such program and activity HHS finds in violation of these regulations. HHS will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from HHS.

(c) HHS will take no action under paragraph (a) until:

(1) The Secretary has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Secretary has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. The Secretary will file a report whenever any action is taken under paragraph (a).

(d) HHS also may defer granting new Federal financial assistance from HHS to a recipient when a hearing under § 91.46(a)(1) is initiated.

(1) New Federal financial assistance from HHS includes all assistance for which HHS requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from HHS does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the beginning of a hearing under § 91.46(a)(1).

(2) HHS will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 91.46(a)(1). HHS will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Secretary. HHS will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

(3) HHS will limit any deferral to the particular recipient and particular program or activity or part of such program or activity HHS finds in violation of these regulations. HHS will not base any part of a deferral on a finding with respect to any program or activity of the recipient which does not, and would not in connection with the new funds, receive Federal financial assistance from HHS.

§ 91.47 Hearings, decisions, post-termination proceedings.

Certain HHS procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to HHS enforcement of these regulations. They are found at 45 CFR 80.9 through 80.11 and 45 CFR Part 81.

§ 91.48 Remedial action by recipient.

Where HHS finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that HHS may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, HHS may require both recipients to take remedial action.

§ 91.49 Alternate funds disbursal procedure.

(a) When HHS withholds funds from a recipient under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient: any public or non-profit private organization or agency, or State or political subdivision of the State.

(b) The Secretary will require any alternate recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

§ 91.50 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act.

Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and HHS has made no finding with regard to the complaint; or

(2) HHS issues any finding in favor of the recipient.

(b) If HHS fails to make a finding within 180 days or issues a finding in favor of the recipient, HHS shall:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary, the Attorney General of the United States, and the recipient;

(iv) That the notice must state: the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and, whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

Appendix A—Comment Analysis

The following comments, suggestions, and criticisms were made at public meetings or submitted in writing in response to the proposed rules. After the summary of each comment, a response is set forth stating the changes which have been made in the regulations or the reasons why no change was deemed necessary or appropriate. The comments follow sequentially the questions posed by the Department in the preamble to the proposed rule, and then the sections of the proposed regulations.

HHS Regulations Format

Comment: Several commenters disagreed with the format suggested in the proposed regulations, cross-referencing provisions from the general regulations into the HHS specific regulations, because the referenced regulations (1) might not be accessible to the user, or (2) might be amended without the user's knowledge. These commenters requested that subparts A and B of the general regulations be repeated in the HHS specific regulations. Some commenters preferred cross-referencing as a means of differentiating between general requirements and those requirements specific to HHS recipients. A few commenters approved the cross-referencing format on the condition that HHS provide recipients directly with information and training materials containing all applicable requirements, or that the HHS regulations contain all cross-referenced regulations in an appendix.

Response: HHS is persuaded by the comments that the cross-referencing of substantive requirements from the general regulations into the HHS specific regulations is more confusing than time-saving. Accordingly, rather than incorporate substantive provisions of the general regulations into the HHS regulations by reference, substantive provisions are set forth independently in the HHS regulations. These regulations will continue to adopt by reference the hearing procedures used in other civil rights regulations (45 C.F.R. Part 80.9–80.11 and Part 81).

Use of Examples to Illustrate the Standards, Generally

Comment: Many commenters stated that examples provide helpful guidance in understanding the ADA standards. Some of these commenters requested that examples be included in the text of the final HHS regulations and one suggested that examples be located in an appendix.

Response: HHS has included examples in the preamble to the final regulations to illustrate how the ADA standards might be applied in particular situations. Readers are cautioned that the examples are limited to the facts presented and are intended only as guidance to clarify the standards set out in the HHS regulations. The examples should *not* be considered as definitive judgments by HHS.

Examples—Permissible Separate Treatment

Comment: One commenter stated that separate treatment should be permitted only when based on factors *other* than age (e.g., health, safety, physical ability), because permitting separate treatment on the basis of chronological age will open the door for the type of "separate but equal" rationale that has been discredited in other civil rights areas.

Response: HHS is sensitive to the need for careful scrutiny of separate treatment to assure that it is not a basis for denying or limiting opportunity to participate in a federally funded program, and believes that the standards in these regulations are sufficient to safeguard against abusive uses of age. On the other hand, HHS believes it is the intent of Congress to permit separate treatment based on age when there is no denial or limitation of service, e.g., in programs where separate treatment allows service to be more responsive to needs of different age groups and therefore may result in better services for each group.

Examples—Prohibited Uses of Age Related to Normal Operation

Comment: A few commenters objected to the example of limiting medical school admission to persons age 35 or under as a prohibited use of age because of concern about health care costs. These commenters supported the use of age limits for medical school admission as a way to conserve scarce dollar resources.

Response: HHS has retained this example. As explained in the analysis of comments received on the general regulations, cost-benefit considerations alone are not a justification for using age distinctions. Cost benefit considerations may be used only where the use of age otherwise meets the requirements of the test set out in section 90.14 of the general regulations.

Alternate Approaches to Regulations—Should the Regulations Address Practices of Specific HHS Recipients, Such as Hospitals?

Comment: Most commenters stated that the regulations should not address practices of specific recipients. Some commenters stated that including illustrative examples in the preamble to the regulations is a better method of clarifying the regulatory standards than attempting to cover the wide variety of recipient programs by specific regulatory provision. No commenters favored addressing specific recipient practices in the HHS regulations.

Response: Based on the commenters' support for HHS's position that separate provisions addressing the practices of specific HHS recipients are unnecessary, HHS has not included such separate provisions.

Should the Regulations Set Out More Detailed Requirements About What Technical Assistance and Educational Materials HHS Provides Its Recipients?

Comment: Most commenters agreed with HHS that the administrative details of technical assistance and educational materials need not be included in the regulations. A few commenters requested that HHS include information on these topics either in an appendix, or in a general regulatory provision.

Response: HHS is committed to providing technical assistance and educational materials by whatever means is most useful to recipients. HHS believes that this commitment is best met by being able to respond to recipients in the manner most effective to the need presented. The regulations therefore continue to require that HHS provide technical assistance and educational materials but do not attempt to define in advance the manner in which the assistance must be delivered.

Should the Regulations Include More Detailed Provisions for Disbursing Funds to Alternate Recipients in the Case of a Fund Termination?

Comment: Most commenters stated that it is impossible to make detailed provision for disbursing funds to alternate recipients in the case of a fund termination and that the only reasonable method is a case by case determination.

Response: HHS has determined that the ADA establishes a minimum standard for selecting an alternate recipient and that any further attempt by HHS to define that standard may unduly restrict the Department's ability to carry out the purpose of the ADA. The final regulations therefore

do not elaborate on the statutory standard for selecting an alternate recipient.

Should HHS Use Hearing Procedures Other Than Those Used for Other Discrimination Matters?

Comment: Commenters generally agreed with HHS that the ADA regulations should incorporate the Title VI hearing procedures set out in 45 CFR Part 80.9–80.11 and Part 81 which are the procedures used for hearings, decisions, and post termination proceedings in conjunction with other civil rights statutes.

Response: The final regulations incorporate the hearing procedures set out in 45 CFR Part 80.9–80.11 and Part 81.

Subpart A—General

Section 91.3 Definitions—"subrecipient"

Comment: Commenters generally supported retaining the definition of subrecipient in the final HHS regulations. One commenter found the definition cumbersome because the recipient should be the primary focus of responsibility in these regulations.

Response: HHS has retained the definition of subrecipient in the final regulations because so many commenters questioned whether a subrecipient's obligations differ from those of a recipient. The obligations of an HHS recipient are not based on whether the recipient receives Federal financial assistance directly from HHS or indirectly (as a subrecipient) through another HHS recipient. The definition therefore states clearly that the subrecipient "has all the duties of a recipient in these regulations."

Subpart C—Duties of HHS Recipients

Section 91.31 General Responsibilities

Comment: One commenter requested clarification on who should be responsible for compliance within a multi-unit institution, such as a hospital, when HHS extends a single grant of Federal financial assistance to an institution which then redistributes portions of that assistance to various components within the institution.

Response: Each HHS recipient of federal financial assistance has responsibility to ensure that its programs and activities are in compliance with the ADA and these regulations. Procedures for assuring compliance are left to the discretion of the recipient institution.

Section 91.33 Recipient Self-evaluation

The requirement for a self-evaluation that appeared in the ADA general regulation has been revised in the final HHS regulations to require, at the discretion of HHS while conducting a complaint investigation or compliance review, that certain recipients examine age distinctions used in their programs to determine whether these age distinctions are permitted under the Act and regulations.

In addition, there is a requirement that each recipient complete an assurance of compliance similiar to the assurance of compliance requirement contained in other civil rights regulations.

Section 91.34 Information Requirements

Comment: A number of commenters stated that although it is reasonable for HHS to require information from recipients concerning compliance, HHS should describe as specifically as possible the kinds of data recipients are expected to keep. These commenters stated that because of the cost and time involved in gathering and maintaining data, HHS should keep information requirements to a minimum.

Response: HHS has revised this section to parallel the compliance information sections in the Title VI, Title IX and Section 504 implementing regulations. While recognizing the need for data sufficient to assess recipient compliance, HHS remains committed to lessening the data gathering burden on recipients. HHS further recognizes that there exists no established body of knowledge or experience to guide the assessment of age discrimination. The regulations, therefore, do not impose specific data requirements upon recipients; rather, they allow HHS to be flexible in determining what kinds of data should be kept by recipients, based on what kinds of data prove useful as we gain experience with the ADA, and age descrimination issues become clearer.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

Section 91.41 Compliance Reviews

Comment: Several commenters stated that the regulations should state clearly what compliance reviews will entail: the scope of a review, and what will trigger it. One commenter requested that the regulations specifically limit any compliance review to those portions of an activity or program that receives Federal financial assistance from HHS. A few commenters questioned HHS's authority to conduct a compliance review where no complaint has been filed or in the absence of reasonable grounds to indicate a violation has occurred.

Response: The ADA charges HHS with responsibility to ensure that no person is discriminated against on the basis of age under any program receiving HHS funds. The compliance review provision in the ADA regulations is similar to the compliance review provisions in the Title VI, Title IX and Section 504 implementing regulations. It is one of several ways in which HHS carries out its responsibility to assure that programs receiving HHS funds are in compliance with the law. The compliance review serves an important oversight function and may be triggered in one of two ways: It may be the direct result of a complaint that alerts HHS to look more closely at a particular program, or it may be part of HHS's ongoing review of a cross section of HHS programs.

Section 91.42 Complaints

Section 91.42(a) Third Party Complaints

Comment: Some commenters opposed third party complaints unless the third party is acting in a legal capacity for the real complainant. These commenters objected to allowing third parties to enter into settlement agreements or to initiate civil actions.

Response: The provision for third party complaints in these regulations is consistent with similar provisions in other HHS regulations implementing civil rights statutes. HHS believes that all allegations of age discrimination should be officially reported and that third party complaints are a useful means of alerting HHS to possible violations of the ADA and these regulations.

Section 91.43 Mediation

Comment: One commenter suggested that any findings of fact made by the mediator should be forwarded to HHS.

Response: The general regulations require that the confidentiality of the mediation be protected. The language of § 91.43(d) is identical to that in § 90.43(c)(3)(iv) of the general regulations. The confidentiality provision deals exclusively with protecting the neutrality of the mediator and protecting the public interest in the success of the mediation process. The parties must be able to speak freely in the mediation without fear that the mediator will testify or provide information in a later enforcement proceeding. The parties must not be bound in subsequent administrative or court proceedings by the statements made in mediation. The terms of any settlement agreed to in mediation will be sent to the agency which received the complaint originally.

§ 91.46 Compliance Procedure

§ 91.46(d) Deferral of new Federal financial assistance

Comment: One commenter stated that the provision allowing HHS to defer granting new Federal financial assistance, when a hearing has been initiated, is unfair because it imposes a penalty prior to establishing the recipient's noncompliance. This commenter suggested that a recipient who defends successfully against a charge of noncompliance should be reimbursed for the cost of the proceedings.

Response: The regulations allow HHS discretion to defer new funds pending the outcome of a hearing to determine whether there has been a violation of the ADA or these regulations. The ADA deferral procedure is consistent with the compliance procedures used under Title VI of the Civil Rights Act of 1964 and the concept of deferral is supported by the Department of Justice in their role as coordinator of Federal enforcement of Title VI. There is no authority under which these regulations can provide for the reimbursement of costs to a recipient who successfully defends against a charge of noncompliance.

§ 91.49 Alternate Funds Disbursal Procedure

Comment: A question was raised concerning the difference between the definition of "recipient" (. . . any public or private agency . . .) found in Section 90.4 of the general regulations, and what the commenter read as a more restrictive definition of "alternate recipient" (. . . any public or *nonprofit* private . . agency . . .) in Section 91.49 of the HHS regulations. (emphasis added)

Response: The 90.4 definition parallels the definition of recipient found in the regulations

implementing other civil rights statutes (e.g., Title VI). Section 305(b) of the Age Discrimination Act requires each Federal agency to make provision in its regulations for the disbursal of withheld funds to an alternate recipient which may be, among others "any public or nonprofit private organization or agency. . . ." HHS has made provision for its alternate funds disbursal procedure in § 91.49 and has adopted directly from the ADA the language defining an alternate recipient.

HHS Activities

For the information of recipients and other reviewers, the following is a summary of activities that the general regulations require of HHS. The citation in brackets is to the section of the general regulations which HHS is summarizing.

(1) Review age distinctions HHS imposes on its recipients to determine whether they are permissible under the Act. HHS will publish the results of that review for public comment 12 months after HHS publishes its final regulations. [§ 90.32]

(2) Cooperate for all compliance and enforcement purposes with other Federal agencies which provide Federal financial assistance to the same recipient or class of recipients. [§ 90.33]

(3) Make annual reports to the Congress describing HHS' efforts to carry out the Act. [§ 90.34]

(4) Attempt to ensure that HHS recipients comply voluntarily with the Act. [§ 90.42]

(5) Provide notice and technical assistance to HHS recipients and make available educational materials. [§ 90.43(a)]

(6) Review the effectiveness of these regulations 30 months after they become effective. [§ 90.62]

Appendix

Section 90.31(f) of the general regulations requires each Federal agency to publish an appendix to its final age discrimination regulations containing a list of each age distinction in a Federal statute or in regulations affecting financial assistance administered by the agency. This appendix is HHS's list of age distinctions contained in Federal statutes or in final HHS regulations which:

(1) Provide benefits or assistance to persons based upon age; or

(2) Establish criteria for participation in age-related terms; or

(3) Describe intended beneficiaries or target groups in age-related terms.

The survey of age distinctions affecting HHS' programs of Federal financial assistance is for informational purposes only. Appendix B deals only with HHS programs covered by the Age Discrimination Act. It does not list age distinctions used by HHS in its direct assistance programs, such as the Supplemental Security Income Program, where the Federal assistance goes directly to the ultimate beneficiary rather than through another recipient (e.g. a grantee).

In addition, the appendix contains age distinctions only in HHS regulations which were in final form on January 1, 1982.

How to Read the Appendix of HHS Age Distinctions

The appendix has two sections: A list of age distinctions in Federal statutes, and a list of age distinctions in HHS regulations. The lists are further divided by operating division. The columns should be read from left to right for each age distinction. The first column contains the popular name of the program; the second column has the statute name, public law number and U.S. Code citation (for statutes) of the regulation name and Code of Federal Regulations citation (for regulations); the third column contains the section number of the public law and a description of the age distinction; the fourth column cites the Catalog of Federal Domestic Assistance number where it is available. Several of the cited programs were incorporated into block grants by the Omnibus Budget Reconciliation Act of 1981. (Pub. L. 97-35) FY'82 is the transition period for many of these programs. Where appropriate, this information is noted in the appendix.

AGE DISTINCTIONS IN STATUTES AFFECTING HHS

[Public Health Service, Office of Human Development Services, Health Care Financing Administration, and Social Security Administration]

Program	Statute	Section and age distinction	CFDA No.
Public Health Service (PHS)			
Vitamins and Minerals	Federal Food, Drug, and Cosmetic Act (FDC Act).	21 U.S.C. 350 provides that, except in the case of, among others, *children* under the age of 12, the Secretary may not establish maximum potency limits for vitamins and minerals, nor classify a vitamin or mineral as a drug solely because it is more potent than nutritionally useful.	
Infant Formula	Infant Formula Act of 1980 Pub. L. 96-359	21 U.S.C. 350(a) establishes a program to ensure the safety and nutrition of *infant* formula.	
Misbranded Drugs and Devices	FDC Act	21 U.S.C. 3529(f) provides that a drug or device is deemed misbranded unless its label bears adequate warnings against use by *children* where its use may be dangerous to health.	
Filled Milk	Filled Milk Act	21 U.S.C. 61 states that the prohibition against filled milk does not apply to any food compound not readily mistaken for milk or cream where such compound is designed for feeding *infants* and *young children* and is customarily used on physician's order.	
Adolescent Pregnancy Program	Title VI of the Health Services Centers Amendment of 1978, P.L. 95-626, as amended by P.L. 97-35; 42 U.S.C. 300a-21 *et seq.*	Sec. 601(b)(i) The Secretary may make grants to provide "services, give primary emphasis to *adolescents* who are *17 years of age or under* and are pregnant or who are parents.". *Note:* This is now in the Maternal and Child Health Block Grant.	
Aging	Public Health Service Act, as amended. P.L. 78-410; 42 U.S.C. 298k-4.	Sec. 463(a) "The Secretary (1) shall, through the Institute carry out the purposes of section 301 with respect to research investigations, experiments, demonstrations, and studies related to the aging process and the diseases and other special problems and needs of *the aged*. . . ." Sec. 463(c) "The Secretary, through the Institute, shall carry out public information and education programs designed to disseminate as widely as possible the findings of Institute-sponsored and other relevant *aging* research and studies and other information about the process of aging which may assist elderly and near-elderly persons in dealing with, and all Americans in understanding, the problems and processes associated with growing older."	13.866
Alcohol Abuse and Alcoholism Demonstration Projects.	Title III of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended. P.L. 91-616 as amended by P.L. 93-282, P.L. 96-180, P.L. 97-35; 42 U.S.C. 4577.	Sec. 311(c)(4) The Secretary shall encourage the submission of and give special consideration to applications under this section for programs and projects "aimed at underserved populations such as . . ." *youth*, the *elderly*. . .	23.001
Appalachian Demonstration Health Projects	Title II of the Regional Development Act of 1965, as amended, P.L. 94-188; 42 U.S.C. 3181.	Sec. 202(a) The Secretary is authorized to make grants for . . . *"child* care projects. . ."	
Childhood Immunization Programs	Title III of the Public Health Service Act, as amended, P.L. 92-449; 42 U.S.C. 247b.	Sec. 317(j)(1)(A) The Secretary may make grants "for disease control programs to immunize *children* against immunizable diseases (including measles, rubella, poliomyelitis, diphtheria, pertussis, tetanus, and mumps.) . . ."	13.268
Genetic Diseases Testing and Counseling Programs and Information and Education Programs.	Title XI of the Public Health Service Act, as amended, P.L. 95-626, as amended by P.L. 97-35; 42 U.S.C. 300b *et seq.*	Sec. 1104(a)(4)(A)(ii) Applicants for community-wide testing and counseling services grants or contracts . . . where appropriate the services will be directed especially but not exclusively to persons entering their *child-producing years*. . . . *Note:* This is now in the Maternal and Child Health Block Grant. FY '82 is the transition period.	

AGE DISTINCTIONS IN STATUTES AFFECTING HHS—Continued

[Public Health Service, Office of Human Development Services, Health Care Financing Administration, and Social Security Administration]

Program	Statute	Section and age distinction	CFDA No.
Health Maintenance Organization	Title XIII of the Public Health Service Act, P.L. 93-222, as amended by P.L. 94-460 and P.L. 95-559.	Sec. 1302(1) defines "basic health services" which must be provided to members of health maintenance organizations. Preventive health services are included under the definition of basic health services at Sec. 1302(1)(H): Preventive health services including (i) immunizations, (ii) well-*child* care from birth, (iii) periodic health evaluations for *adults*, (iv) voluntary family planning services, (v) infertility services, and (vi) *children's* eye and ear examinations	
Maternal and Child Health and Crippled Children's Services.	Title V of the Social Security Act, P.L. 95-83, as amended by P.L. 97-35; 42 U.S.C. 701 *et. seq.*.	*Note:* Age related terms are found throughout Title V of the Social Security Act. See, for example §§ 571,512.	
Research for mothers and children (NICHD)	Title IV-E of the Public Health Service Act, as amended, P.L. 94-63; 42 U.S.C. 289d.	Sec. 441(a) The Surgeon General is authorized, with the approval of the Secretary, to establish in the Public Health Service the National Institute of Child Health and Human Development for the conduct and support of research and training relating to maternal health, *child* health, and human development, including research and training in the special health problems and requirements of mothers and *children* and in the basic sciences relating to the process of human growth and development, including prenatal development. (b) The Secretary shall carry out through the National Institute of Child Health and Human Development the purposes of section 301 with respect to the conduct and support of research which specifically relates to sudden *infant* death syndrome.	13.865
Drug Abuse Demonstration Projects	Title IV of the Drug Abuse Prevention Treatment and Rehabilitation Act, P.L. 92-255 as amended by P.L. 94-239, P.L. 94-371, P.L. 95-461, P.L. 96-181, P.L. 97-35; 21 U.S.C. 1177.	Sec. 410(d) The Secretary shall give special consideration to applications under this section for programs and projects "aimed at underserved populations such as . . . *youth*, the *elderly* . . ."	
National Health Service Corps Program	Title III of the Public Health Service Act, P.L. 94-484; 42 U.S.C. 254k.	Sec. 332(b)(2) In establishing criteria for the designation of health manpower shortage areas the Secretary shall take into consideration indicators such as *"infant* mortality". Sec. 334(b)(2) authorizes the Secretary to waive payment by an entity to which Corps personnel are assigned where a significant percentage of the area served are *"elderly"*.	
Community Health Center	Title III of the Public Health Service Act, P.L. 78-410, P.L. 94-63, P.L. 94-278, P.L. 95-626; 42 U.S.C. 254c.	Sec. 330(b)(1)(c) defines primary health services to include *children's* eye and ear examinations . . . prenatal services, and well *child* services.	13.224
Family Planning Services, Research and Training.	Title X of the Public Health Service Act, P.L. 91-572, 94-63, 94-439, 95-83, 95-613; 42 U.S.C. 300.	Sec. 1001(a) Projects must offer family planning services, "including . . . services for *adolescents*".	13.217
Migrant Health	Title III of the Public Health Service Act, P.L. 78-410, P.L. 94-63, P.L. 95-626; 42 U.S.C. 254b.	Sec. 329(a)(1) defines the term "migrant health centers" and states that services may be provided to "individuals who have previously been migratory agricultural workers, but can no longer be defined as a "migratory agricultural worker" *because of age* . . .". Sec. 329(a)(6) includes in the definition of "primary health services," preventive health services (including *children's* eye and ear examination . . . prenatal services, well *child* services . . .).	
Adolescent Family Life Demonstration Projects.	Title XX of Public Health Service Act, P.L. 97-35; 42 U.S.C. 300z *et seq.*.	Sec. 2002(a)(9) *'Adolescent'* means and individual under the age of 19; and (10) *'unemancipated minor'* means a minor who is subject to the control, authority, and supervision of his or her parents or guardians, as determined under State law.	
Maternal and Child Health Services Block Grant.	Title V of the Social Security Act, as amended by P.L. 97-35.	Sec. 501(a): For the purpose of enabling each State—(1) to assure mothers and *child* . . . access to quality maternal and child health services. (2) to reduce *infant* mortality and the incidence of preventable diseases and handicapping conditions among *children* . . .. (3) provide rehabilitation services for blind and disabled individuals *under the age of 16* receiving benefits under Title XVI of this Act	
Office of Human Development Services (OHDS)			
Child Welfare Services State Grants Program	Title IV-B of the Social Security Act, P.L. 96-272; 42 U.S.C. 620, 42 U.S.C. 625.	Sec. 420(a): For the purpose of enabling the United States, through the Secretary, to cooperate with State public welfare agencies in establishing, extending, and strengthening *child* welfare services. Sec. 425(a)(1): For the purposes of this title, the term "*child* welfare services" means public social services which are directed toward the accomplishment of the following purposes: (A) protecting and promoting the welfare of all *children*, including handicapped, homeless, dependent, or neglected *children;* (B) preventing or remedying, or assisting in the solution of problems which may result in the neglect, abuse, exploitation, or delinquency of *children;* (C) preventing the unnecessary separation of *children* from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of *child* removal is desirable and possible; (D) restoring to their families *children* who have been removed, by the provision of services to the *child* and the families; (E) placing *children* in suitable adoptive homes, in cases where a restoration to the biological family is not possible or appropriate; and (F) assuring adequate care of *children* away from their homes, in cases where the *child* cannot be returned home or cannot be placed for adoption.	13.645
Federal Payments for Foster care and Adoption Assistance.	Title IV-E of the Social Security Act, P.L. 96-272 as amended 42 U.S.C. 670 *et seq.*	Sec. 470: For the purpose of enabling each State to provide, in appropriate cases, foster care and adoption assistance for *children* who otherwise would be eligible for assistance under the State's plan approved under part A . . .	[1] 13.658 [2] 13.659
WIN Social Services	Title IV-A of the Social Security Act, P.L. 92-223; 42 U.S.C. 602.	Sec. 402(a)(19)(G): A State plan for aid and services to needy families with *children* must . . . provide . . . "that the State agency will have in effect a special program which . . . will provide . . . [necessary] *child* care services" to individuals eligible for the Work Incentive Program.	

AGE DISTINCTIONS IN STATUTES AFFECTING HHS—Continued

[Public Health Service, Office of Human Development Services, Health Care Financing Administration, and Social Security Administration]

Program	Statute	Section and age distinction	CFDA No.
Child Welfare Services Research and Demonstration.	Title IV-B of the Social Security Act, P.L. 90-248; 42 U.S.C. 626 (a)(1)(A), (B), (C) and (2).	Section 426(a) provides (1) For grants . . . (A) to public or other nonprofit institutions of higher learning, and to public or other nonprofit agencies and organizations engaged in research or *child* welfare activities, for special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of *child* welfare; (B) to State or local public agencies responsible for administering, or supervising the administration of, the plan under this part, for projects for the demonstration of the utilization of research (including findings resulting therefrom) in the field of *child* welfare in order to encourage experimental and special types of welfare services. . . .	13.608
Child Welfare Services Training Grants		(C) For grants to public or other nonprofit institutions of higher learning for special projects for training personnel for work in the field of *child* welfare, including traineeships with such stipends and allowances as may be permitted by the Secretary; (2) For contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research, special projects, or demonstration projects relating to such matters.	13.648
Child Abuse and Neglect State Grants	Child Abuse Prevention and Treatment Act, P.L. 93-247 as amended; 42 U.S.C. 5102.	Sec. 3: For purposes of this Act the term *"child* abuse and neglect" means the physical or mental injury, sexual abuse or exploitation, negligent treatment or maltreatment of a *child under the age of 18 or the age specified by the child protection law of the State in question*, by a person who is responsible for the *child's* welfare under circumstances which indicate that the *child's* health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary.	13.628
	42 U.S.C. 5103	Sec. 4(b)(1): The Secretary, through the Center, is authorized to make grants to the States for the purpose of assisting the States in developing, strengthening, and carrying out *child* abuse and neglect prevention and treatment programs.	
Social Service Block Grants	Title XX Block Grants to States for Social Services as amended, P.L. 97-35; 42 U.S.C. 1397 *et seq.*	Sec. 2001: Federal assistance to States for services directed at one of five goals. Goal (3) is that of "preventing or remedying neglect, abuse, or exploitation of *children* and *adults* unable to protect their own interests . . ."	
Head Start Program	Head Start Act of 1981 P.L. 97-35, 42 U.S.C. 9833, et seq.	Sec. 638: Federal financial assistance may be provided to eligible Head Start agencies "for the planning, conduct, administration, and evaluation of a Head-start program focused primarily upon *children* from low income families who *have not reached the age of compulsory school* attendance . . ." Sec. 649: Research, demonstration, and pilot project grants and contracts designed to test or assist in development of new approaches or methods to further purposes of the part.	
Runaway Youth Program	Title III of the Juvenile Justice and Delinquency Prevention Act, P.L. 93-415 as amended by P.L. 95-115; 42 U.S.C. 5701 *et seq.*	Sec. 311: The purpose of the Act is to develop local facilities to deal primarily with the immediate needs of runaway youth or otherwise homeless *youth*. . . . [Act also uses terms *"children" "juveniles"* and *"young people"* without specifying chronological age.]	
Title III Grants for Community State and Programs on Aging.	Title III of the Older Americans Act of 1965, P.L. 89-73 as amended 42 U.S.C. 3001 *et seq.*	Sec. 301-337: Grants to the States to develop greater capacity and foster the development of comprehensive and coordinated service systems to serve *older individuals*. Funding is provided for a broad variety of social services including long-term care, ombudsman program services, nutrition services and legal services; for multi-purpose senior centers; and for planning and administration. See Sections 307(a)(3)(B); 307(a)(11); 307(a)(13); 307(a)(15)(C) and (D).	13.633 13.635 13.639
Title VI Grants for Indian Tribes	Title VI of the Older Americans Act, P.L. 95-478 as amended by P.L. 97-115; 42 U.S.C. 3057.	Sec. 603: The Commissioner may make grants to eligible tribal organizations to pay all of the costs for delivery of social services and nutritional services for Indians who are *aged 60 and older*. See also: Sections 602(a)(1); and 604(a)(6), (7), (8) and (10).	
	42 U.S.C. 3035a P.L. 97-115	Sec. 422: Grants to support the development or operation of model projects to demonstrate methods to improve or expand supportive services or nutrition services or otherwise promote the well-being of *older individuals*.	
Title IV of the Older American Act P.L. 97-115 as amended.	41 U.S.C. 3035b	Sec. 423: Grants to "support the development of comprehensive coordinated systems of community long-term care for *older individuals*.	
	42 U.S.C. 3035c	Sec. 424 Grants and contracts to support legal research, technical assistance, etc. to organizations developing or providing pro bono or reduced fee legal services to *older individuals*, and for demonstration projects relating to delivery of legal services to individuals with social or economic need.	
	42 U.S.C. 3035d	Sec. 425 National impact demonstration grants or contracts directed to expanding services to or promoting the well-being of *older individuals*.	
	42 U.S.C. 3035e	Sec. 426 Grants for model programs relating to utility costs for *older people*.	
Developmental Disabilities Program	Part A of the Developmental Disabilities and Bill of Rights Act. P.L. 95-602 as amended 42 U.S.C. 6000 *et seq.*	Sec. 102(7) The term "developmental disability" means a severe, chronic disability of a person which—(A) Is attributable to a mental or physical impairment . . . (B) Is manifested before the person attains *age 22*; (C) Is likely to continue indefinitely; (D) Results in substantial functional limitations in three or more areas of major life activity . . ."	13.630

Health Care Financing Administration (HCFA)

MEDICAID			
Skilled Nursing Facility Services	Title XIX of the Social Security Act, (Medical Assistance Program), as amended.	Sec. 1905(a)(4)(A): Skilled nursing facility services for *persons 21 years of age or older*. See also § 1901, 1902, 1903, and 2171 of P.L. 97-35, 95 Stat. 815	
Early and Periodic Screening Diagnosis and Treatment.	P.L. 89-97 as amended by P.L. 97-35, 42 U.S.C. 1396 *et seq.*	Sec. 1905(a)(4)(B): Early and periodic screening, diagnosis and treatment for persons *under 21 years of age*. See also Sec. 1905(a)(4)(A) for *persons age 21 and over*.	
Family Planning Services		Sec. 1905(a)(4)(C): Family planning services for individuals *of child bearing age (including minors* who can be considered sexually active).	
Services Institutions for Tuberculosis or Mental Diseases.	Title XIX of the Social Security Act 42 U.S.C. 1396d(a)(14).	Sec. 1905(a)(14): Services to persons in institutions for tuberculosis or mental disease *for persons 65 years of age or older* if provided.	

AGE DISTINCTIONS IN STATUTES AFFECTING HHS—Continued

[Public Health Service, Office of Human Development Services, Health Care Financing Administration, and Social Security Administration]

Program	Statute	Section and age distinction	CFDA No.
Inpatient Psychiatric Facility Services	42 U.S.C. 1396d(h)(1)(C) and (h)(2)	Sec. 1905(a)(16) and (h)(1)(C) and (h)(2): Inpatient psychiatric facility services *for individuals under 21*; if provided (provided *until 22 if receiving services at 21*). See also § 1905(a)(13) and (18) Medicaid must also be provided to persons receiving Aid to Families With Dependent Children under Title IV-A of the Act (*under 18 or students under 21* (Sec. 406(a)(2)). A state may at its option provide Medicaid to medically needy who meet the age and other criteria of titles I, IV-A and XVI, but whose income or resources exceed the eligibility limits for those programs (Sec. 1905(a)(i)–(v) and (vii)). Sec. 1903(a)(1) and (b)(1)–Medicaid may not be provided for services to *individuals 65 or over* or disabled individuals who could have been enrolled in Medicare and had these services paid for under Medicare.	
MEDICARE			
Health Insurance for the Aged and Disabled	Title XVIII of the Social Security Act, (Health Insurance for the Aged and Disabled), as amended. Title XVIII of the Social Security Act, P.L. 89-97; 42 U.S.C. 1395 *et seq.*	Part A—Hospital Insurance Benefits for the Aged and Disabled. Sec. 1811. The insurance program for which entitlement is established by sections 226 and 226A provides basic protection against the costs protection against the costs of hospital, hospital, related post-hospital and home health services, in accordance with this part for (1) *individuals who are age 65 or over* and are eligible for retirement benefits under title II of this Act . . . or under the railroad retirement system, (2) *individuals under age 65* who have been entitled for not less than 24 months to benefits under title II of this Act . . . on the basis of a disability, and (3) certain individuals who do not meet the conditions specified in either clause (1) or (2) but who are medically determined to have end stage renal disease. See also: Section 1818(a)(1).	13.773
Hospital Insurance Benefits for the Aged and Disabled.	Title II of the Social Security Act, as amended, 42 U.S.C. 426.	Sec. 226 provides that: (a) Every individual who—(1) *has attained age 65*, and (2)(A) is entitled to monthly insurance benefits under section 202; (B) is a qualified railroad retirement beneficiary, or (C) [applies to certain Federal employees ,] shall be entitled to hospital insurance benefits under part A of Title XVIII . . . (b) Every individual who—(1) *has not attained age 65*, and (2)(A) is entitled to, and has for 24 calendar months been entitled to, (i) disability insurance benefits under section 223 or (ii) *child's* insurance benefits under section 202(d) by reason of a disability (as defined in section 223(d) or (iii) widow's insurance benefits under section 202(e) or widower's insurance benefits under section 202(f) by reason of a disability (as defined in section 223(d), or (B) is, and has been for not less than 24 months a disabled qualified railroad retirement beneficiary, within the meaning of section 7(d) of the Railroad Retirement Act of 1974, or (c) [applies to certain Federal employees], shall be entitled to hospital insurance benefits under Part A of Title XVIII for each month beginning with the later of (I) July 1973 or (II) the twenty-fifth month of his entitlement or status as a qualified railroad retirement beneficiary described in paragraph (2), and ending . . . with the month following the month in which notice of termination of such entitlement to benefits or status as a qualified railroad retirement beneficiary described in paragraph (2) is mailed to him, or if earlier, with the month before the month in which *he attains age 65*. . . . (c) For purposes of subsection (a)(1) entitlement of an individual to hospital insurance benefits for a month shall consist of entitlement to have payments made under, and subject to limitations in Part A of Title XVIII on his behalf for inpatient hospital services, post-hospital extended care services, and home health services (as such terms are defined in Part C of Title XVIII) furnished him in the United States (or outside the United States in the case of inpatient hospital services furnished under the conditions described in section 1814(f)) during such month; . . . (e)(1) For purposes of determining entitlement to hospital insurance benefits under subsection (b) in the case of widows and widowers described in paragraph (2)(A)(iii) thereof— (A) the term *"age 60"* in sections 202(e)(1)(B)(ii), 202(e)(5), 202(f)(1)(B)(ii), and 202 (f)(6) shall be deemed to read *"age 65"*. (B) the phrase "before she attained *age 60"* in the matter following subparagraph (F) of section 202(e)(1) and the phrase "before he attained *age 60"* in the matter following subparagraph (F) of section 202(f)(1) shall each be deemed to read "based on a disability. . ." (2) For purposes of determining entitlement to hospital insurance benefits under subsection (b) in the case of an *individual under age 65* who is entitled to benefits under section 202, and who was entitled to widow's insurance benefits or widower's insurance benefits based on disability for the month before the first month in which such individual was so entitled to old-age insurance benefits (but ceased to be entitled to such widow's or widower's insurance benefits upon becoming entitled to such old-age insurance benefits), such individual shall be deemed to have continued to be entitled to such widow's insurance benefits or widower's insurance benefits for and after such first month. (3) For purposes of determining entitlement to hospital insurance benefits under subsection (b) *any disabled widow age 50 or older* who is entitled to mother's insurance benefits (and who would have been entitled to widow's insurance benefits by reason of disability if she had filed for such widow's benefits) shall, upon application, for such hospital insurance benefits be deemed to have filed for such widow's benefits and shall, upon furnishing proof of such disability prior to July 1, 1974, under such procedures as the Secretary may prescribe, be deemed to have been entitled to such widow's benefits as of the time she would have been entitled to such widow's benefits if she had filed a timely application therefor.	
Transitional Provision	Title I of the Social Security amendments of 1965, P.L. 89-97; 42 U.S.C. 426a.	Sec. 103. Transitional provision on eligibility of uninsured individuals for hospital insurance benefits-entitlement to benefits:.	

AGE DISTINCTIONS IN STATUTES AFFECTING HHS—Continued

[Public Health Service, Office of Human Development Services, Health Care Financing Administration, and Social Security Administration]

Program	Statute	Section and age distinction	CFDA No.
		(a) Anyone who—(1) has *attained the age of 65*, (2)(A) attained such age before 1968, or (B) has not less than 3 quarters of coverage . . . whenever acquired, for each calendar year elapsing after 1966 and before the year in which he attained such age, . . . shall (subject to the limitations in this section) be deemed, solely for purposes of section 426 of this title, to be entitled to monthly insurance benefits under such section 402 for each month, .	
End Stage Renal Disease Entitlements Provisions.	Title II of the Social Security Act, as amended, P.L. 95-292 as amended by 3278 of P.L. 97-248; 42 U.S.C. [426(1)] 426-1.	Sec. 226A. End stage renal disease program—Entitlement to benefits: (a) Notwithstanding any provision to the contrary in section 226 or title XVIII, every individual who—. (1)(A) is fully or currently insured (as such terms are defined in section 214 of this Act), or would be fully or currently insured if (i) his service as an employee (as defined in the Railroad Retirement Act of 1974) after December 31, 1936, were included in the term "employment" for purposes of this title, and (ii) [applies to certain Federal employees], described in subparagraph (A) or (B)(i); or (B) is entitled to monthly insurance benefits under this title, (ii) is entitled to an annuity under the Railroad Retirement Act of 1974, or (iii) [applies to certain Federal employees]; or (C) is the spouse or dependent *child* (as defined in regulations) of an individual . . . (2) is medically determined to have end stage renal disease; and (3) has filed an application for benefits under this section; shall, in accordance with the succeeding provisions of this section, be entitled to benefits under part A and eligible to enroll under part B of Title XVIII, subject to the deductible, premium, and coinsurance provisions of that title.	
Premium Hospital Insurance	42 U.S.C. 1395i-2	Sec. 1818. Hospital insurance benefits for uninsured individuals not otherwise eligible—Individuals eligible to enroll. (a) Every individual who—(1) *has attained the age of 65*, (2) is enrolled under part B of this title, (3) is a resident of the United States, * * * and (4) is not otherwise entitled to benefits under this part, shall be eligible to enroll in the insurance program established by this part.	
Medicare Part B Supplementary Medical Insurance Benefits for the Aged and Disabled.	Title XVIII of the Social Security Act P.L. 89-97; 42 U.S.C. 1395j *et seq.*	Sec. 1836. Every individual who * * * is entitled to hospital insurance benefits under part A or *has attained age 65 * * * is eligible to enroll.* . . See also Sec. 1862(a)(3) as amended by P.L. 97-248 § 116.	
Social Security Administration (SSA)			
Aid to the Aged, Blind, or Disabled (AABD)	Title XVI of the Social Security Act, as amended, P.L. 87-543; 42 U.S.C. 1381, 42 U.S.C. 1385.	This title is presently in effect in Puerto Rico only Sec. 1601 now enables States to furnish financial assistance to needy individuals *who are 65 years of age or over*, are blind or *who are 18 years of age or over* and permanently and totally disabled. Section 1605 defines "aid to the aged, blind or disabled" as money payments to, or—medical care in behalf—of needy *individuals who are 65 years of age or older*, are blind, or *age 18 years of age or over* and permanently and totally disabled. This does not include an individual who is an inmate in a public institution (except as a patient in a medical institution) or an *individual under age 65* who is a patient in an institution for tuberculosis or mental diseases.	13.761
Aid to Families with Dependent Children (AFDC).	Title IV-A of the Social Security Act, as amended, P.L. 271; 42 U.S.C. 601 *et seq.*	Sec. 401—Encourages the care of dependent children in their own homes and in the homes of relatives by enabling each State to furnish financial assistance or rehabilitation and other services to needy dependent *children* and the parents or relatives with whom they are living. The term dependent *child* is defined in Section 406(a) as a needy *child* who has been deprived or parental support—and "who is (A) *under the age of 18* or (B) at the option of the State, under the age of 19 and a full-time student in a secondary school (or in the equivalent level of vocational or technical training), if, before he attains age 19, he may reasonably be expected to complete the program of such secondary school (or such training).	
Aid to the Permanently and Totally Disabled (APTD).	Title XIV of the Social Security Act, as amended, P.L. 87-543; 42 U.S.C. 1351, 42 U.S.C. 1355.	This title is presently in effect for Guam and the Virgin Islands only Sec. 1401—Enables States to furnish financial assistance to needy *individuals 18 years of age and older* who are permanently and totally disabled and encouraging each State to furnish rehabilitation and other service to help such individuals. Sec. 1405—defines "aid to the permanently and totally disabled" as money payments to or "medical care in behalf of, or any type or remedial care recognized under State law in behalf of, needy *individuals 18 years of age or older* who are permanently and totally disabled. . .".	13.761
Federal Old-Age Survivors, and Disability Insurance Benefits (OASDI).	Title II of the Social Security Act, as amended, P.L. 89-97; 42 U.S.C. 422.	Sec. 222(d)(1)—For the purpose of making vocational rehabilitation services more readily available to disabled individuals who are—. (A) entitled to disability insurance benefits, or (B) entitled to *child's* insurance benefits *after having attained age 18*, or (C) entitled to widow's insurance benefits *prior to attaining age 60*, or (D) entitled to widower's insurance benefits prior to attaining age 60, to the end that savings will result to the Trust Fund as a result of rehabilitating such individuals into substantial gainful activity, there are authorized to be transferred from the Trust Funds, sums to enable the Secretary to pay for reimbursement for the reasonable and necessary costs of rehabilitation services which result in such individuals performing substantial gainful activity for a continuous period of nine months.	13.802
Old Age Assistance Program (OAA)	Title I of the Social Security Act, as amended P.L. 271; 42 U.S.C. 301.	This title is presently in effect in Guam and the Virgin Islands only Sec. 1—To enable States to furnish financial assistance to aged needy individuals. Old age assistance is defined in Section 6 as "money payments" or medical care to needy individuals who are *65 years of age or older*. This does not include an individual who is an inmate of a public institution (except as a patient in a medical institution).	13.761

AGE DISTINCTIONS IN STATUTES AFFECTING HHS—Continued

[Public Health Service, Office of Human Development Services, Health Care Financing Administration, and Social Security Administration]

Program	Statute	Section and age distinction	CFDA No.
Supplemental Security Income Program (SSI)	Title XVI of the Social Security Act, as amended P.L. 92-603; 42 U.S.C. 1382d.	Sec. 1615(a)—A blind or disabled person *"who has not attained age 65"* shall be referred for vocational rehabilitation service or in the case of blind or disabled children who *have "not attained age 16"* shall be referred to the State agency administering the State plan, which provides counseling for *disabled children*, service plans and prompt referral to appropriate medical, education and social services and to provide for *children age 6 and under* or who have never attended public school, who require preparation for public education, medical, social, developmental and rehabilitation services. "Effective October 1, 1982, pursuant to section 2193(c)(8) of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981, the age distinctions under the SSI program are as follows: Sec. 1615(a)—A blind or disabled person *'who has not attained age 65'* shall be referred for vocational rehabilitation service or in the case of blind or disabled children who have *'not attained age 16'* for a review not less often than quarterly of such person's disability or blindness and his need for and use of the vocational rehabilitation services".	13.807
Child Support and Establishment of Paternity	Title IV-D of the Social Security Act, as amended, P.L. 93-647; 42 U.S.C. 651.	Section 451—Authorizes the appropriation of funds for the purpose of enforcing the support obligations owed by absent parents to their *children*, and spouses or former spouses with whom the children are living locating absent parents, establishing paternity and obtaining *child* and spousal support. Section 452(a) authorizes the Secretary of HEW to estabish a separate organizational unit under the direction of the Secretary's designee who shall establish such standards for State programs for locating absent parents, establishing paternity and obtaining *child* and spousal support as he determines to be necessary to assure that such program will be effective. Section 454(a) provides that a State plan for *child* and spousal support, in addition to other requirements must provide that such State will undertake (A) in the case of a *child* born out of wedlock with respect to whom an assignment under section 402(a)(26) of this title is effective, to establish the paternity of such child—, and (B) in the case of any *child* with respect to whom such assignment is effective, to secure support for such *child* from his parent—. Section 462 defines "child support", when used in reference to the legal obligations of an individual to provide such support to mean periodic payments of funds for the support and maintenance of a *child* or *children* with respect to which such individual has such an obligation and includes but is not limited to, payments to provide for health care, education, recreation, clothing, or to meet other specific needs of such a *child* or *children*. . . .	

[1] Foster care.
[2] Adoption.

AGE DISTINCTIONS IN REGULATIONS AFFECTING HHS

[Public Health Service, Social Security Administration, Office of Human Development Services, and Health Care Financing Administration]

Program	Regulation	Section and age distinction	CFDA No.
Public Health Service, Food and Drug Administration			
Labeling of Drugs for Human Use	Labeling 21 CFR Part 201	Sec. 201.19 sets forth certain requirements concerning the use of the term *"infant"* in human drug labeling. Sec. 201.57(f)(9) sets forth requirements concerning labeling for prescription drugs with pediatric indications. Sec. 201.308(c) sets forth a warning statement concerning *children* for the labeling of ipecac syrup. Sec. 201.314 contains age distinctions with respect to the labeling of drugs containing salicylates as follows: (a)—*children*, young children (c)—*child, children under 3* years of age (c)(3)—adults (d)—adults (e)(1)—*children, children under 3* years of age, *children greater than 3* years, *children down to age 6, younger children.* (2)—*children under 3* years of age, *younger children*, adults (g)(1)—*children* Sec. 201.315 sets forth a warning statement concerning *children under 3* years of age for over-the-counter drugs for minor sore throats.	
Prescription Drug Advertising	Prescription Drug Advertising, 21 CFR Part 202.	Sec. 202.1(e)(7)(x) *geriatric patients* are given as an example with respect to an advertisement promoting use of a drug in a selected class of patients.	
Special Requirements for Specific Human Drugs.	Special Requirements for Specific Human Drugs, 21 CFR Part 250.	Sec. 250.250(c)(3)(i) sets forth certain labeling requirements with respect to *infants*..	
Methadone	Drugs Used for Treatment of Narcotic Addicts, 21 CFR Part 291.	Sec. 291.505 discusses the use of methadone in the treatment of patients of various age groups as follows: (d)(3)(ii) and (iv) for patents *under the age of 18.*	
New Drugs	New Drugs, 21 CFR Part 310	Sec. 310.201 establishes conditions for exemption from prescription requirements for certain drugs. Makes numerous references to various age groups i.e., *adult, children 6-12 years, children 3-6 years, children under 12 years, children under 3 years, children under 6 years, children 6 years and over.* Sec. 310.500(e) labeling guidelines for the drug digoxin include directions for use for *newborn infants, infants 1 month-2 years, children 2-10 years, children over 10 years, and adults.*	
Drug Labeling	Interpretative Statements Re Warnings on Drugs and Devices for Over-the-Counter Sale, 21 CFR Part 369.	Sec. 369.20 sets forth recommended caution and warnings statements for the labeling of various drugs. Includes caution warnings concerning women of childbearing age, *children, children under 6 years of age, infants, children under 3 years of age.* Sec. 369.21 sets forth required caution and warning statements for the labeling of various drugs. Includes caution and warning statements concerning *children, children under 3 years of age, children under 12 years of age, children 6 years of age, children under 2 years of age.*	

AGE DISTINCTIONS IN REGULATIONS AFFECTING HHS—Continued

[Public Health Service, Social Security Administration, Office of Human Development Services, and Health Care Financing Administration]

Program	Regulation	Section and age distinction	CFDA No.
Radioactive Drugs	Prescription Drugs for Human Use Generally Recognized As Safe and Effective and Not Misbranded; Drugs Used in Research 21 CFR Part 361.	Sec. 361.1(b)(3)(i) establishes generally recognized as safe limits for the radiation dose to an *adult* research subject. Sec. 361.1(b)(3)(ii) established a maximum radiation dose for research subjects under 18 years of age. Sec. 361.1(c)(3) concerns certain reporting requirements for research involving research subjects under 18 years of age. Sec. 361.1(d)(5) sets forth certain requirements concerning the selection of human research subjects, those at least 18 years of age, those less than 18 years of age, *minors*, and females of childbearing age.	
OTC Drugs	Over-the-counter (OTC) Human Drugs Which are Generally Recognized as safe and Effective and Not Misbranded 21 CFR Part 330.	Sec. 330.1(g) requires a warning in the labeling to keep all drugs out of the reach of *children*.	
Medical Devices	Labeling 21 CFR Part 801	Sec. 801.403 sets forth recommended warnings and caution statements for specific medical devices with respect to *children* and the *elderly*. Sec. 801.420(c)(3) sets forth certain labeling requirements for hearing aids with respect to *children* who are prospective hearing aid users. Sec. 801.421 sets forth conditions for the waiver of the medical evaluation requirements for prospective haring aid users 18 years of age or older.	
Exemptions from Federal Preemption of State and Local Medical Device Requirements.	Exemptions for Specific States 21 CFR Part 808.	Sec. 808.71(a)(1) exempts Massachusetts General Laws, Chapter 93, Section 72, to the extent that it requires a hearing test evaluation for a *child* under the age of 18. Sec. 808.85(b) preempts Ohio Revised Code, section 4747.09, the last two sentences with respect to medical examination of *children*. Sec. 808.101(a) exempts District of Columbia Act 2-79, section 5, to the extent that it requires an audiological evaluation for *children* under the age of 18.	
Classification of Devices	21 CFR Parts 864-884	Classification regulations establish the regulatory controls necessary to assure the safety and effectiveness of medical devices. Certain of the devices are intended for persons of specific age groups, such as *infants*. Example: Sec. 880.5680 Pediatric position holder. The device is intended to hold an infant or a child in a desired position for therapeutic or diagnostic purposes, e.g., in a crib under a radiant warm.	
Childhood Lead-Based Paint Poisoning Program Control.	Grants for the Prevention of Lead-Based Paint Poisoning; 42 CFR Part 91.	Sec. 91.1 This regulation applies to programs for prevention, detection and treatment of incidents of lead-based paint poisoning among *children under 6 years of age*. Note: This program is now in the Maternal & Child Health Block Grant. FY '82 is the transition period.	13.266
Childhood Immunization	Grants for Disease Control, Subpart B	This grant program is directed toward the population susceptible to *childhood* diseases. A *childhood* immunization program is defined in the regulation as a disease control program to immunize *children* against vaccine preventable diseases including poliomyelitis, measles, mumps, rubella, diphtheria, pertussis, and tetanus.	13.268
Influenza Immunization	Grants for Influenza Immunization programs, Subpart E.	This grant program is directed toward programs to immunize persons in high-risk groups against influenza. The regulation defines high-risk groups to mean those groups of persons at highest risk of serious illness or death due to influenza and its complications, as specified in grant guidelines. [The grant guidelines for the program define the high-risk target population to include persons *age 6 months through 64 years* with certain medical disabilities (as specified by the Advisory Committee on Immunization Practices) and *all persons age 65 and over.*].	
Community Health Services	Grants for Community Health Services, 42 CFR Part 51c.	51c.102(e)(2)(4) Applicants for grants must provide an assessment of the need for services, taking into account, among other things, health indices for the population to be served, such as infant mortality rate, and demographic factors affecting the need and demand for services, such as percentage of the population *age 65 and over*. Sec. 51c.102(h) defines "Primary health services" to include: "(3) Preventive health services, including . . . *children's* eye and ear examination, prenatal and post partum care, prenatal services, well *child* care (including periodic screening) . . . ".	
Indian Health-Inpatient and Out-patient Care	Indian Health-Availability of Services, 42 CFR 36, Subpart B.	Sec. 36.11 uses the terms school *children* as an example of a special group receiving a preventive care service.	13.228
Maternal and Child Health and Crippled Children's Services.	Grants for Maternal and Child Health and Crippled Children's Services, Subpart A, 42 CFR Part 51a.	Sec. 51a.101 *et seq.* All of Subpart A is age-related toward services for *children* and women of child-bearing age. *Crippled children* is defined for program purposes as an individual *under the age of 21*. *Note:* Maternal & Child Block Grant. FY '82 is the transition period	13.211 (CC) and 13.232 (MCH)
Special Projects of Regional or National Significance.	Special Projects of Regional and National Significance, 42 CFR Part 51a, Subpart B.	Sec. 51a.201 *et seq.* Subpart B provides for demonstration of innovative methods of providing services to mothers and *children*.	13.211 13.232
Maternal and Child Health Research Projects	Subpart D Project Grants to Institutions of Higher Learning.	Sec. 51a.401 *et seq.* Subpart D provides for the administration of projects which contribute to the advancement of maternal and *child* health, the advancement of services for *crippled children*, or the training of personnel for health-care related services for mothers and *children* Note: Although included in the Maternal Child Health legislation, this program is part of the 15% Federal set aside program which remains categorical. The recent block grant rules removed all of Part 51a after Oct. 1, 1982. Subparts B & D should have been retained and steps are being taken by BCHS to get subparts B & D put back into effect.	13.233
Maternal and Child Health Research Projects	Research Projects Relating to Maternal and Child Health, 42 CFR Part 205.	Sec. 205.1(2) refers to the Section 512, Social Security Act, authorization for research projects relating to maternal and *child* health and *crippled children's* services. The other applicable portions of the regulations are designed to carry out the research activities for the improvement of maternal and *child* health.	11.231
Migrant Health Services	Grants for Migrant Health Services, 42 CFR Part 56, Subpart A.	Sec. 56.104(b)(4) (ii) and (iv) requires that applications for grants provide an assessment of the need for services, taking into account, among other things, health indices for the population to be served, such as *infant* mortality rate, and demographic factors affecting the need and demand for services, such as percentages of such population *age 65 and over*.	

AGE DISTINCTIONS IN REGULATIONS AFFECTING HHS—Continued

[Public Health Service, Social Security Administration, Office of Human Development Services, and Health Care Financing Administration]

Program	Regulation	Section and age distinction	CFDA No.
Referral and Services for Blind and Disabled Children Receiving Supplemental Security Income Benefits.	Referral and Services for Blind and Disabled Children Receiving Supplemental Security Income Benefits, 42 CFR Part 51a Subpart C.	The regulations carry out the statutory requirement for provision of services for SSI recipients *under 16 years of age* who are referred to the State crippled children's agency or another State agency which administers programs for disabled *children*. The age-related requirements are provision of all services including treatment for *children age 6 or under* or who have never attended public school, and establishment of individual service plans, counseling, referral and monitoring services for all other *children* receiving SSI benefits who are *7 to 16 years of age*. Note: This is now part of the Maternal and Child Health Block Grant. FY '82 is the transition period.	13.807
Social Security Administration (SSA)			
Aid to the Aged, Blind or Disabled (AABD).....	Coverage and conditions of eligibility in financial assistance programs 45 CFR Part 233 (cont.).	Sec. 233.60 Institutional status ..... (a) Federal financial participation. (2) (ii) Federal financial participation under title XVI of the Social Security Act is not available in payments to or in behalf of any individual who *has not attained 65 years of age* and who is a patient in an institution for tuberculosis or mental diseases—	13.761
Aid to Families with Dependent Children (AFDC.		Sec. 233.90 Factors specific to AFDC. (b) Conditions for plan approval. (2) An otherwise eligible *child who is under the age of 18 years* may not be denied AFDC, regardless of whether he attends school or makes satisfactory grades. (3) A State may elect to include in its AFDC program *children age 18* who are full-time students in a secondary school, or in the equivalent level of vocational or technical training, and who may reasonably be expected to complete the program before reaching age 19.	
Aid to Families with Dependent Children (AFDC).	Coverage and conditions of eligibility in financial assistance programs 45 CFR Part 233 (cont.).	Sec. 233.120 Emergency assistance to needy families with children..... (b)(1) Federal financial participation is available for emergency assistance to or on behalf of a needy *child under the age of 21* and any other member of the household in which he is living if— (i) Such *child* is (or, within 6 months prior to the month in which such assistance is requested, has been) living with any of the relatives specified in section 406(a)(1) of the Act in a place of residence maintained by one or more of such relatives as his or their own home. (ii) Such *child* is without resources immediately accessible to meet his needs. (iii) The emergency assistance is necessary to avoid destitution of such *child* or to provide living arrangements for him in a home, and. (iv) His destitution or need for living arrangements did not arise because he or such relative refused without good cause to accept employment or training for employment.	13.761
	The following list of regulation sections also use age or age-related terms. However, the terms refer to eligible individuals as defined, by age, as shown above. For example, 45 CFR 234.60 provides "protective payments for dependent children." These regulation sections do not contain conditions or requirements that relate to age except as age is defined above.	45 CFR Secs: 201.3, 201.14; 205.10; 205.25; 205.146; 206.10; 224.1; 224.20; 224.22; 232.2; 232.10; 232.11; 232.12; 232.20; 232.40; 232.42; 232.43; 232.49; 233.40; 233.100; 233.110; 234.60; 234.70; 234.120; 235.70; 237.50.	
Assistance Programs Office of Family Assistance.	Training and use of subprofessionals and volunteers—45 CFR Part 225.	Sec. 225.2 State plan requirements ..... The State plan for financial assistance programs under titles I, IV-A, X, XIV, or XVI of the Social Security Act for Guam, Puerto Rico and the Virgin Islands or for child welfare under title IV (Part B) of the Act must: (a) Provide for the training and effective use of subprofessional staff as community service aids through part-time or full-time employment of persons of low income and, where applicable, of recipients and for that purpose will provide for: (1) Such methods of recruitment and selection as will offer opportunity for full-time or part-time employment of persons of low income and little or no formal education, including employment of *young and middle aged adults, older persons*, and the physically and mentally disabled. . .	13.761
	Assistance to individuals 65 years of age or older in institutions for mental diseases—45 CFR Part 206.	Sec. 208.1(a) A State plan under titles I, XVI of the Social Security Act which includes assistance to or in behalf of individuals *age 65 years of age or older* who are patients in institution for mental diseases must provide for—(3) the development of alternate plans of care, making maximum utilization of available resources for recipient *65 years of age or older* who would otherwise need care in institutions, to meet their medical, social and financial needs.	13.761
Old Age Assistance Program (OAA)	Coverage and Conditions of Eligibility in Financial Assistance Programs—45 CFR Part 233 (cont.).	Sec. 233.10 General Provisions regarding coverage and eligibility The following is a summary statement regarding the groups for whom Federal financial participation is available. (More detailed information is given elsewhere.) (b)(2)(i) OAA—for needy individuals under the plan who are *65 years of age or older*	
Aid to Families with Dependent Children (AFDC).		(ii) AFDC—for: (a) Needy *children* under the plan who are: (1) *Under the age of 16*, or age 16 if a full-time student in a secondary school or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19; (2) Deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or unemployment of a father; and (3) Living in the home of a parent or of certain relatives specified in the Act, or in foster care under certain conditions. (b) The parent or other caretaker relative of a dependent *child* and, in certain situations, the parent's spouse.	
Aid to Blind (AB)		(iii) AB—for needy individuals under the plan who are blind	
Aid to the Permanently and Totally Disabled (APTD).		(iv) APTD—for needy individuals under the plan who are *18 years of age or older* and permanently and totally disabled.	

AGE DISTINCTIONS IN REGULATIONS AFFECTING HHS—Continued

[Public Health Service, Social Security Administration, Office of Human Development Services, and Health Care Financing Administration]

Program	Regulation	Section and age distinction	CFDA No.
Aid to the Aged, Blind and Disabled (AABD)		(v) AABD—for needy individuals under the plan who are aged, blind, or *18 years of age or older* and permanently and totally disabled.	
Aid to the Aged, Blind and Disabled (AABD) (cont.).	Coverage and conditions of eligibility in financial assistance programs 45 CFR part 233 (cont.).	Sec. 233.30 Age. (a) Condition for plan approval. A State plan under Title I or XVI of the Social Security Act may not impose any age requirement of *more than 65 years.* (b) Federal financial participation. (1) Federal financial participation is available in financial assistance provided to otherwise eligible persons who were, for any portion of the month for which assistance is paid: (i) In OAA or AABD with respect to *the aged, 65 years of age or over;* (ii) In AFDC, *under 18 years of age;* or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19; (iii) In AB or AABD with respect ot the blind, any age; (iv) In APTD or AABD with respect to the disabled, *18 years of age or older* (2) Federal determination of whether an individual meets the age requirement of the Social Security Act will be made according to the common-law method (under which a specific age is attained the day before the anniversay of birth), unless the State plan specifies that the popular usage method (under which an age is attained on the anniversary of birth), is used. (3) The State agency may adopt an arbitrary date such as July 1 as the point from which age will be computed in all instances where the month of an individual's birth is not available, but the year can be established.	13.761
Child Support Enforcement Program	Office of Child Support Enforcement 45 CFR Parts 301, 302 and 305.	Sec. 302.17 The State plan shall provide a copy of State statutes or regulations . . . that provide procedures to be used in the determination of paternity of a *child* born out of wedlock and to establish the *child* support obligation of a responsible parent and to enforce such child support obligations. 302.31 The State plan shall provide that: (a) The (IV-D) agency will undertake: (1) In the case of a *child* born out of wedlock with respect to whom an assignment under Sec. 232.11 is effective, to establish the paternity of the *child*; and. (2) In the case of any *child* with respect to whom such assignment is effective, to secure support for such *child* from any person who is legally liable for such support . . .	
The cited section of the regulations refer to child support, child support obligations and child support enforcement but do not pertain to eligibility requirements for children or families with dependent children or otherwise of individuals.		301.1; 301.13; 301.15; 302.32; 302.34; 302.36; 302.37; 302.40; 302.51; 302.52; 302.70; 302.72; 304.20; 304.21; 304.22; 304.23; 304.24; 304.29; 305.0; 305.10; 305.24; 305.27; 305.28; 305.37; 305.50;. Note: The Department is currently developing amending regulations to reflect changes in the Child Support Enforcement Program under the Omnibus Budget Reconciliation Act of 1981..	
Supplemental Security Income Program (SSI)	Supplemental Security Income for the Aged, Blind and Disabled 20 CFR Part 416.	Sec. 416.1710—Referrals. *Persons 16 years of age* or older under 65 years old and receiving supplemental security income (SSI) benefits, will be referred to the State agency providing vocational rehabilitation services. *Persons under age 16,* will be referred to an agency administering services under the State plan for crippled children's services.	13.807
Office of Human Development Services (OHDS)			
Title III of the Older Americans Act of 1965, as amended.	Basis and purpose of part	Sec. 1321.1 This part prescribes requirements State agencies must meet to receive grants to develop comprehensive and coordinated systems for the delivery of social and nutrition services under Title III. . . .	
Grants for State and Community Program on Aging.	45 CFR Part 1321		
	Staffing	Sec. 1321.17(c) *Preference.* Subject to merit system requirements, the State agency must give preference in hiring to persons *age 60 or older.*	
	Agency Responsibility: general	Sec. 1321.41(d) The State agency must represent the interests of *older persons* before legislative, executive and regulatory bodies in the State..	
	Long-term care ombudsman program	Sec. 1321.43(a) *General rule.* The State agency must establish and operate a statewide long-term care ombudsman program that meets the requirements of paragraphs (c) through (f) of this section. The State agency may operate the ombudsman program directly, or by contract ot other arrangment, with any public agency or private nonprofit organization, except one that is. . . .	
	Service delivery systems responsibilities; general.	Sec. 1321.45(a) The State agency must: . . . (5) Provide adequate and effective opportunities for *older persons* to express their views to the State agency on policy development and program implementation under the plan;. (6) Give preference to *older persons* with the greatest economic or social need in the delivery of services under the State plan; (13) Coordinate legal services for *older persons* in the State, give technical assistance, advice, and training in the provision of legal services to *older persons;* and make reasonable efforts to maintain existing levels of those services; (16) Ensure that all *older persons* in the State have reasonably convenient access to information and referral services;	
	State advisory council	Sec. 1321.47(a) *Functions of the council.* [A State advisory council on aging must be established] . . . to advise and help the State agency to . . . (3) Represent the interests of *older persons.*	
	Intrastate funding formula	Sec. 1321.49(b) [An intrastate funding formula (developed for the allocation of funds to area agencies] must . . . (3) Reflect the proportion of *persons age 60 and over* among the planning and service areas in the State; and (4) Reflect the proportion . . . of *persons age 60 and over* in greatest economic or social need.	
	Designation of planning and service areas	Sec. 1321.53(c) *Factors to be used in designation.* In dividing the State into planning and service areas, the State agency must consider —(1) the distribution . . . of *persons age 60 and over* including those with the greatest economic need.	

AGE DISTINCTIONS IN REGULATIONS AFFECTING HHS—Continued

[Public Health Service, Social Security Administration, Office of Human Development Services, and Health Care Financing Administration]

Program	Regulation	Section and age distinction	CFDA No.
	Interstate planning and service area	Sec. 1321.57(d) If the Commissioner approves the request for designation of an interstate planning and service area, the Commissioner reduces the allotment(s) of the State(s) without lead responsibility for administering programs within the area in proportion to the number of individuals age *age 60 and older* in the State(s) portion of the area, and adds the amount(s) to the allotment of the State with lead responsibility.	
	Designation and function of area agencies	Sec. 1321.61(c) *Functions of area agencies.* The area agency must— (2) Serve as the advocate and focal point for *older persons* in the planning and service area.	
	Staffing	Sec. 1321.69(c) *Preference.* Subject to merit system requirements the area agency must give preference in hiring to *persons 60 or older.*	
	Comprehensive and coordinated service delivery system.	Sec. 1321.75(a) The area plan must provide for the development of a comprehensive and coordinated service delivery system for social and nutrition services needed by *older persons* in the planning and service area in which the area agency enters into cooperative arrangements with other service planners and providers to—. (1) Facilitate access to and utilization of all existing services; and (2) Develop social and nutrition services effectively and efficiently to meet the needs of *older persons.*	
	Content of area plan	Sec. 1321.77(b) *Area agency function requirements.* An area plan must provide that the area agency function requirements are met for . . . (7) Considering the views of *older persons* . . .; (10) Coordination with other Federal programs serving *older persons* . . . (c) *Service delivery requirements.* An area plan must provide that the service delivery requirements are met for—(1) Giving preference to older persons with greatest economic or social need . . .; (3) All service providers concerning . . . advisory role for *older persons* . . . (e) *Information requirements.* The area plan must specify—(2) A resource allocation plan indicating the propsoed use of all funds for programs for *older persons* directly administered by the area agency; . . . (5) Proposed methods for giving preference to those with greatest economic social need . . . (i) Must include . . . consideration of *older persons* . . .; and (ii) May not include . . . a means test . . . (i.e.,) the use of an *older person's* income or resources to deny or limit that person's receipt of services. . . .	
	Advocacy responsibilities of the area agency	Sec. 1321.91 The area agency must—(b) Conduct public hearings on the needs of *older persons;* (c) Represent the interests of *older persons* to public officials, public and private agencies or organizations; . . . (e) Coordinate planning with other agencies and organizations to promote new or expanded benefits and opportunities for *older persons*	
	Area agency general planning and management responsibilities.	Sec. 1321.93. The area agency must—. . . (b) Assess the services needed by *older persons* . . . and the effectiveness of the use of resources in meeting these needs; . . . (g) give preference in the delivery of services . . . to *older persons* with the greatest economic or social need; . . . (i) Provide adequate and effective opportunities for *older persons* to express their views to the area agency on policy development and program implementation . . . (j) Have outreach efforts to identify *older persons* and inform them of the availability of services under the plan . . .; (k) If possible, have arrangements with children's day care organizations so that *older persons* can volunteer to help provide day care; (l) If possible, have arrangements . . . to use the services provided *older individuals* under the community schools program	
	Designation of community focal points for service delivery.	Sec. 1321.95(b) *Procedures for designating community focal points for service delivery.* (1) [In designating and developing community focal point] . . . the area agency must consider—(i) Communities with the greatest incidence of *older persons* with the greatest economic or social need; (c) *Developing collocation of services.* The area agency must—(1) Establish guidelines for operating schedules at the focal point which are convenient for *older persons* in the communtiy;	
	Area agency advisory council	Sec. 1321.97(a) *Functions of council.* [An advisory council must be established to] . . . advise the agency to . . . (3) Represent the interests of *older persons;* and (4) Review and comment on all community policies, and programs and actions which affect *older persons.* (b) *Composition of the Council.* The advisory council must be made up of—(1) More than 50 percent older persons and include— (i) *Older persons* with greatest economic or social need; . . . (2) Representatives of *older persons* . . .	
	Outreach, training, and coordination requirements.	Sec. 1321.107. All service providers . . . must comply with procedures established by the area agency for—(a) Outreach activities to ensure participation of eligible *older persons;* (b) Training and use of *elderly* and other volunteers and paid personnel . . .	
	Preference for older persons with greatest economic or social need.	Sec. 1321.109. All service providers . . . must follow priorities . . . for serving *older persons* with greatest economic or social need . . .	
	Contributions for services under the area plan	Sec. 1321.111(a) *Opportunity to contribute.* Each service provider must—(1) Provide each *older person* with a free and voluntary oportunity to contribute to the cost of the service; (2) Protect the privacy of each *older person* with respect to his or her contribution; . . . (b) *Contribution schedules.* . . . In developing a contribution schedule the provider must consider the income ranges of *older persons* in the community and the provider's other sources of income. (c) *Failure to contribute.* A service provider that receives funds may not deny any *older person* a service because the *older person* will not or cannot contribute to the cost of the service. (d) *Contributions as program income.* Contributions made by *older persons* are considered program income.	
	Multipurpose senior centers	Sec. 1321.121(a) *Purpose of making awards.* The area agency may award social service funds under this part to a public or private non-profit agency for the following purposes—(1) Acquiring . . . a facility . . . for use as a multipurpose senior center; (2) Constructing a facility . . . for use as a multipurpose senior center	
	Health safety, and construction requirements.	Sec. 1321.123(b) *Life Safety.* . . . the State agency may require a recipient of any multipupose senior center award to—. . . (3) Have a plan for assuring the safety of *older persons* in a natural disaster or other safety threatening situations.	

AGE DISTINCTIONS IN REGULATIONS AFFECTING HHS

[Public Health Service, Social Security Administration, Office of Human Development Services, and Health Care Financing Administration]

Program	Regulation	Section and age distinction	CFDA No.
	Funding and use requirements	Sec. 1321.135(c) In a facility that is shared with other age groups, funds received . . . may support only—(1) That part . . . used by *older persons*; or (2) A proportionate share of the costs based on the extent of use of the facility by *older persons* . . .	
	Nutrition Services	Section 1321.141(a) *Purpose of making awards.* The area agency may award nutrition service funds received under this part to provide meals and other nutrition services, including outreach, and nutrition education, to *older persons*. In making these awards the area agency must assure that congregate meals are provided and that home-delivered meals are provided based on an assessment of need by the area agency and nutrition service providers. (b) *Eligibility.* (1) *Congregate nutrition services.* A person age *60 or older*, and the spouse of the person regardless of age, are eligible to participate in congregate nutrition services . . . (2) *Home-delivered nutrition services.* A person *age 60 or over* who is homebound . . . is eligible to receive a home-delivered meal . . . under this part must be in addition to any legal services being provided to *older persons* in the planning and service area.	.....
	Special requirements for nutrition services providers.	Sec. 1321.145(a) *Requirements for congregate providers.* Each congregate provider must—. . . (2) Locate congregate nutrition services as close as possible and, where feasible and appropriate, within walking distance, to the majority of eligible *older persons* . . . (b) *Requirements for home-delivered meals providers.* Each home-delivered meals provider must: . . . (3) With the consent of the *older person* bring to the attention of appropriate officials . . . conditions or circumstances which place the *older person* . . . in imminent danger.	
	Food requirements for all services providers.	Sec. 1321.147(f)(2) *Food stamp program* . . . The nutrition services provider must coordinate its activities with agencies responsible for administering the food stamp program to facilitate participation of eligible *older persons* . . .	
	Legal Services	Sec. 1321.151(a) *Purpose of award.* The area agency must award social service funds under this part for legal services to *older persons* with economic or social needs. The purpose of awards under this section is to increase the availability of legal services with a priority on *older persons* with the greatest economic or social need in order to assist them to secure their rights, benefits and entitlements, and to assist them in achieving the objectives of the Act. Legal services provided with funds under this part must be in addition to any legal services being provided to older persons in the planning and service area.	
	Information and Referral Services	Sec. 1321.161(a) The area plan must provide for information and referral services sufficient to ensure that all *older persons* within the planning and service area have reasonably convenient access to the service. (b) In areas in which a significant number of *older persons* do not speak English as their principal language, the service provider must provide information and referral services in the language spoken by the *older persons*. (c) . . . A provider information and referral services must— (1) Maintain current information with respect to the opportunities and services available to *older persons*; (2) Develop current lists of *older persons* in need of services and opportunities; and (3) Employ a specially trained staff to inform *older persons* of the opportunities and services which are available and to assist *older persons* to take advantage of the opportunties and services. (d) An information and referral services provider may disclose information by name about an *older persons* only with the informed consent of the *older person* . . .	
	Allotments and grants to States	Sec. 1321.181(c) *Amounts allotted for social and nutrition services.* From the sums appropriated each fiscal year for social and nutrition services, each State is allotted an amount based on the ratio of its population age *60 and older* to the national population age *60 and older*. . .	
	Fifty percent	Sec. 1321.187(b) *Waiver.* The State agency . . . may waive the [fifty percent service] requirement . . . for any . . . service for which the area aging demonstrate . . . that the services provided from other sources meet the needs of *older persons*. . .	
	Obligation and reallotment	Sec. 1321.197(b) *Reallotment* . . . (2) If an Indian tribal organization receives a grant . . . the commissioner withholds a portion of the State's allotments for . . . services . . . based on the number of *older Indians*. . .	
Grants to Indian Tribes for Social and Nutritional Services.	Title VI of the Older Americans Act, 45 CFR Part 1328; basis and scope.	Section 1328.1 This part implements Title VI of the Older Americans Act, as amended, by establishing the requirements that an Indian tribal organization must meet in order to receive a grant to provide social and nutrition services to *older Indians*, and to acquire, alter, or renovate a facility for use as an Indian multipurpose senior center. This part also prescribes application and hearing requirements and procedures for these grants.	
	Definitions	Sec. 1328.3 "Older Indians" means a member of an Indian tribe who is *60 years of age or older*.	
	Tribal organization eligibility	Sec. 1328.7(a) A tribal organization is eligible to apply for a grant . . . if it . . . (2) Represents *75 or more older* who will receive services . . .; (3) Demonstrates its ability to deliver social and nutrition services to *older Indians* . . . (4) Assures that the *older Indians* it represents under its grant do not receive services under Title III of the [Older Americans] Act. . . (b) A tribal organization may represent *older Indians* from more than one tribe. (d) A tribal organization may not provide services funded under 45 CFR Part 1321 [Grants for State and Community Programs on Aging] to any *older Indian* represented by the tribal organization under this part.	
	Tribal organization responsibilities	Sec. 1328.9 A tribal organization, must—(a) Propose the geographic boundaries of its service area . . . *older Indians* in the service area may receive services only under this part . . . (e) Use a needs assessment to determine the kinds and levels of services needed by *older Indians* in the service area . . . (2) . . . If the tribal organization uses a needs assessment due for a State, region or area it must show how it decided the findings were applicable to the *older Indians*. (g) Provide for outreach efforts to identify *older Indians* and inform them of the availability of services. . .	

AGE DISTINCTIONS IN REGULATIONS AFFECTING HHS—Continued

[Public Health Service, Social Security Administration, Office of Human Development Services, and Health Care Financing Administration]

Program	Regulation	Section and age distinction	CFDA No.
	Tribal Organization Responsibilities (cont.)	Section 1328.9(h) A tribal organization, must coordinate, to the extent feasible, with other community agencies including area agencies on aging, in the service area, in planning and providing services to *older Indians* . . . (j) A tribal organization, must give preference, wherever feasible, to employing *older Indians* for full/and part-time staff positions to carry out activities under this part. (k) Provide each *older Indian* with a full and voluntary opportunity to contribute to the cost of the services . . . (1) Have procedures [subject to the requirements provided] to ensure [the confidentiality of] . . . information about an *older Indian* . . . (n) Represent the interests of *older Indians* . . . (q) Provide services under this part in a plain and uniform manner to all providers . . . (t) Ensure that all services . . . are provided without consideration of an *older Indian's* income and resources or ability to pay for services . . .	
	Advisory Council	Sec. 1328.11(b) The advisory council must be [established] and made up of more than 50 percent *older Indians* . . . (c) The tribal organization must use the advisory council in . . . (3) Providing advice and guidance on matters concerning the *older Indians* . . .	
	Contributors	Sec. 1328.13(a) *General rule.* A tribal organization must—(1) Provide each *older Indian* with a free and voluntary opportunity to contribute to the cost of the service; (2) protect the privacy of each *older Indian* with respect to his or her contributions . . . (b) *Contributions schedules.* A tribal organization may develop a suggested contribution schedule for services provided. . . . In developing a contribution schedule for services provided. In developing a contribution schedule the tribal organization must consider the income ranges of *olde. Indian* . . . (c) *Failure to contribute.* A service provider that receives funds may not deny any older Indian a service because the *older Indian* will not or cannot contribute to the cost of the service. (d) *Contributions as program income.* Contributions made by a *older Indian* are considered program income and are to be used for allowable costs of additional services . . .	
	Required and optional services	Sec. 1328.17(a) *Services that must be provided or provided for under this part.* A tribal organization that receives a grant . . . must . . . (2) Provide for information and referral services . . . If information and referral services are being provided from other sources . . . the tribal organization must demonstrate in its application that the needs of the *older Indians* in the service area are being met for that category of service. (b) *Other services that may be provided under a grant under this part.* The tribal organization may provide additional services necessary for the welfare of *older Indians* that ae designed to meet the unique social and nutrition needs of *older Indians* in the service area.	
	Nutrition Services	Section 1328.21(a) *General rule.* The tribal organization must provide nutrition services to *older Indians* at home or in a congregate setting, and may provide nutrition services to the spouses of *older Indians.* (b) *Food requirements for all nutrition services.* The tribal organization must ensure that . . . (2) Menus are provided to meet the particular . . . needs of eligible *older Indians* . . . (3) Appropriate food containers and utensils are available for use by disabled *older Indians* upon request . . . (e) *Food Stamps.* Where applicable the tribal organization must work with agencies responsible for administering the Food Stamp Program to facilitate participation of eligible *older Indians*	
	Legal Services	Section 1328.23(a) *Purpose.* The tribal organization must provide legal services to *older Indians* with social or economic needs. The purpose of legal services under this part is to increase the availability of legal aid to *older Indians* with social or economic needs in order to assist them to secure their rights, benefits and entitlement, and to assist them in achieving the objectives of the Act. Legal Services provided with funds under this part must be in addition to, and not in substitution for, any other legal services provided to *older Indians* represented by the tribal organization, except that legal services which had been provided under Title III of the Act would not continue to be available to *older Indians* served under this part. (b) *Conditions legal service providers must meet* . . . (2) Unless the tribal organizations directly provides legal services, the tribal organization must award funds to the legal services provider(s) that most fully meet(s) the following standards. The legal services provider(s) must— (i) Have staff with expertise in specific areas of law affecting *older Indians* . . . (ii) Demonstrate the capacity to provide effective . . . representation in the areas of law affecting *older Indians* . . . (v) Have offices and/or outreach sites which are convenient and accessible to *older Indians* in the community and (vi) Demonstrate the capacity to obtain other resources to provide legal services to *older Indians* (3) Each legal service provider must— (i) Make efforts to involve the private bar in legal services provided under this part, including groups within the private bar that furnish legal services to *older persons* on a pro bono and reduced fee basis . . . (c) *Case Priorities.* A legal service provider . . . may . . . set priorities for the categories of cases for which it will provide legal representation in order to concentrate on *older Indians* . . . (d) *Information about income and resources.* A legal services provider may not require an *older Indian* to disclose information about income or resources as a condition for providing legal services . . .	
	Information and Referral Services	Sec. 1328.25(a) The tribal organization must provide information and referral services so that *older Indians* have reasonably convenient access to those services. (b) If a significant number of *older Indians* in the service area do not use English as their principal language, the tribal organization must provide for information and referral services in the language those individuals speak. (c) The tribal organization must establish or have a list of all services that are available to *older Indians* in the service area. (d) The tribal organization must provide assistance to *older Indians* to help them take advantage of the available service; and (e) The tribal organization must maintain a list of services needed or requested by the *older Indians.*	

AGE DISTINCTIONS IN REGULATIONS AFFECTING HHS—Continued

[Public Health Service, Social Security Administration, Office of Human Development Services, and Health Care Financing Administration]

Program	Regulation	Section and age distinction	CFDA No.
	Long-Term Care Ombudsman Services	Sec. 1328.27 (a) *General rule* . . . no tribal organization public agency, or private nonprofit organization may operate an ombudsman program if it is—(1) Responsible for licensing or certifying long-term care facilities or other residential facilities for *older persons;* (2) An association, or an affiliate or agent of an association, of long-term care facilities for *older persons* (b) *Appointing an ombudsman.* The tribal organization must assure that an individual is designated to serve as the long-term care ombudsman and that the following responsibility(ies) are delegated to the ombudsman: (1) Investigate and resolve complaints made by, or for, older *Indians* residing in the long-term care facilities about administrative actions that may adversely affect their health, safety, welfare or rights (3) Provide information to the tribal organization, and to the Commissioner on request, about problems of *older Indians* residing in long-term care facilities in the service area . . .	
	Health and Safety Requirements	Sec. 1328.25(b) *Life Safety* . . . the tribal organization may require a recipient of any multipurpose senior center award to (3) Have a plan for assuring the safety of *older persons* in a natural disaster or other safety threatening situations.	
	Surplus Educational Facilities from the Bureau of Indian Affairs.	Sec. 1328.37 If an eligible tribal organization applies for a grant under this part to renovate a surplus educational facility the Bureau of Indian Affairs (BIA) has made available for use as a center, the tribal organization (c) May renovate the center to become an extended care facility or a community center providing nutrition, social and child care services. If a center will be used for services other than services to *older Indians,* the tribal organization may use funds under this part only— (1) To alter that portion of the center used by *older Indians;* or (2) For a proportionate share of the alteration costs based on the extent of use of the facility by *older Indians.*	
	Preapplication Requirements	Sec. 1328.39(b) The tribal organization must include in the preapplication, information to demonstrate that it meets the eligibility requirements specified in § 1328.7. The preapplication must include (2) Documentation of the number of *older Indians* that the tribal organization represents . . . (3) Documentation of its ability to deliver social and nutrition services to *older Indians* . . . (4) An assurance from the tribal organization that it has methods and procedures to ensure that *older Indians* will not receive services under 45 CFR Part 1321 for the duration of the grant under this part.	
	Application Requirements	Sec. 1328.43(c) *Application assurances.* A tribal organization must provide satisfactory assurances in its application that it has methods and procedures to ensure that the older Indians served under the grant do not receive services under Part 1321 for the period of the grant	
	Prohibition on Consideration of Program Benefits as Personal Income.	Sec. 1328.51 Benefits derived from this program cannot be considered as part of an *older Indian's* income in qualifying for other Federal programs.	
Runaway Youth Program	45 CFR Part 1351—Significant terms	Sec. 1351.1 For purpose of this part: (f) "Homeless Youth" means a person *under 18 years of age* who is in need of services and without a place of shelter where he or she receives supervision and care. (1) "Runaway Youth" means *a person under 18 years of age* who absents himself or herself from home or place of legal residence without the permission of parents or legal guardian.	
	Purpose	Sec. 1351.10—"The purpose of the Runaway Program is to establish or strengthen existing or proposed community-based runaway *youth* projects to provide temporary shelter and care to runaway or otherwise homeless *youth* who are in need of temporary shelter, counseling, and aftercare services"	
	Criteria for funding Runaway Youth Programs	Sec. 1351.18. In reviewing applications HHS [considers] . . a number of factors . . . : (b) the number of runaway or otherwise homeless *youth* in the area in which the . . . project is located; (c) The availability of services to *youth* in the area . . . ; (d) Plans for meeting the best interests of the *youth* . . . ; (e) Plans for the delivery of aftercare or counseling services to *youth* . . .	
	Additional information	Sec. 1351.19(b)(1) *Confidential information.* All information of individuals served by a runaway youth project shall be confidential and shall not be disclosed or transferred to any individual without written consent of the *youth* . . . (2) *Medical, psychiatric or psychological treatment.* No *youth* shall be subject to medical, psychiatric or psychological treatment without the consent of the *youth* . . .	
Child Abuse and Neglect Prevention and Treatment program.	45 CFR Part 1340, Purpose of the program	Sec. 1340.1-1 (a) The basic purpose of this program is to assist States and localities, and non-profit private organizations in carrying out their responsibilities for the protection of *children* and for the amelioration of their environment, particularly as an integral part of a family unit whose adult member(s) need help in coping with emotional or environmental stresses	13.628
	Definitions	Sec. 1340.1-2 For purposes of this part—. (b)(2) "Child" means a person *under the age of 18* . . .	
	Demonstrations	Sec. 1340.2-1(b) *Nature of demonstration programs and projects.* (1) Such demonstrations may include, but are not limited to efforts to provide additional or more effective ways of preventing, identifying or treating *child* abuse and neglect; testing the feasibility of providing services . . . ; innovative services or and methods . . . ; methods of coordinating . . . (e) *Special criterion for selection-equitable distribution.* The formula . . . [must include] a minimum amount and an additional amount based on the number of *children under the age of eighteen* . . .	
	Technical assistance	Sec. 1340.2-2 Technical assistance . . . will be furnished by the National Center on Child Abuse and Neglect [for] . . . the prevention, identification and treatment of *child* abuse and neglect	
	Training materials	Sec. 1340.2-3 The National Center on Child Abuse and Neglect . . . will develop . . . and conduct training for personnel who . . . engage in the prevention, identification and treatment of child abuse and neglect.	
	Research	Sec. 1340.2-4 The National Center on Child Abuse and Neglect will conduct research into the causes of child abuse and neglect and into the prevention, identification, and treatment . . .	
	Purpose and eligible applicants	Sec. 1340.3-1(a) States that qualify . . . may receive grants to initiate or continue the support of programs which can be expected to assist the State in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs . . .	

AGE DISTINCTIONS IN REGULATIONS AFFECTING HHS—Continued

[Public Health Service, Social Security Administration, Office of Human Development Services, and Health Care Financing Administration]

Program	Regulation	Section and age distinction	CFDA No.
	Establishment of Compliance	Sec. 1240.3-2(b) Whichever State office, agency, or organization is designated by the Governor, may apply for financial assistance under section 4(b)(1) for the payment of reasonable and necessary expenses in developing, strengthening, and carrying out *child* abuse and neglect prevention and treatment programs. Such State office, agency, or organization need not be limited in its mandate or activities to *child* abuse and neglect. Such State office, agency, or organization designated by the Governor may enter into purchase agreements with other offices, agencies, or organizations (including Indian Tribal governments) to conduct activities under the grant. The application for such funds shall include a description of the activities presently conducted by the State and its political sub-divisions in relation to preventing and treating *child* abuse and neglect, the activities to be assisted under the grant, a statement of how the proposed activities are expected to develop, strengthen or carry out *child* abuse prevention and treatment programs . . .	
	Qualifications for Assistance	Sec. 1340.3-3(a) The Act enumerates ten elements of a comprehensive system to prevent and treat *child* abuse and neglect which a State must have in order to qualify for assistance under section 4(b)(1). The enactment of identical laws and procedures in the States is not necessary. Rather, as its purpose, the Act seeks to insure that all States receiving assistance under this subsection (in meeting the ten requirements) must provide what may be grouped into four fundamental *child* protective capabilities: (1) Detection through third party reporting of *children* in danger, including mandatory and permissive reporting of suspected *child* abuse and neglect; (2) *child* protective services to provide non-criminal investigations for the verification of reports, to provide immediate protection of *children* through such means as protective custody, and to provide rehabilitative and ameliorative services; (3) *juvenile* or family court action to remove a *child* or to impose treatment services, and (4) law enforcement investigations and criminal court prosecution, when appropriate. (b) . . . it is not necessary for States to adopt language for the definition of "child abuse and neglect" identical to that used in the Act . . . (d) . . . the State shall satisfy . . . the following . . .: (1) The State must have in effect a child abuse and neglect law . . . (2) The State must provide for the reporting of known or suspected instances of child abuse and neglect . . . (3)(i) A State must provide . . . an appropriate investigation . . . (ii) that upon a finding of abuse of neglect, immediate steps . . . be taken to protect the health and welfare of the . . . *child* . . .	
	Approval of applications, plan amendments, and funds.	Sec. 1340.3-5(a) The Secretary shall approve an application for funds . . . if he finds . . . (2) that the funds are intended to be used to develop, strengthen, or carry out *child* abuse or neglect prevention or treatment programs. (b) The Secretary shall approve the initial or continued use of funds for . . . projects related to *child* abuse and neglect . . .	
Head Start Program	Program performance standards for operation of Head. Start Programs by grantees and Delegate Agencies.	Sec. 1304.1-3(a) The Head Start Program is based on the premise that all *children* share certain needs, and that children of low income families, in particular, can benefit from a comprehensive developmental program to meet those . . .	13.600
	45 CFR Part 1304, Head Start programs goals	(b) The overall goal of the Head Start Program is to bring about a greater degree of social competence in *children* of low income families. By social competence is meant the *child's* everday effectiveness in dealing with both present environment and later responsibilities in school and life. Social competence takes into account the interrelatedness of cognitive and intellectual development, physical and mental health nutritional needs and other factors that enable a *child* to function optimally. The Head Start Program is a comprehensive developmental approach to helping children achieve social competence.	
	Eligibility Requirements and Limitations for Enrollment in Head Start, 45 CFR Part 1305 Age eligibility of children.	Sec. 1305.3 Unless the Headstart agency's approved grant provides otherwise, only those children *between three years of age and the age of compulsory school attendance* are eligible to enroll and participate in the Head Start program.	
Child Welfare Services State Grants	Service Programs for Families and Children: Title IV, Parts A and B of the Social Security Act, 45 CFR Part 1392 Child Welfare Services.	Sec. 1392.2(a) There must be a single unit, within the single State agency, at the State level and also at the local level to provide or supervise all services to families and *children* . . .	
	Use of subprofessional personnel	Sec. 1392.6(b) The State plan must also include: . . . (4) Annual progression in the utilization of increasing numbers of subprofessional staff in achieving the service goals for families and children.	
	Use of volunteers	Sec. 1392.7(a) . . . provisions must be made for the training and effective use of nonpaid or partially paid volunteers representing various *age* groups . . .	
Medicaid	Eligibility in the States and District of Columbia . . . 42 CFR Part 435; Definitions.	Sec. 435.4 . . . "Categorically needy" means aged, blind or disabled individuals or families and *children* (1) who are otherwise eligible for medicaid and who meet the financial eligibility requirements for AFDC SSI, or an optional State supplement . . .; or (2) Whose categorical eligibility is protected by statute . . . "Families and children" refers to eligible members of families with *children* who are financially eligible under AFDC or medically needy rules and who are deprived of parental support and care as defined under the AFDC program (see 45 CFR 233.90, 233.100). In addition, this group includes individuals *under age 21* who are not deprived of parental support or care but are financially eligible under AFDC rules or medically needy rules (see optional coverage group, (435.222). It does not include individuals *under age 21* whose eligibility for medicaid is based on blindness or disability—for these individuals, SSI rules govern.	
Health Care Financing Administration (HCFA)			
	Children for whom adoption or foster care maintenance payments are made.	Sec. 435.118 The agency must provide medicaid to *children* for whom adoption assistance or foster care maintenance payments are made . . . Sec. 435.222 Individuals under age 21 who would be eligible for AFDC but do not qualify as dependent *children* (a) The agency may provide Medicaid to individuals *under age 21* (or, at State option, *under age 20, 19 or 18*) who would be eligible for AFDC if they met the definition of dependent *child*. (See 45 CFR 233.90(c)(1).) (b) The agency may cover all individuals described in paragraph (a) of this section or reasonable classifications of those individuals (such as the following:)	

AGE DISTINCTIONS IN STATUTES AFFECTING HHS—Continued

[Public Health Service, Office of Human Development Services, Health Care Financing Administration, and Social Security Administration]

Program	Statute	Section and age distinction	CFDA No
		(1) Individuals [*under age 21*] in foster homes or private institutions for whom a public agency is assuming a full or partial financial responsibility. If the agency covers these individuals, it may also provide Medicaid to individuals [*under age 21*] placed in foster homes or private institutions by private nonprofit agencies (2) Individuals [*under age 21*] in adoptions subsidized in full or in part by a public agency (3) Individuals [*under age 21*] in intermediate care facilities, if intermeidate care facility services are provided under the plan. If the agency covers these individuals, it may also provide medicaid to individuals in intermediate care facilities for the mentally retarded (4) Individuals [*under age 21*] receiving active treatment as inpatients in psychiatric facilities or programs, if inpatient psychiatric services for individuals [*under 21*] are provided under the plan	
		DEPENDENCE	
	Categorical Requirements for Eligibility 42 CFR Part 435.	Sec. 435.510 Determination of dependency. For families with dependent [*children*] who are not receiving AFDC, the agency must use the definitions and procedures set forth under the State's AFDC plan to determine whether—, (a) an individual [*under age 21*] is a dependent child because he is deprived of parental support or care; and (b) An individual is an eligible member of a family with dependent children	
		AGE	
		Sec. 435.520 Age requirements for [*the age*] and [*children*] (a) The agency must not impose— (1) An age requirement of [*more than 65 years*]; (2) An age requirement that excludes an individual [*under age 19*] who would be eligible for AFDC if he met AFDC age or school attendance requirements; or (3) A lower age requirement than that under the State's AFDC plan. (b) In determining age, the agency must use the common-law method (under which an age is reached the day before the anniversary of birth), except— (1) For families and children, the agency must use the popular usage method (under which an age is reached on the anniversary of birth), if this method is used under the State's AFDC plan; and (2) For *aged* blind, or disabled individuals, the agency may use the popular usage method, if the plan provides under (435.121, for coverage of *aged*, blind, or disabled individuals who meet more restrictive eligibility requirements than those under SSI. (c) The agency may use an arbitrary date, such as July 1, for determining an individual's age if the year, but not the month, of his birth is known. See also: 42 CFR 431.620 Agreement with State mental health authority or mental institutions; 42 CFR 433.36 Liens and recoveries; 42 CFR 435.1 Introduction; 42 CFR 435.120 Individuals receiving SSI; 42 CFR 435.201 Individuals included in optional groups; 42 CFR 435.320 Medically needy coverage of the aged, blind, and disabled in States that cover individuals receiving SSI; 42 CFR 435.403 State residence; 42 CFR 435.602 Limitation on the financial responsibility of relatives; 42 CFR 435.711 General Requirements; 42 CFR 435.712 financial responsibility of spouses and parents; 42 CFR 435.724 Financial responsibility of parents for blind or disabled children; 42 CFR 435.731 General requirements for determining income eligibility in States using more restrictive requirements than SSI; 42 CFR 435.733 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care; 42 CFR 435.734 Financial responsibility of spouses and parents; 42 CFR 435.812 Medically needy income standards: Reasonableness; 42 CFR 435.814 Medically needy income standards: State Plan Requirements; 42 CFR 435.821 Financial responsibility of relatives: Individuals under age 21 and caretaker relatives; 42 CFR 435.822 Financial responsibility of relatives of aged, blind, or disabled individuals in States using SSI eligibility requirements; 42 CFR 435.823 Financial responsibility of relatives of aged, blind, or disabled individuals in States using more restrictive requirements than SSI; 42 CFR 435.832 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care; 42 CFR 435.840 Medically needy resource standards: General requirements; 42 CFR 435.841 Medically needy resource standards: Reasonableness; 42 CFR 435.845 Medically needy resource eligibility; 42 CFR 435.1008 Institutionalized individuals.	
Eligibility Requirements for Guam, Puerto Rico, Virgin Islands.	42 CFR Part 436	See Sections 436.118; 436.201; 436.222; 436.310; 436.320; 436.520; 436.700	
Services in Medicaid Assistance Programs	42 CFR Part 440	Sec. 440.40 Skilled nursing facility services for individuals *age 21 or older* (other than services in an institution for tuberculosis or mental diseases). EPSDT and family planning services and supplies. (a) Skilled nursing facility services (1) "Skilled nursing facility services for individuals *age 21 or older*, other than services in an institution for tuberculosis or mental diseases," means services that are— (i) Needed on a daily basis and required to be provided on an inpatient basis under §§ 405.127, 405.128, and 405.128a of this chapter; (ii) Provided for a facility or distinct part of a facility that is certified to meet the requirements for participation under subpart C of part 442 of this chapter . . . (iii) (a) Ordered by and under the direction of a physician . . . (b) EPDST. "Early and periodic screening and diagnosis and treatment" means— (1) Screening and diagnostic services to determine physical or mental defects in recipients *under age 21;* Sec. 440.140 describes inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals *age 65 or older* in institutions for tuberculosis or mental diseases. Sec. 440.160 describes inpatient psychiatric services for persons *under age 21*	

AGE DISTINCTIONS IN STATUTES AFFECTING HHS—Continued

[Public Health Service, Office of Human Development Services, Health Care Financing Administration, and Social Security Administration]

Program	Statute	Section and age distinction	CFDA No.
Requirements and limits on Specific Services....	42 CFR Part 441.....	See Sections 441.11 Continuation of FFP for institutional services; 441.13 Prohibitions on FFP: Institutionalized individuals; 441.15 Home health services; 441.50 Basis and purpose; 441.56 Required services; 441.58 Periodicity schedule; 441.59 Administration; 441.100 Basis and purpose; 441.101 State plan requirements; 441.150 Basis and purpose; 441.151 General requirements; 441.182 Maintenance of effort: Computation; 441.253 Sterilization of a mentally competent individual *aged 21 or older.*	
Medicare—Health Insurance for the Aged and Disabled.	Federal Health Insurance for the Aged and Disabled, 42 CFR Part 405.	Subpart A—Hospital Insurance Benefits Sec. 405.101 Hospital Insurance benefits; general (a) An individual who meets the conditions for entitlement to hospital insurance benefits provided under Part A of Title XVIII of the Act is eligible to have payment made on his behalf, or to him directly (for certain hospital services) subject to the conditions and limitations set out in this Part 405 and in the Act for: (1) Inpatient hospital services, post hospital extended care services, and post hospital home health services furnished to him during any month for which he meets such conditions for entitlement to hospital insurance benefits; (b) Except where payment may be made to the individual for certain hospital services (see §§ 405.156 and 405.157), payment for the services covered under the hospital insurance benefits program is made to the institution or agency eligible to receive payment rather than to the individual to whom the services are furnished. Sec. 405.102 Hospital insurance benefits for *individuals age 65 or over* (a) Conditions of entitlement. An individual is entitled to hospital insurance, benefits under the provisions described in this Subpart A *if such individual has attained age 65* and: (1) Is entitled to monthly insurance benefits under section 202 of the Social Security Act as described in Subpart D of Part 404 of this chapter; or (2) Is a "qualified railroad retirement beneficiary" as described in paragraph (b) of this section: or (3) Is deemed entitled to monthly insurance benefits under section 202 of the Social Security Act, solely for purposes of entitlement to hospital insurance benefits, by meeting the requirements prescribed in § 405.103. Sec. 405.103 Transitional provisions for entitlement of *aged* uninsured individuals to hospital insurance benefits. (a) Requirements. Unless excluded under the provisions of paragraph (b) of this section, an individual *age 65 or over* will be deemed entitled to monthly insurance benefits under section 202 of the Social Security Act, solely for purposes of entitlement to hospital insurance benefits (see § 405.102(a)(3)), if such individual: (1)(i) *Attained age 65 before 1968*, or (ii) *Attained age 65 after 1967* and has not less than three quarters of coverage (as defined in Subpart B of Part 404 of this chapter or in section (5)(1) of the Railroad Retirement Act of 1937), whenever acquired for each calendar year after 1966 and before the year he attained age 65; (2) Is not entitled to hospital insurance benefits as provided in § 405.102(a)(1) and would not be entitled to such benefits upon filing an application for monthly insurance benefits under section 202 of the Social Security Act; . . . Sec. 405.104 Entitlement to hospital insurance benefits based on end-stage renal disease. (b) Definitions . . . "Dependent *child*" means a person who, on the first day he has end-stage renal disease, is unmarried and meets the dependency requirements for entitlement to *child's* social security benefits on the basis of a parent's earnings (see 20 CFR 404.323–404.327(a) and; (1) Is *under age 22;* or (2) Is under a disability that began *before age 22;* or (3) Is under age 26, is receiving at least one-half support from that parent, and has continuously received at least one-half support from that parent since the day before attaining *age 22.* (c) Conditions of entitlement. An individual is entitled to Medicare, part A benefits based on end-stage renal disease if he is medically determined to have that disease and meets the following conditions: . . . He is: . . . (iii) The spouse or dependent child or a person who meets the requirements of paragraph (c)(1)(i) or (c)(1)(ii) of this section. Sec. 405.105 Hospital insurance entitlement based on entitlement to disability insurance benefits (a) Conditions of entitlement— (1) General. An individual is entitled to hospital insurance benefits described in this Subpart A if such individual: (i) *Has not attained age 65* and is entitled, and has for the 24 preceding consecutive calendar months been entitled, to— (A) Disability insurance benefits under section 223 of the Social Security Act (see 20 CFR § 404.306 of this chapter), or (B) Child's insurance benefits under section 202(d) of the Social Security Act by reason of disability (see 20 CFR § 404.320(a)(4)(iii) of this chapter), or (C) Widow's insurance benefits under section 202(e) of the Social Security Act by reason of disability (see 20 CFR § 404.328(a)(3)(ii) of this chapter and paragraph (a)(2), (4) and (5) of this section), or (D) Widower's insurance benefits under section 202(f) of the Social Security Act by reason of disability (see 20 CFR § 404.331(a)(3)(ii) of this chapter and paragraphs (a)(3) and (4) of this section); or (ii) *Has not attained age 65* and is, and has for the immediately preceding 24 consecutive calendar months been, a disabled qualified railroad retirement beneficiary under section 7(d) of the Railroad Retirement Act of 1974. (2) Modification of age requirement for widow's insurance benefits. For purposes of determining entitlement to hospital insurance benefits under paragraph (a)(1)(i)(C) of this section, 20 CFR 404.328(a)(3)(ii) and 404.328(e) are modified by *substituting "age 65" where "age 60"* appears therein.	

AGE DISTINCTIONS IN REGULATIONS AFFECTING HHS—Continued

[Public Health Service, Social Security Administration, Office of Human Development Services, and Health Care Financing Administration]

Program	Regulation	Section and age distinction	CFDA No.
		(3) Modification of age requirement for widower's insurance benefits. For purposes of determining entitlement to hospital insurance benefits under paragraph (a)(1)(i)(D) of this section, 20 CFR 404.331(a)(3)(ii) and 404.331(c) are modified by *substituting* "age 65" *where "age 62"* appears therein. X X X (c) End of coverage. The entitlement of an individual entitled under paragraph (a) of this section ends with the last day of whichever occurs first: X X X (2) The month before the month in which he attains *age 65*; . . . Sec. 405.106 Premium hospital insurance (a) General. Hospital insurance benefits under Part A of title XVIII are available on a voluntary basis beginning July 1973 to eligible individuals *age 65 or over* who do not otherwise qualify for hospital insurance benefits and are willing to pay the full average cost of such insurance in a monthly premium. Eligible individuals must enroll timely for this insurance, pay a monthly premium (see paragraph (d) of this section), and enroll or already be enrolled in the supplementary medical insurance plan under Part B. (b) Requirements for eligibility to enroll for premium hospital insurance. An individual is eligible to enroll for premium hospital insurance if: (1) He *has attained age 65;* and Sec. 405.120 Post hospital extended care services; scope of benefits (a) Benefits and conditions for entitlement. (1) An individual who meets the requirements described in § 405.102 and who requires the services referred to in §§ 405.126–405.128, is eligible to have payment made on his behalf to a participating skilled nursing facility (see § 405.150) for up to 100 days of extended care services (§ 405.124) furnished to him in a spell of illness if he is admitted to such skilled nursing facility within the time specified in paragraph (d) of this section after his discharge from a hospital in which he was an inpatient for not less than three consecutive calendar days (as defined in paragraph (c) of this section) and such discharge occurred *on or after the first day of the month in which the individual attained age 65*, or after June 30, 1966, whichever is later	
Medicare Part B Supplementary Medical Insurance Benefits for the Aged and Disabled.	42 CFR Part 405, Subpart B Supplementary Medical Insurance Benefits.	Sec. 405.201: Part B of title XVIII of the Act provides for a voluntary "Supplementary medical insurance plan" available to most individuals *age 65 and over* Sec. 405.205: An individual is eligible for enrollment if he is covered under Part A or *has attained age 65* *See* also §§ 405.212(e); 405.214(d); 405.223(c)(2)(iv) and (e); 405.310(n)(1); 405.315(a)(1); 405.1630 (First Paragraph); 405.2020(b)(7) and (d).	

[FR Doc. 82-34952 Filed 12-27-82; 8:45 am]
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federal register

Tuesday
December 28, 1982

Part III

Department of Labor

Mine Safety and Health Administration

Safety Standards for Fire Prevention and Control

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 55, 56, and 57

Safety Standards for Fire Prevention and Control

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of availability of preproposal drafts.

SUMMARY: The Mine Safety and Health Administration (MSHA) has developed a preproposal draft of revisions to current fire prevention and control standards for the metal and nonmetal mining industry. MSHA seeks comment from all interested parties on the preproposal draft. Copies of the draft may be obtained by contacting the Agency.

DATES: Comments must be received on or before February 28, 1983.

ADDRESSES: Send comments to the Office of Standards, Regulations and Variances; MSHA; Room 631, Ballston Towers #3; 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On March 25, 1980, MSHA published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** (45 FR 19267) announcing its comprehensive review of existing metal and nonmetal mine safety and health standards in 30 CFR Parts 55, 56, and 57. The Agency is reviewing the standards to eliminate duplicative and unnecessary standards, provide alternative methods of compliance, reduce recordkeeping requirements, and upgrade provisions consistent with advances in mining technology. MSHA believes that this review will result in more effective regulations for assuring the safety and health of miners. The review is consistent with the specific goals of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

On November 20, 1981, MSHA published a subsequent ANPRM in the **Federal Register** (45 FR 57253) listing eight sections the Agency had selected for priority review. Standards related to fire prevention and control were included in the priority group.

On March 9, 1982, MSHA published a notice in the **Federal Register** announcing public conferences to discuss issues related to the standards under priority review. The Section 4 conferences were concluded in April 1982. During the conferences many commenters requested that the Agency make available a preproposal draft of the standards under review before issuing a proposed rule.

MSHA has now completed development of the preproposal draft for Section .4. In addition to revising the substance of the existing standards, the Agency has reorganized Parts 55, 56 and 57 into a single Part 58. This reorganization would eliminate the current repetition of identical standards in the Code of Federal Regulations. The revised standards are designated general, surface, and underground so that they would apply only to the appropriate mining application.

The Agency requests comment on the substance of the preproposal standards, as well as on the reorganization of the standards. In addition, the Agency is interested in any economic data or other regulatory impact information commenters may wish to submit.

A copy of the preproposal draft has been mailed to persons and organizations known to be interested. All other interested persons and organizations may obtain a copy of the draft by submitting a request to the address provided above. The document contains the Agency's intended revisions, a comparison with existing provisions, and a summary explanation of the proposed changes.

Dated: December 21, 1982.

Thomas J. Shepich,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 82–35056 Filed 12–27–82; 8:45 am]

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federal register

Tuesday
December 28, 1982

Part IV

Department of Health and Human Services

Food and Drug Administration

Labeling for Salicylate-Containing Drug Products; Advance Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 82N-0158]

Labeling for Salicylate-Containing Drug Products

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and and Drug Administration (FDA) is considering proposing to require certain over-the-counter (OTC) and prescription saliciylate-containing drug products for human use to bear a warning against the use of the products for the treatment of flu or chickenpox in children or adolescents under 16 years of age, because salicylates may be associated with the development of Reye syndrome (RS) in this age group. This advance notice describes the recent studies reporting an association between salicylate use and the development of RS and discusses various criticisms of these studies. This advance notice also discusses specific warning statements under consideration by the agency. FDA is publishing this advance notice so that the agency will have the benefit of a broad range of views early in the rulemaking process, and so that all interested persons will have an opportunity to express their opinions.

DATE: Comments by February 28, 1983.

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

FOR FURTHER INFORMATION CONTACT: Paul O. Fehnel, Jr., National Center for Drugs and Biologics (HFN-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: FDA is considering whether to propose a rule that would require, among other things, that the labeling of certain salicylate-containing OTC and prescription drug products for human use bear a warning that salicylates should not be used in persons under 16 years of age with flu or chickenpox. FDA is considering this action because of recent studies reporting that the use of salicylates to treat these conditions is associated with the development of RS. The products under consideration for bearing a warning are: (1) systemically absorbed OTC salicylate-containing drug products for human use that are administered orally or rectally; and (2) systemically absorbed prescription salicylate-containing drug products for human use that are administered orally, rectally, or parenterally. The agency invites comments on any matter relevant to the proposed rulemaking being considered.

I. Background

A. *Reye syndrome.* RS is a disease of unknown cause that is characterized by severe vomiting and irritability or lethargy which may progress to delirium and coma. The illness is described clincially as having an acute onset in which the initial symptom is usually vomiting, which may be profuse and persistent, and which is often accompanied by a change in mental status. The Centers for Disease Control (CDC) has established an epidemiologic case definition for establishing the diagnosis of RS (Ref. 1). In addition, for purposes of management and study, a system of classifying the symptoms of RS into stages has been developed. The stages are zero to V, with V exhibiting the most severe symptoms.

The disease is classically described as occurring in a child or adolescent during the course of or while recovering from a mild respiratory tract infection, influenza, chickenpox, or other viral illness (Refs. 2, 3, and 46). (The illness occurring before RS may be referred to as the antecedent illness.) Influenza and chickenpox are the most commonly associated viral illnesses. The estimated incidence of RS is 0.37 to 4.7 per 100,000 persons under 18 years of age (Ref. 2), but its incidence may be 30 to 60 per 100,000 persons under 18 years of age (Ref. 2), but its incidence may be 30 to 60 per 100,000 in children of that age who have contracted influenza B (Ref. 3). CDC estimates that RS affects 600 to 1,200 children in the United States each year. A careful analysis of RS cases indicates that it is primarily observed in children between 6 months and 15 years of age (Ref. 3). The age distribution of the disease appears to depend on the type of the antecedent illness. Chickenpox-associated RS is found mainly in the 5- to 9-year age group; influenza B-associated RS is seen mainly in the 10- to 14-year age group (Ref. 3).

The mortality rate is high. In the past several years, the case fatality rate reported to CDC has been between 20 and 30 percent (Refs. 1 and 21). Permanent brain damage occurs in many other cases (Ref. 2).

RS was first described by the pathologist Douglas Reye of Australia in 1963 (Ref. 4). Subsequently, there has been substantial interest in monitoring the occurence of the disease and in attempting to identify causative factors. CDC first initiated nationwide surveliance for the disease in December 1973, in an effort to monitor its incidence during an anticipated epidemic of influenza. In December 1976, CDC and State health departments again intensified surveillance, and have been continuously maintaining surveillance since that time. Since 1976, between 200 and 500 patients per year meeting the CDC case definition have been reported to that agency. As in most disease surveillance systems, reported cases are recognized to represent only a fraction of the actual total, but increases in the number of reported cases have been observed during years of major influenza B and influenza A activity in 1977, 1979, and 1980.

Due in part to the rapid onset of RS, it has been suggested that a toxic agent interacting with the viral infection may be a causative factor in the production of the disease. Suspected agents have included environmental toxins and common medications. In its November-December 1976 *Drug Bulletin,* FDA reported a recommendation of its Neurologic Drugs Advisory Committee against the use of antiemetics, aspirin, and acetaminophen in children whose signs and symptoms indicate RS (Refs. 5 and 6).

A number of investigators have suggested the possiblility that RS may be associated with salicylates. In 1962, before Reye's initial report, Mortimer reported on four cases of fatal varicella (chickenpox) infections associated with hypoglycemia. Mortimer postulated that salicylates may have caused the hypoglycemia and the subsequent unexpected severe illnesss (Ref. 7).

In 1964, Utian reported 14 cases of what appeared to by RS and considered salicylate intoxication as a possible cause of the illness in these children (Ref. 8). In 1965, Giles suggested that a direct association existed between RS and salicylates and that in RS patients an enzyme system involving carbohydrate metabolism might by hypersensitive to salicylate (Ref. 9). In 1968, Norman reported a case of biopsy-confirmed RS associated with isolation of influenza B from the liver (Ref. 10). This patient was on long-term salicylate therapy for juvenile arthritis.

In the 1970's, several authors discussed the distinction between RS and acute salicylate intoxication. Evidence to suggest that RS and salicylism (salicylate intoxication) may be biochemically distinct was reported by Hilty in 1974 and updated in 1981 by Romshe and Hilty (Refs. 11 and 12). Hilty suggested that RS can be

distinguished from salicylism and other causes of hepatic damage by quantitative analysis of serum amino acids.

Several descriptive studies and two case-control studies examining medication histories of patients with RS were published in the 1970's. Among the studies that reported detailed information on aspirin use, the aspirin use ranged from 53 to 100 percent. The highest rates were reported in studies where information was more likely to be complete. For example, studies involving extensive home interviews found a higher prevalence of salicylate use amont RS patients. Aspirin was the only medication received by all RS patients interviewed by Reynolds, but because the doses were not considered to be excessive, the association was not emphasized (Ref. 13). In 1975, Linneman reported a history of aspirin use in 94.6 percent of 56 RS cases with known medication histories (Ref. 14).

Corey reviewed national surveillance data collected from 1973–1974 by CDC (Ref. 15). Data collection for aspirin use was based primarily on reviews on national surveillance forms supplemented in 16 percent of cases by personal communications with health personnel. In the subset of patients for whom medication history was available, 78 percent reported using aspirin. Corey expressed reservations about accuracy of the medication histories obtained through this system, noting that many patients may have erroneously reported not using aspirin.

Two case-control studies published before 1980, one conducted by Ruben (Ref. 16) and the other conducted by Corey (Ref. 17), compared medication histories of RS patients and controls. In both studies, however, interviews too place many months after the occurrence of RS, and controls were not matched for a history of illness temporally and clinically similar to cases. Medication questions, therefore, were not limited to those medications taken for the illness preceding RS in patients, or for the comparable illness in controls. Starko and colleagues (Ref. 18) were the first investigators to conduct such a study. This study is discussed below.

B. *Studies reporting an associaton between salicylates and RS.* For several years, CDC has been involved in investigations of RS. Within the past few years, four case-control studies have been conducted by the Arizona, Ohio, and Michigan State Health Departments in cooperation with CDC. The reports of these studies indicated as an association between RS and the ingestion of salicylates (e.g., aspirin) during the antecedent illness. On the basis of its review of the first three studies (Arizona, Ohio, and first Michigan study), CDC published a recommendation in the *Morbidity and Morality Weekly Report* on November 7, 1980 (Ref. 19) that "parents should be advised to use caution when administering salicylates to treat children with viral illness, particularly chickenpox and influenza-like illnesses."

A consensus development conference was held at the National Institutes of Health (NIH) in March 1981 to address diagnostic criteria and treatment of RS. Because the conference had not been called to review the first three State studies that had been recently completed at the time of the conference, data from the studies were not presented but were discussed by several participants. The conference report stated that the studies discussed at the conference indicate "an increase in the estimated relative risk of Reye's syndrome, which does not appear to be due to chance" (Ref. 46). The conference report advised that "caution in the use of salicylates in children with influenza and those with varicella is prudent." However, the report also pointed out that "certain similarities between salicylism and Reye's syndrome and those studies reporting an association between Reye's syndrome and salicylate ingestion indicate a need for further carefully designed studies before recommending changes in antipyretic therapy in children" (Reg. 46).

In November 1981, CDC convened a group of outside consultants to review the four State studies. The consultants concluded that there is "strong epidemiologic evidence for an association between the occurrence of Reye syndrome and the prior ingestion of salicylate containing medication" (Ref. 20). The consultants recommended that "until the nature of the association between salicylates and Reye syndrome is clarified, the use of salicylates should be avoided, when possible, for children with varicella infections and during presumed influenza outbreaks" (Id.). In the *Morbidity and Mortality Weekly Report* of February 12, 1982 (Ref. 21), CDC reported that the studies indicated an association between salicylates and RS and stated that "until definitive information is available, CDC advises physicians and parents of the possibility of increased risk of Reye syndrome associated with the use of salicylates for children with chickenpox or influenza-like illness."

C. *FDA review of the four State studies.* In response to the reported association between salicylates and RS, FDA formed a working group composed of members of the agency to review the available data to determine the quality and strength of the association. Despite the apparent association between salicylates and RS reported by the four State studies, the working group recognized that the studies required careful evaluation both because of the inherent limitations of case-control methodology and because of questions raised by earlier reviews of the studies. Case-control studies attempt retrospectively to assess the relationship of an existing disease or disorder to other variables or attributes, such as exposure to medications. After the initial identification of cases, that is, persons with the disease under investigation, a suitable control group of persons without the disease is identified for comparison purposes. The relationship of an attribute to the disease under investigation is examined by comparing the case group and the control group to determine how frequently the attribute is present in each group. Thus, in the RS studies, the investigators attempted to match reported cases of RS with control subjects who appeared to match the case subjects as closely as possible except for the development of RS.

The FDA working group recognized that an adequate evaluation of the four State studies would require consideration of the design and execution of the studies, including such questions as: (1) Potential differences in the type and severity of antecedent viral illness in cases and controls; (2) comparability and accuracy of the drug histories in cases and controls; (3) potential confusion as to the active ingredients in drugs administered to cases and controls; (4) potential differences in methods of collecting data for cases and controls; (5) the period of recall time and differences in the periods of recall time for cases and controls; (6) criteria used for diagnoses of RS and, especially, the criteria employed to establish the onset of RS; and (7) the reasons for the exclusion of reported RS cases from the studies.

In evaluating the available date, the FDA working group's activity included the following:

1. Review of materials available from the investigators in Arizona, Michigan, and Ohio.

2. Review of summaries provided by CDC on studies concerning RS and salicylates (Ref. 22).

3. Review of wrtitten analyses by employees or consultants of Sterling Drug (Refs. 23, 24, 25, and 26) and Schering-Plough (Ref. 27), which are two manufacturers of salicylate drug

products, and meetings with representatives of the two companies to hear presentations of these analyses by each firm (Refs. 28, 29, and 30).

4. Review of the written information presented by the Health Research Group (HRG) and meeting with representatives of HRG to hear their interpretation of the data (Refs. 31 and 32).

5. Site visits to the Michigan State Health Department and the Ohio State Health Department to obtain further details on how the studies in these States were conducted and to audit certain data from the study records (Ref. 33).

6. A meeting with scientists from CDC and National Institutes of Health, at which suggestions for analysis of the date were discussed.

The FDA working group prepared a preliminary report of its review of the four State studies and available information relating to the interpretation of these studies (Ref. 34). That report, dated May 18, 1982, presents a detailed discussion of the results of the studies and the working group's analysis of the data. The following summarizes the results of the four State studies and the working group's analysis of those studies:

1. *Arizona study.* The first reported case-control study on RS was conducted by Starko et al. in Arizona (Ref. 18). The study included 7 school children, hospitalized December 21 through 25, 1978, during an outbreak of influenza A/Brazil and 16 classmate controls who were ill during December 1978. All seven cases had recent influenza A (H1N1) infections, according to the analysis of blood samples collected. Blood samples were not collected for the control group.

The major finding of the study was that all 7 of the cases, but only 8 of the 16 controls, gave a history of salicylate ingestion during the antecedent illness for cases or during the viral illness for controls. Because the study lacked daily medication recording and had a small sample size, the working group did not attempt to conduct a more detailed analysis of the data from this study.

2. *Michigan studies.* Two case-control studies were performed by the Michigan Health Department. The first study was conducted during the months of March and April 1980 following an influenza B outbreak during the winter of 1979–1980. The second study began on September 1, 1980, and continued into 1981. Influenza A (H3N2) virus predominated during the second study. A report of these two studies has been published in the June 11, 1982 issue of the *Journal of the American Medical Association* (Ref. 35).

Under the Michigan State health code, physicians are required to report cases of RS to the State health department within 10 days. During the first study, 56 cases were reported. Twenty-five of the 56 patients were selected for the study because they lived within driving distance of the Michigan Health Department. During the second study, there were 17 cases reported; 5 of the 17 second study cases were excluded by the Michigan Health Department.

During both studies, controls were matched to cases on the basis of gastrointestinal (GI) symptoms, respiratory illness, or chickenpox. In the second study, cases and controls also were matched by temperature strata as follows: less than 100 degrees Fahrenheit, 100.1 to 102.9 degrees, and 103 degrees and over. For the cases, the date of protracted vomiting or behavioral change was established as the date of onset of RS.

In the first study, interviews with parents of children with RS were conducted an average of 45.5 days (4 to 83 days) after the onset of RS. During the second study, interviews took place an average of 4.8 days (2 to 10 days) after the onset of RS in the cases. Interviews for the control groups were conducted an average of 55.3 days (9 to 121 days) for the first study, an average of 12.2 days (3 to 40 days) for the second study.

In the first study, 24 of 25 (96 percent) cases took salicylate-containing medication before the onset of pernicious vomiting, compared to 30 of 46 (65 percent) controls. When highest measured temperature was used retrospectively to match controls to cases to attempt to ensure comparability, the difference in salicylate ingestion remained significant in that 14 of 14 (100 percent) cases as compared to 14 of 19 (73 percent) controls ($p<.05$) had ingested salicylates. During the second year of the study, 12 of 12 (100 percent) cases as compared to only 13 of 29 (45 percent) controls ($p<.002$) were reported to have received salicylate-containing medications. Medications containing acetaminophen but not salicylates were taken by 8 controls (17.8 percent) and 1 case (4 percent) in year 1 and by 9 controls (31 percent) and no cases in year 2.

Daily medication use was recorded in the second Michigan study for the 12 cases included in the study and their associated controls. This daily record was used to determine whether the cases and controls used salicylates on day 1; day 1 or 2; or day 1, 2, or 3 of their antecedent illness. The FDA working group was thus able to evaluate the apparent association between salicylate ingestion and RS using data where the salicylate use was most likely to be before the onset of RS and most likely to be in response to symptoms of the antecedent illness. Because the data sets to be analyzed consisted of cases matched to one or two controls on the basis of multiple characteristics (age, race, sex, geography, and fever), the working group employed a multiple conditional logistic analysis. That approach accounts for the variable matching to give a valid estimate of the excess risk associated with the cases and salicylate use. The multiple conditional logistic analysis showed that on day 1 of the antecedent illness, cases were 9.1 times more likely to have taken aspirin than their matched controls and that this was statistically highly significant. Because all of the cases used salicylates on days 2 and 3, this analysis could not be performed for day 1 or 2, or for day 1, 2, or 3.

3. *Ohio study.* The Ohio study was initiated under a contract from CDC in December 1978. The original study, developed by CDC investigators in cooperation with the Ohio State Department of Health, was designed to examine the possible relationship between RS and respiratory viral illnesses. The Ohio State Department of Health also wanted to conduct an exploratory investigation of other possible risk factors, including medications, environmental toxins, and a number of other variables which had been mentioned in the literature. The study was conducted from December 1978 through March 1980 and included 97 cases of RS. Thirty-three of the cases have been identified as "first year" because they were investigated before the collection of data about the development of symptoms and the administration of drugs on a day-to-day basis. The 64 cases for which such data were collected are referred to as "second year."

For both years of the study combined, the Ohio State Department of Health found that salicylates were the only medications which were taken significantly more frequently in cases (94 of 97=96.8 percent) than in controls (110 of 156=70.5 percent) before the development of symptoms of RS. Medications containing acetaminophen but not salicylates were taken by 29 of 156 (18.6 percent) controls but only 1 of 97 (1 percent) cases. Medication containing acetaminophen in combination with salicylates were taken by 16 of 97 (16 percent) cases compared to 51 of 160 (32 percent) controls ($p<0.01$).

The Ohio State University Biometry Facility performed a multiple logistic

analysis using a model which included histories of salicylate ingestion, fever, headache, and sore throat. Adjusting for these potentially distorting variables, cases were found to be 11.5 ($p<0.001$) times more likely than controls to have taken salicylates. Similar results were obtained for each year of the study. The Ohio investigators also compared salicylate use in cases and controls matched by highest level of fever. Data had been collected on whether or not the case or control had a fever. If fever was present, the highest level of fever was recorded. The known fever levels were then divided into three strata (98.7 to 99.9; 100.0 to 101.9; 102.0 or higher). Although the prevalence of fever was significantly greater in cases than in controls (74 of 97 cases and 95 of 156 controls had fever ($p<0.01$)), among those with fever, at each temperature stratum salicylate use was consistently greater among cases (100 percent at each stratum used salicylate) than among controls (67 percent, 81 percent, and 75 percent used salicylate at the respective strata). A report of the Ohio study has been published in the August 13, 1982 issue of the *Journal of the American Medical Association* (Ref. 75).

Members of the FDA working group made a site visit to the Ohio Department of Health on March 8–10, 1982. They considered it important to evaluate the administration of medications and the development of symptoms on a daily basis to attempt to ensure that the administration of drugs before the onset of RS could be identified. By evaluating the data on a daily basis, the working group could attempt to adjust for any differences between cases and controls in symptoms that might be distorting the results of the analysis. By ascertaining which drugs had been administered before the onset of RS, the working group could test the hypothesis that the salicylate use by the cases might reflect treatment of the symptoms of RS rather than those of the antecedent illness and therefore would not be regarded as a possible cause of RS.

The only data which permitted such an evaluation were the data collected during the second year of the Ohio study. For that reason, the working group examined in detail the original State records of the 64 second-year cases and their associated controls. The working group transcribed the information concerning the daily administration of medication and the daily development of symptoms from the original State records. The working group also audited a sample of the first-year cases and the stage 0 cases that were not included in the study and the available information from all the fatal cases. On the basis of this evaluation, the working group concluded that the coding of information from the original investigational records had been performed with an unusually high degree of accuracy. No significant discrepancies were found by examining the original case and control questionnaire forms and comparing them with the coding of the data for computer compilation and analysis.

The Ohio second-year data enabled the FDA working group to analyze both the administration of medication and the development of symptoms on a daily basis, to attempt to adjust for confounding variables in cases and controls, and to attempt to ensure that the drugs under consideration were administered before RS was present. As was done with the Michigan data, FDA performed a multiple conditional logistic analysis of salicylate exposure during days 1 to 3 of the antecedent illness which adjusted for possible differences between cases and controls which might have been explained by differences in the presence of headache, fever, cough, and sore throat. These symptoms are those for which salicylate-containing products may have been used. One hypothesis would suggest that if the cases had different symptoms (e.g., more headache or fever) than controls, the higher salicylate user cases could be attributable to the presence of symptoms more likely to be treated with salicylates. In order to examine the possibility that salicylates might have been used to treat early symptoms of RS rather than an antecedent illness, cases (and their matched controls) with 4 or fewer days between the onset of the antecedent illness and the onset of RS were eliminated. On the basis of this analysis, FDA's working group found that cases of RS were still significantly more likely to have used salicylates. There was significantly less use of acetaminophen in the cases than in controls.

The FDA working group also considered a hypotheseis that some of the statistical association in the Ohio second year based on salicylate use during days 1 to 3 might be explained by the administration of salicylates after the symptoms of RS had already appeared in some of the cases. As noted earlier, RS typically develops in a child who appears to be recovering from antecedent illness. Approximately half of the cases (33) had at least a 1-day period between the symptoms of the antecedent illness and the onset of RS when no symptoms were recorded (these are referred to as biphasic cases). However, a number of cases (30) did not appear to have a symptom-free period between the recorded date of onset of the antecedent illness and the onset of RS (these are referred to as monophasic cases). In one case it was not possible to determine monophasic or biphasic status; therefore, that case was not used in the analysis.

Statistical analyses showed a different relative rate of salicylate usage between the monophasic cases and the biphasic cases as compared to their controls. Multivariate conditional logistic analysis of the data on the biphasic cases showed that these cases did not use salicylates in the first 3 days of their illness to any significantly greater extent than their controls. The same analysis of the group with the monophasic illnesses showed that these cases did have a significant excess of use of salicylates over their controls.

The FDA working group also compared salicylate usage in the biphasic versus the monophasic cases (Ref. 74). This analysis showed that fewer cases with biphasic illness used salicylates during days 1 to 3 than those with monophasic illness, although the difference is not significant (82 percent versus 93 percent, $p=.17$).

These analyses appear to indicate that there is a difference between the monophasic and biphasic cases. However, further examination of the data reveals that other factors require consideration in interpreting the relative rates of salicylate usage between cases and controls. The criteria upon which cases were divided into monophasic and biphasic groups were based solely on the symptom pattern reported in the cases. Consequently, the distribution of variables (e.g., salicylate use, headache, fever, etc.) in the controls for the two groups would be expected to be roughly the same. It is not the same. Salicylate use in the biphasic control group was significantly greater during days 1 to 3 than in the monophasic control group (76.5 percent versus 58.3 percent, $p<.05$). The FDA working group analyzed covariates (fever, headache, cough, sore throat) in the controls for the two groups and did not find symptom differences to explain the greater use of salicylates in the controls for the biphasic than for the monophasic patients.

The FDA working group recognized that at least three possible interpretations of these findings could be considered:

1. Because RS is thought to be a biphasic, rather than a monophasic illness, it might be argued that some of the monophasic cases either had no

antecedent viral illness, the viral illness was not detected, or the symptoms of the antecedent illness and the symptoms of RS were overlapping. Therefore, it could be further argued that in some of the monophasic cases, salicylates might not have been administered before the onset of RS, that salicylates might actually have been used to treat the symptoms of RS, and that salicylate use in those cases might not be implicated as a causative factor in the development of RS.

2. That salicylate use might hasten the development of RS.

3. That the division into groups with monophasic and biphasic illnesses might not have been meaningful and was associated with an artifactual difference in the respective control groups that resulted in irrelevant statistial differences in the relative risks calculated for the two groups of RS cases.

Because the FDA working group could not eliminate this third interpretation, it was unable to conclude that the statistical association in the Ohio second year could be explained by the administration of salicylates after the symptoms of RS had appeared.

4. *Working group summary.* The FDA working group considered that its analysis of the data from the second year of the Ohio study was pivotal to the assessment of the possible association between the use of salicylates in the preceding viral illness and the subsequent development of RS. The working group concluded that its analysis of the data from that study showed that patients with RS (cases) had a greater frequency of salicylate use during the first 3 days of the antecedent viral illness than did children matched for certain selected variables with an illness of a similar nature (controls). The working group found that cases of RS in the study were significantly more likely to have used salicylates, and this association continued even when the data were statistically adjusted to account for differences in cases and controls for the symptoms headache, fever, sore throat, and cough and when cases with 4 or fewer days between the onset of antecedent illness and the onset of RS were eliminated. In addition, the working group found there was significantly less use of acetaminophen in the cases than in the controls.

The FDA working group report also recognized that the association between salicylates and RS observed in the four State studies might be reflective of factors other than a causative role of salicylates in the development of RS. In addition, the report raised the question whether in some cases the symptoms of RS had developed earlier than was recognized, so that treatment was given after the onset of RS and not during the antecedent illness. Because the working group report reflected a preliminary review and was prepared to provide information for consideration at a public meeting, the working group did not resolve these questions before the public meeting.

D. *Reye syndrome workshop.* A Reye syndrome workshop sponsored by FDA, CDC, and the National Institute of Allergy and Infectious Diseases of the National Institutes of Health was held on May 24, 1982. A notice announcing the workshop was published in the **Federal Register** (47FR 20862; May 14, 1982) (Ref. 36). The workshop was scheduled to provide interested persons, including industry and consumer group representatives, an opportunity to discuss the currently available data on RS and to make written submissions and to give oral presentations. A transcript of the meeting was prepared (Ref. 37).

Before the workshop, FDA had made data available that was in its possession and on which it had relied in preparing the working group's preliminary review. The data in the agency's possession did not include the original forms used in conducting the four State studies. (The agency has since obtained the original data in the Ohio study (Ref. 111).) The data did include FDA's transcription of certain data from the second year of the Ohio study and the second year of the Michigan study (Ref. 38). In addition, the data included a data computer tape provided by the Ohio Department of Public Health on its RS investigation (Ref. 65).

The workshop was attended by invited experts from the academic community, the drug industry, and consumer organizations. The scientific panel members (primarily from the academic community) were asked to review and discuss the data and presentations, but were not asked to make formal recommendations to the sponsoring organizations. However, the members of the scientific panel were provided an opportunity to comment at the close of the meeting. Some of the panel members indicated that the available data were adequate to establish an association between salicylates and RS. Others indicated a belief that the data showed a possible association. Some members indicated that a causal relationship between salicylates and RS had not been shown. Several of the members agreed that physicians and the public should be advised of the possible risks of the use of salicylates to treat certain viral illnesses in children (Ref. 37).

E. *FDA evaluation of the four State studies.* FDA evaluated the four State studies to address questions concerning the design and execution of the studies. FDA's evaluation of the data from the four State studies included a careful consideration of questions raised concerning the quality of the data. Industry representatives and others contend that the data do not establish an association between salicylate use and the development of RS. In support of this contention they have raised objections to the design and execution of the studies generally, as well as objections to the evaluation of specific factors. FDA scientists have reviewed the questions raised thus far. Summaries of the questions, as well as the agency's tentative responses, follow.

1. It is claimed that the data from the State studies have not been adequately analyzed. Inadequacies in the data analysis, it is argued, included no independent review of the primary data base (e.g., completed questionnaires), no audit of the secondary data base (e.g., computer tapes coding information from the questionnaires), no proper multivariate analysis of the data, and no sensitivity analysis of the odds ratio that measured the purported salicylate-RS association. The argument is that because the data analysis was inadequate, the studies cannot be said to have demonstrated an association between salicylate use and RS.

As discussed above, the FDA working group did review the primary data from both Michigan studies and from both years of the Ohio study. The working group also performed a selected audit of the computer tapes from the Ohio study and concluded that the coding of information from the original investigational records had been done with an unusually high degree of accuracy.

The Ohio State Health Department performed a multivariate analysis of the data from the Ohio study and found a statistically significant association between RS and salicylate use. In addition, the FDA working group's analysis included multivariate analysis using the multiple conditional logistic model (Ref. 112). This form of analysis is primarily designed to analyze matched case-control data where adjustment for covariates is desired. The results of these analyses also support the conclusion that there is an association between salicylate use and RS.

The sensitivity analysis referred to in the criticisms of the State studies is intended to determine the effects of

misclassification on the odds ratio, the measure of association used in these studies. Theoretical studies in the literature (Refs. 40 to 45) have shown that if the misclassification bias is nondifferential, that is, the same level of misclassification exists in both the cases and controls, then the odds ratio tends towards the "null" hypothesis. In other words, the estimated odds ratio will always tend to be less than the true odds ratio. That is, if the same level of misclassification exists in both the cases and controls in the Reye's studies, then the cases are even more likely to have used salicylates in relation to the controls than the analyses have shown. However, if the misclassification is differential, affecting one group more than the other, then the estimated odds ratio can be either less than the true odds ratio or greater.

Without specific information as to the nature of any potential misclassification bias in these studies, the bias' effects cannot be estimated and, therefore, cannot be corrected for. In none of the studies reported are there data indicating that a differential misclassification is operating. Nor are there any supplementary data supporting such a claim. Therefore, a sensitivity analysis may be either unnecessary or impossible with respect to these RS studies.

2. It is claimed that the studies were conducted without a protocol that defined precisely the methods of data acquisition, data anlaysis, and study monitoring used in the studies. The suggestion is that lack of a protocol may lead to such problems as inconsistencies in interview techniques employed by different interviewers or inconsistent matching of cases and controls, which may distort the study results.

The FDA working group found that better documentation of operational procedures for the studies could have been provided. However, for both years of the Michigan study there was a protocol that included eligibility criteria, so that cases and controls could be consistently matched. Although there was no formal protocol for the Ohio study, the study did have an operational manual which described eligibility criteria, as well as the interviewing procedures. Thus, there were plans for both the Ohio and Michigan studies to guard against distorting inconsistencies.

3. It is claimed that there was no matching of cases and controls on the basis of severity of the antecedent illness. Thus, it is contended, the cases were sicker than controls with respect to such factors as the presence of fever, the degree of fever, and the amount of liquid intake during the acute illness. The severity of illness, it is argued, may have determined the parent's choice of antipyretic drug thereapy. The argument is that matching cases and controls for such variables as reduced fluid intake, use of antinauseant medication, and fever could eliminate the association between salicylate use and RS.

The investigators attempted to control for severity by matching cases with ill controls who were from the same classroom and who were ill at about the same time, as well as by matching as many variables as possible. Such matching included, for example, matching cases that had chickenpox with controls that had chickenpox and cases that had respiratory illness with controls that had respiratory illness. Matching with respect to the degree of fever was done in the second year in Michigan, but not in the other studies. In the second-year Michigan study, which included matching by temperature strata, 12 of 12 cases (100 percent) and 13 of 29 controls (45 percent) reported receiving salicylate-containing medications ($p < .002$). When highest-measured temperature was used restrospectively to match cases and controls in the statistical analysis of the first-year Michigan study, the difference in salicylate ingestion remained significant (100 percent of cases, 73 percent of controls ($p < .05$)). As discussed earlier, the Ohio investigators also restrospectively matched cases and controls by temperature strata. At each temperature stratum salicylate use was consistently greater among cases than controls. FDA's multivariate conditional logistic analyses, which adjusted for fever, showed that the association between salicylates and RS remains significant.

The data also indicate that the administration of antinauseants is not significantly associated with the antecedent illness, but may be associated with the symptoms of the onset of RS. This was confirmed by FDA's analysis of the second year of the Ohio study, which shows that most antinauseant use was on the day of onset of RS or later. With respect to reduced fluid intake, the question was asked in such a manner that data available with respect to this factor cannot establish whether the reduction in intake was associated with the antecedent illness or with the onset of RS. In addition, FDA's multivariate conditional logistic analyses adjusted for other indications of severity of illness, including cough, headache, and sore throat. After adjusting for these measures of severity of antecedent illness, the association between salicylates and RS remains significant.

4. It is claimed that interviewer bias influenced the results of the studies. Interviewer bias could have resulted form the fact that interviewers were not "blinded", i.e., they knew in advance that the parents they interviewed were the parents of cases rather than controls or of controls rather than cases. Such knowledge, it is argued, could cause interviewers to question one group of parents more closely than the other, thereby producing more, or more reliable, information from that group. Prior knowledge by interviewers that salicylate drugs were suspected more strongly than other factors of being asssociated with RS could also have biased the questioning. These forms of interviewer bias could have produced biased reporting by the interviewees. For example, if the parents of cases were more closely questioned than parents of controls, it is possible that they would have been more likely to recall the specific medications administered to their children. It is therefore possible that such parents would have been more likely to have remembered that they had administered aspirin, whereas parents of controls would have remembered only that they administered a fever-reducing drug of some sort, thus falsely increasing the incidence of aspirin use in cases compared with controls. It is also possible that if intervjewers knew of a potential connection between salicylates and RS, they might have persisted in asking parents of cases about medications until receiving a response mentioning a salicylate product, whereas they might not have so persisted when questioning parents of controls.

Although it is true that interviewers knew in advance which families had cases and which had controls, precautions were taken to prevent the introduction of bias into the interviews by reason of such knowledge. Interviewers in the Michigan and Ohio studies received training designed to standardize interviewing technique, so that parents of cases and parents of controls would be asked the same questions in a similar manner.

FDA's review of the questionnaries used in the Michigan and Ohio studies revealed no basis for concluding that salicylate drugs had been given undue attention by the interviewers or that other forms of interviewer bias tainted the responses. Moreover, in the Arizona study and the first Michigan study and the first year of the Ohio study, those conducting the investigation had not concluded that salicylate drugs were more likely than other factors to be

associated with RS. The interviewers in those studies, therefore, were unlikely to have biased the results by any intentional or unintentional desire to elicit information concerning a hypothesis implicating salicylates in the development of RS. Furthermore, interviewers in the second year of the Ohio study were not informed by the investigators that a possible association between salicylate drugs and RS was suspected.

Finally, the absence of significant interviewer bias in the Michigan studies is suggested by the fact that similar numbers of drug preparations were reported by cases and controls. Because parents of cases and parents of controls reported almost the same numbers of drug preparations given, it does not appear that interviewers persisted longer in their questioning about medications with parents of cases than with parents of controls.

5. It is claimed that the Ohio study may have been flawed by a bias in case selection. A physician at one of the six clinical centers participating in that study has stated that some of the cases he reported to the Ohio State Health Department were excluded from the study (Ref. 78). He indicated that at least four of the cases he reported had no history of salicylate ingestion.

The FDA working group has reviewed the case selection in the Ohio study for each of the participating centers (Refs. 79 and 80). During the 2 years of the study, 11 RS cases were reported from the clinic with which this physician is associated. The Ohio Health Department excluded 5 of those 11 cases from the study for the following reasons: 2 cases were stage 0; 1 case was too young (about 1 year old); 2 cases could not be matched. These exclusions were consistent with the eligibility criteria established and with the procedures used during the period of this study. Of the 11 cases reported from this clinic 8 (73 percent) had used salicylates; of the 6 cases from this clinic which were included in the study, 4 (67 percent) has used salicylates.

The working group saw no indication that the case selection process pertaining to the cases reported from one center was unique. Of all the cases reported to the Ohio Health Department, 183 of 196 (93.4 percent) had used salicylates. Among nonsalicylate users who were not included in the 97 matched cases, 6 were stage 0, 2 were preschool, and 2 apparently could not be matched. There were 31 cases who were not matched, although they were eligible based on stage, degree of illness, and age. Of those, 29 (93.5 percent) had used salicylates. Thus, it does not appear that cases were selected for matching based on whether or not they had used salicylates.

6. It is claimed that product confusion among parents caused misclassification of the drugs used by cases and controls. Thus, it has been argued that some parents may have thought a salicylate product was used when, in fact, it was a nonsalicylate product. It is also asserted that the documentation confirming the medication histories is inadequate. The assumption is that because the parents of cases were usually interviewed in the hospital it would be less likely that the investigators confirmed the cases' medication histories by visually inspecting the medication bottles. Confirmation by inspecting the medication bottles of the controls would be more likely because the interviews were conducted at the parents' home.

In Ohio, there was an extensive effort to identify ingredients properly for single as well as combination drugs. In Michigan, the interviewer notified the family to prepare for the interview and to show the medication bottle to the interviewer. Although parents, in some instances, may have been confused as to the identity of the active ingredient, interviewers in both Ohio and Michigan usually obtained brand names of the drug administered, which were then checked to determine and record the active drug ingredient. In Ohio, 90 percent of the cases and 91 percent of the controls supplied brand names; 100 percent of the acetaminophen identification was by brand name.

It is true that the documentation does not show which product identifications were confirmed by visual inspection of the bottles and which were not. However, there is also no documentation showing that any of the visual confirmations revealed a contradiction between the brand name identified and the brand name on the bottle label. Thus, any effect of the visual confirmation on the study analysis remains conjectural.

7. Analyses have been submitted by industry representatives to show that there is no significant statistical association between salicylate use and RS if two subsets of the second-year Ohio cases identified by FDA's working group are examined (Ref. 101). The following subsets of the 64 second-year Ohio cases were analyzed: (1) The 48 cases with more than 4 days of symptoms before the onset of RS and (2) the 41 cases in which the relationship of salicylate use to onset of RS could be ascertained with reasonable certainty.

The working group's analysis of those 48 cases with more than 4 days of symptoms before the onset of RS showed a positive and statistically significant association between salicylate exposure and RS. The industry submission's analysis of those 48 cases showed a positive association that was, however, not statistically significant. The difference between the working group's finding and the industry submission's finding with respect to this subject appears to result from the differences in the databases of the two analyses. The industry submission's coding of subjects from the second year of the Ohio study for exposure to salicylates or nonexposure to salicylates differs from the working group's coding with respect to 11 subjects. This difference appears to be primarily due to the fact that the industry submission had coded controls as exposed if salicylates were used at any time during their illnesses, whereas cases were coded as exposed only if a salicylates were used early in the course of illness. The working group coded a subject as exposed only if salicylate was used during the first 3 days of the illness, and this same coding was applied to both cases and controls.

The working group coded exposure according to the first 3 days of illness only in order to determine whether the frequency of salicylate use was related to the severity of symptoms of the antecent illness. The first 3 days is the time period when symptoms of viral illnesses are likely to be most severe. The working group performed a multiple conditional logistic analysis to test whether differences in symptoms accounted for a greater frequency of salicylate use in cases and found that there was still a significant association of salicylate use with RS after accounting for these differences. The working group attempted both to assure that the database did not include salicylates that were being given specifically to treat Rs and to determine whether salicylate use was the result of more severe illness in cases than controls. The industry analysis did not compare equivalent time periods in cases and controls and did not adjust for the severity of illness when examining the relationship between salicylate use and RS.

The industry submission also analyzed a subset of 41 cases in which the relationship of salicylate use to onset of RS could be ascertained with reasonable certainty. The industry submission argued that with this subset of 41 there is also no statistically significant association between salicylate use and RS. FDA's working group had identified and studied this subset of 41 cases in order to determine

whether salicylates were used for treatment of RS, regardless of whether they had been used initially for treatment of the antecedent illness. That is, the 23 cases that began salicylate use on day 1 or 2 of illness and continued until the onset of Rs were excluded from this subset because for those 23 cases it could not be determined when the salicylate use for the antecedent illness ended and the salicylate use for RS began. However, because this group of 41 cases does not include all RS cases who used salicylates before onset of RS, the association of RS with prior salicylate usage cannot be determined by comparing only these cases and their controls. Therefore, the industry submission's analysis using this subset of 41 cases to determine the frequency of use of aspirin before the onset of RS is an invalid approach.

8. The industry submission which analyzed the 48 and 41 case subsets also claimed that some of the product identifications recorded on the case report forms are insufficient to determine whether the products contained salicylates (Ref. 101). The industry submission argued that 7 of the subjects in the second year of the Ohio study (4 cases and 3 controls) who were identified as having been exposed to salicylate had received medications which had not been clearly identified as containing salicylates ("indeterminate" medications).

The submission argued that even when all 64 cases are examined, the assumptions about the 7 indeterminate medications lead to critical differences in the results. Using its database, the industry submission presented an analysis showing that when it is assumed that the 7 subjects who took indeterminate medications were exposed to salicylates, the result is a statistically significant association between salicylates and RS. However, when it is assumed that these 7 subjects were not exposed to salicylates, the association is no longer statistically significant. The submission argued that if only 3 of the indeterminant cases are assumed to be unexposed, the results are not statistically significant.

The industry submission based its identification of "indeterminate" medication on the fact that the trade names of some salicylate-containing products are very similar to the trade names of non-salicylate-containing products. For example, "Brand X" may contain aspirin and "Brand X-AF" may contain acetaminophen. FDA's working group assumed that a listing on a case report form for "Brand X" would mean literally that, and would not have been so listed if the brand name were at all different. Therefore, the working group listed these products as salicylates. However, if it were assumed (as the industry submission assumed) that the correct names of these products could not be determined, then the appropriate approach would be to exclude these subjects from the analysis. That is, if the salicylate exposure is unknown, that subject should not be included as either exposed or unexposed, because either assumption would improperly bias the results. When the subjects identified by the industry submission as having taken "indeterminate" medications are excluded from analysis of all 64 cases, the association between salicylate use and RS remains significant, regardless of whether the industry submission's database or the working group's database is used.

9. It is claimed that, even over relatively short periods of time, parents do not accurately remember significant details about medications they administered to their children, the symptoms their children had during illness, or their children's behavior patterns (e.g., fluid intake) during illness. If recall were equally inaccurate for both groups of parents, it would not ordinarily be expected to bias the information reported for cases and controls. However, in case-control studies parents of cases are typically interviewed shortly after their children's illness, whereas parents of controls are often interviewed weeks or months after illness, and this was true of the Ohio and Michigan studies. Also, parents of cases—children with RS—might remember important details concerning medication or severity of symptoms more clearly than parents of controls, whose children had a far less serious illness. Such differential recall, it is thought, could have biased the results of the Ohio and Michigan studies.

In both the Ohio and the Michigan studies the investigators attempted to identify and interview the parents of controls as quickly as possible, thus minimizing the time differential between the two groups of parents as much as is practicable in case-control studies. Nevertheless, neither the time diffeential, nor any possible difference in recall accuracy between parents of RS children and parents of control children, could have been entirely eliminated.

Two observations, however, tend to negate the existence of significant recall bias stemming from these factors. First, recall bias would not be expected to result in the selective underreporting of the use of salicylate drugs, and overreporting of the use of acetaminophen, by the control group parents. Recall bias should have produced, instead, underreporting of both medications by the parents of controls. The parents of controls would have had no reason to remember administering an salicylate product. Second, as previously noted, similar numbers of total drug products were reported by both cases and controls in the Michigan studies. Therefore, it does not appear that parents of controls had, in the time period between the child's illness and the interviewer's questioning, forgotten the medications they gave during the illness to any greater degree than the parents of cases had forgotten the medications they had administered.

10. It is claimed that the data do not establish a dose-response relationship between salicylate ingestion and the development of RS. It is argued that one would expect there to be such a relationship if salicylate drugs caused RS. The absence of such a relationship, it is argued, would suggest that a causal relationship between salicylate drugs and RS is biologically implausible.

It is correct that the data do not show a dose-response relationship between salicylates and RS. The data are inadequate to show either the existence or the absence of such a relationship. Demonstration of a dose-response relationship would clearly strengthen an association between salicylates and RS, but its absence does not negate the existence of an association. A correlation between salicylate blood levels and the development of RS has also not been clearly demonstrated. The methodologies reported often lack sensitivity and are affected by confounding factors, such as ketosis (which is present in dehydrated children, such as those who have RS). The significance of the blood levels measured depends on various factors, including information about the amount and timing of all salicylate drugs administered and the physical condition of the child. Data of the requisite quality to determine whether a dose-response relationship exists were not obtained during any of the studies.

Demonstration of a dose-response effect might strengthen the evidence of a causal relationship, but is not essential to show an association or a causal role of salicylates in RS. If the effect of salicylates in RS were dose dependent (e.g., the more toxin taken or present, the greater the toxic response), then such a relationship possibly could be demonstrated by clinical history and by laboratory tests. However, if the role of

salicylates is independent of dose, as it appears to be, then any exposure to salicylates, not necessarily exposure at toxic levels, could be a triggering factor in RS. That is, it is possible that a small amount of salicylates administered under certain circumstances will trigger RS and that it makes no difference whether or not larger amounts are administered. Thus, it is biologically plausible that salicylates could be a factor in causing RS even if no dose-response relationship were shown.

11. It has been argued that the association between salicylates and RS cannot be reconciled with certain facts concerning the identification and the patterns of incidence of RS. The argument is that because aspirin has been so widely used for so many years, it is unlikely that aspirin causes a disease that: (1) Has only recently been identified; (2) is very rare; (3) is geographically concentrated; and (4) occurs in Caucasians 90 percent of the time. It has also been argued that the facts that not all children who take salicylates for flu or chickenpox symptoms get RS and that some children get RS without having taken salicylates are inconsistent with a causal connection between salicylate use and RS.

The fact that RS was only identified as a specific disease in 1963 does not mean that it did not exist prior to that time—only that it had not yet been identified as a specific illness. RS is a rare disease; a rare disease is often not identified until sufficient information is accumulated and communicated to interested scientists to allow them to differentiate the symptoms of the disease from those of other diseases. That RS is rare does not, however, mean that there can be no causal relationship between salicylate use and RS. Administration of a drug can result in serious harm in only a small percentage of cases, yet nevertheless be the causal agent. For example, administration of chloramphenicol at a certain dosage has been estimated to cause fatal aplastic anemia in 1 out of 40,500 patients (Ref. 64). The data do show that not all children taking a salicylate for symptoms of flu or chickenpox develop RS. There must be more than one factor involved in the development of RS. That is, there may be certain preconditions, such as genetic predisposition, necessary before RS develops. Salicylate use could be one element in a chain of causes that lead to RS if most of the elements are present. Nor does the fact that a few cases of RS have been identified in which no salicylates were used prove that salicylates can have no causal role in RS. Salicylate use may be one among several possible causes, not all of which need be present for RS to develop. A number of environmental agents, such as insecticides, mycotoxins, and aflatoxins, have been suggested as possible factors in causing RS (Refs. 81 and 82). However, none of these agents have been confirmed as factors in causing RS by later studies.

Observed geographic differences in the incidence of Reye syndrome may reflect the varying levels of interest of health departments, communities, and physicians and the varying reporting requirements in different States. Whether some environmental agents present in different geographical locations may also be implicated in RS cases is unknown. As yet, there have been no adequate studies conducted to determine whether, in fact, RS does occur disproportionately in certain geographic areas. Even if future studies were to define geographic differences in the incidence of this disease, it is possible that factors other than salicylate use (including influenza and other as yet unidentified risk factors) might explain such observed differences.

Why 90 percent of the RS cases reported each year are among Caucasians is also not understood. It may be that Caucasians have different exposure to predisposing conditions of RS that have not as yet been identified. Perhaps there is a genetic predisposition to RS that is greater among Caucasians. As has been discussed before, salicylate use could be causally associated with RS without being the sole cause. Therefore, the fact that some factor other than salicylate use may result in more RS in Caucasians does not mean that salicylate use does not cause RS.

12. It has been argued that it is likely that a number of the children identified as cases did not actually have RS. The argument that some of the cases probably were misidentified rests on two main points: (1) Not all of the cases of RS were confirmed by liver biopsy and (2) there were low death rates among the study participants. It is claimed that the lack of biopsy confirmation is significant in light of an unpublished study conducted by Sokol, Heubi, and others in Cincinnati, OH. An abstract of their study indicates that 26 percent of subjects diagnosed as having stage IRS using CDC/NIH consensus conference diagnostic criteria were biopsy negative for RS (Ref. 83). It is also stated that in the second year of the Ohio study only 4 percent of the cases died, whereas the national death rate from RS is approximately 22 percent to 40 percent.

It is true that not all of the RS cases were biopsy confirmed. The investigators in all four State studies used criteria developed by CDC (Ref. 1) and NIH (Ref. 46) to diagnose RS accurately. A liver biopsy is a procedure not to be undertaken lightly, especially in an uncooperative, critically ill child with defective coagulation (Ref. 46). Approximately 26 percent of the cases were biopsied in the 2 years of the Ohio study. None of the children included in the Ohio study who were biopsied were biopsy negative.

None of the patients in the Sokol-Heubi study were included in the four State studies (Ref. 84). All of the patients in the Sokol-Heubi study with stages II through V RS (four patients) were biopsy positive. Among the stage I RS patients, 14 of 19 were biopsy positive. Of these 14 biopsy-confirmed RS case, 100 percent had salicylate exposure; only 1 of the biopsy negative cases had salicylate exposure. Thus, although the Sokol-Heubi study suggests that there are difficulties in diagnosing stage I RS, the study also suggests that there is an association between salicylate exposure and biopsy-confirmed RS cases.

Mortality rates for RS cases have decreased since the 80 percent rate reported in Reye's original study (Ref. 4). In 1974 the death rate from RS in the United States was 41 percent (Ref. 77); in 1981 the national RS death rate was 28 percent (Ref. 1). It is likely that early recognition of RS and greater use of intensive medical support have resulted in the lowered mortality rate (Ref. 2). The RS death rate in Ohio in the last 10 years has been consistently lower than the national average—in Ohio the death rate was 23 percent in 1973, 13 percent in 1976, and 3 percent in 1977 (Ref. 56). A possible reason for the low Ohio death rates is that the children were identified as RS cases at a less severe stage and received prompt, aggressive supportive therapy. Although it is not entirely clear why the Ohio RS death rate has been consistently lower than the national average, the 4 percent death rate in the second year of the Ohio study is consistent with the usual low rate in Ohio.

Furthermore, as the American Academy of Pediatrics' Committee on Infectious Diseases has pointed out, if any misclassified cases could be eliminated from the analysis, it would be expected that an association between aspirin and RS would be strengthened rather than weakened (Ref. 47). This results from the fact that non-RS individuals, misclassified as RS

cases, would probably exhibit salicylate patterns more like their controls and hence would dilute an association. Thus, elimination of these cases would further enhance the differences in salicylate use between cases and controls, therefore strengthening an association.

13. It has been argued that an association between salicylates and RS cannot be reconciled with the fact that the liver pathology of RS is different from the liver pathology of salicylism and that the serum patterns of amino acids, free fatty acids, ketones, and urates in RS are different from the serum patterns of the same substances in salicylism.

The liver pathologies and the serum patterns of RS and salicylism do differ. It is generally agreed, however, that RS is neither the same as salicylism nor the results of salicylism. Therefore, it would not be expected that RS and salicylism would have the same liver pathologies and serum patterns. The fact that the liver pathologies and serum patterns of RS and salicylism differ would not negate the existence of an association between salicylism use and RS; it would also be irrelevant to the question of whether salicylism use might be a causal factor in the development of RS.

14. It has been argued that the association between salicylates and RS cannot be reconciled with the fact that the concentration of salicylates needed to produce one proposed mechanism for salicylates' role in RS occurs at levels that have probably not been reached in most cases. That is, it is claimed that the concentration of salicylates needed to produce a 50-percent inhibition of rate-limiting enzymes for mitochondrial oxidative phosphorylatin has not been shown to have been reached in most RS cases.

The mechanisms acting in the origin and development of RS are not fully understood. The possible mechanisms by which salicylates might contribute to causing RS are also not fully understood. One possible mechanism postulated for a causal role of salicylates in RS is that the salicylates inhibit certain mitochondrial functions. Whether this particular postulate can be supported theoretically or by future clinical data is not crucial in determining whether salicylate use plays a causal role in the development of RS.

15. It has been argued that the association between salicylates and RS cannot be reconciled with the fact that the incidence of RS in children with rheumatic disease (such as juvenile rheumatoid arthritis), who regularly receive high dosages of salicylates, is not higher that the incidence of RS in the general population.

The incidence of RS in children with rheumatic disease who are on high-dose salicylate therapy cannot be determined on the basis of the available data. Cases of RS among these children have been reported (Refs. 10 and 37 (at page 129)). More information on the incidence of RS in this group of children may be useful in understanding the relationship between salicylates and RS. It should be noted again that even if salicylate use is shown to be one causal factor in the development of RS, it is not the sole causal factor. The existence of an antecedent illness, such as the flu or chickenpox, has already been strongly implicated in the development of RS. Perhaps genetic predisposition is also a factor in what may be shown to be a chain of causal factors. Because children with rheumatoid arthritis already have a pathologic disorder, that disorder may be in some way associated with a greater or lesser likelihood of developing RS.

16. It has been argued that there is a medical risk in suggesting that salicylates not be used to treat high fever in children because of the possible harm, including convulsions and damage to the central nervous system, that prolonged high fever can cause. Suggestions have been made that consumers should not be subject to such a risk and that rather than warning consumers against salicylate use, the agency should advise consumers that they should exercise prudence in the use of all medications in children. It has been argued that cautioning against salicylate use will lead to more use of acetaminophen products, which pose risks of liver toxicity. It has also been suggested that a label warning on salicylates concerning RS might lead parents to believe that by not giving their children salicylate products they have removed all risk of RS.

A label warning statement being considered by the agency for certain salicylate-containing drug products would advise consumers against the use of salicylates in persons under 16 years of age with flu or chickenpox unless directed by a doctor. Fever is often associated with these diseases; prolonged high fever can lead to convulsions and, in very rare cases, permanent damage. There are, however, alternative antipyretic drugs that do not contain salicylates. Although there is a risk of liver toxicity associated with acetaminophen use, this risk stems from drug overdose and can be avoided in children largely through use of child-resistant containers. Salicylates also can be dangerous to children if taken in overdose.

More importantly, most levels of fever probably do not require any drug therapy and are not harmful. The American Academy of Pediatrics' Committee on Infectious Diseases has suggested that when a physician believes that control of fever is necessary, such alternative means of fever control as increased fluid intake and sponging with tepid water should be considered (Ref. 47). The labeling statement under consideration would not warn against salicylate use in children in all circumstances. The possible benefits of salicylates might outweigh the risk of Reye syndrome in certain patients, such as those with juvenile rhevmatoid arthritis for whom the risk of Reye syndrome may be less important than the benefits gained in treating this chronic debilitating disease.

Prudent use of all medications, including antipyretics in children, is, of course, advisable. However, such general advice may not be sufficient to protect against specifically recognized risks. The agency's educational campaign, discussed in detail below, informs parents about the symptoms of RS and stresses the importance of early emergency medical treatment. Because of the educational campaign parents should have increased awareness of the syndrome and be more likely to recognize it when it occurs. Warning parents through labeling statements about the possible risks of RS from treating certain childhood illnesses with salicylates would not necessarily imply that abstaining from salicylate use prevents RS.

17. It has been argued that, despite the uncertainties in the data, the public should be warned of the association between salicylate use and the development of RS. It is also claimed that, although the public should be advised generally to use caution in administering antipyretics to children, the available data do not justify a labeling warning requirement specifically for salicylate-containing products. In the June 1982 issue of *Pediatrics*, the American Academy of Pediatrics published a recommendation of its Committee on Infectious Diseases that "[i]nasmuch as salicylates are over-the-counter preparations, education of parents to their avoidance in influenza and varicella [chicken pox] requires a total community effort. We urge that the appropriate governmental agencies undertake appropriate review and necessary action to inform the public at large" (Ref. 47). On November 8, 1982, the Executive Board of the American

Academy of Pediatrics stated its belief that labeling aspirin-containing preparations as contraindicated in treatment of influenza or chicken pox "should be delayed until more conclusive evidence of the association of aspirin administration and Reye's Syndrome is shown by further investigation" (Ref. 85). Subsequently, on November 19, 1982, the American Academy of Pediatrics stated that it "continues to be concerned about the possible association of aspirin and Reye's Syndrome and has alerted physicians to use caution in recommending aspirin for treatment of influenza and chicken pox symptoms" (Ref. 86). The American Academy of Pediatrics added that it believed "the current labeling [on aspirin] which includes 'flu' among those conditions which may be treated with aspirin is inappropriate" and recommended deletion of the flu indication from the labeling of children's aspirin-containing products (Ref. 86). These and other comments raise questions about the quality of data which should exist to support regulatory actions. The comments also raise questions about the differences between two types of agency actions—advice to the public and label warning requirements. These questions are discussed in the following section.

F. *Regulatory evaluation.* The agency has statutory authority to undertake various kinds of activities to protect the public health, including initiating public educational campaigns and requiring labeling warnings on drug products. FDA has evaluated the recent reports on the relationship between salicylate use and RS and has considered the potential risks to the public health suggested by those reports in considering which related activities to initiate.

Section 310(b) of the Public Health Service Act, 42 U.S.C. 242o(b), directs the Secretary of HHS to issue "information related to public health, in the form of publications or otherwise, for the use of the public" and to publish "other pertinent health information for the use of persons and institutions concerned with health services." Section 311(a) of the Public Health Service Act, 42 U.S.C. 243(a), directs the Secretary to "advise the several States on matters relating to the preservation and improvement of the public health." Functions of the Secretary under these sections that relate to the responsibilities of FDA have been delegated to the Commissioner of Food and Drugs. See 21 CFR 5.10 (a)(2), (19).

Section 705(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 375(b), authorizes the Secretary to disseminate information regarding drugs "in situations involving, in the opinion of the Secretary, imminent danger to health or gross deception of the consumer." The magnitude of the potential danger need not be estimated, however, because section 705(b) is not a limitation upon the authority of the Secretary. It has been held that "even in the absence of this statute there would be nothing to prevent the [Federal officials] from disseminating information to the public. The [Federal officals] are performing a public duty when they are urging the use of certain treatments or warning the public against the use of certain treatments." *Hoxsey Cancer Clinic* v. *Folsom*, 155 F. Supp. 376, 378 (D.D.C. 1957). See *United States* v. *An Article of Device . . . Dispulse Mfg. Corp.*, 262 F. Supp. 728 (D. Conn. 1967). The functions of the Secretary under the Federal Food, Drug, and Cosmetic Act have also been delegate to the Commissioner of Food and Drugs. See 21 CFR 5.10(a)(1).

As discussed above, several groups and numerous individuals have suggested that, until the relationship between salicylate use and RS is clarified, physicians and the public should be advised of the possible risks of using salicylates to treat certain viral illnesses in children. Case-control studies are inherently limited by possible distortions resulting from interviewer bias, recall bias, or imperfect matching of cases and controls. However, the data which first indicate potential health risks are often flawed or equivocal. In some cases, it may be years before data are available to establish definitively that a serious health risk accompanies the use of a particular product.

With rare diseases, such as RS, the agency has no option except to rely on case-control studies, because prospective studes of a population at risk for a disease that may occur, as here, at an annual rate of less than 5 cases per 100,0900 population under 16 years of age would require an enormous number of subjects. The four State studes are consistent in their results. Collectively, the result of the studies on their face would appear to establish an association between salicylate ingestion and RS—nearly every child who developed RS had take salicylates (137 of 141); while far fewer of the control group (151 of 247) had taken salicylates. Moreover, the Ohio and Michigan studies appear to establsh a reverse association with the administration of acetaminophen (a nonsalicylate antipyretic and analgesic), in that control subjects were much more likely to have received this drug than were the cases.

A statistical association as reported by the four State studies might reflect a causative role for salicylates in the development of RS, or it might be associated with other factors. Although RS is a rare disease, the mortality rate is high. Until the relationship between salicylates and RS has been clarified, FDA believes that the interests of the public health require that physicians and the public be advised of the possible risks of administering salicylate-containing medication to children with flu or chickenpox. This position is consistent with the views expressed in a recent editorial in the August 13, 1982 edition of the *Journal of the American Medical Association* (Ref. 76).

On June 4, 1982, the Secretary of Health and Human Services announced that "medical experts have concluded that the use of salicylates such as aspirin in children with influenza and chickenpox and certain other viral infections has been sufficiently associated with Reye Syndrome to warrant warning physicians and parents" (Ref. 48). The Secretary announced that he had directed FDA to undertake an educational campaign aimed at medical care personnel, pharmacists, and parents. In addition, the Secretary directed the Surgeon General of the U.S. Public Health Service to issue an advisory. On September 20, 1982, the Secretary announced the details of the educational campaign that had been undertaken. These initiatives are explained in detail below.

As discussed in detail above, the four State studies reporting an association between salicylate use and RS have been extensively criticized. In addition to comments pointing out the inherent limitations of case-control studies, specific questions about the design, execution, and analyses of these particular studies have been raised. Certain individuals, as well as the Executive Board of the American Academy of Pediatrics, have maintained that a labeling warning statement concerning salicylate use and RS would be premature at this time. On November 18, 1982, the Department of Health and Human Services announced that the American Academy of Pediatrics Executive Board's statement of November 8, 1982 (Ref. 85) is the first time that concerns have been raised by an independent scientific body and that it is critical that they be resolved. The announcement advised that the Secretary has decided that new

government-supported studies are necessary to help resolve the scientific dispute over the reported association between RS and salicylate-containing drugs. The announcement also advised that the Secretary has directed the Public Health Service to make recommendations to him for new research to help resolve the scientific dispute. (A protocol for a new study had been submitted earlier by industry representatives (Ref. 87)). The announcement pointed out, however, that a significant body of qualified opinion believes that the available scientific evidence sufficiently establishes an association that the public should be informed. Accordingly, the announcement advised that the Secretary has decided to continue the previously initiated public educational campaign to warn parents and professionals of the need for caution. The continuation of the public educational campaign is consistent with the statement of the American Academy of Pediatrics that was issued on November 19, 1982 (Ref. 86).

Recognizing the controversy over whether the results of the four State studies justify requiring label warnings at this time, the Secretary on November 18, 1982, also announced that this advance notice would set forth the available information and invite comments on whether label warnings should be required. Evidence of a potential public health risk may be sufficient to make public education appropriate but may not necesarily justify requiring revised product labeling.

Any proposed rule concerning an RS-salicylate labeling warning would be promulgated under the authority of sections 201(n), 502 (a) and (f), and 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(n), 352 (a) and (f), and 371(a)). If warranted by new scientific information or by the response to this advance notice, the possible labeling warnings announced in this notice may be required through an interim final rule (i.e., one with immediate effect). The possible label warnings and other labeling revisions under consideration are discussed in detail below.

II. Educational Activities

A. *Departmental initiatives*—1. *Surgeon General's advisory.* The Surgeon General of the U.S. Public Health Service issued a Surgeon General's advisory in the *Morbidity and Mortality Weekly Report* of June 11, 1982 (Ref. 49). That advisory recommended against the use of salicylates and salicylate-containing medications for children with influenza and chickenpox. The association of salicylates with RS, the Surgeon General states, "is based upon evidence from epidemiologic studies that are sufficiently strong to justify this warning to parents and health care personnel."

2. *FDA Drug Bulletin.* FDA issued an article in the August 1982 *FDA Drug Bulletin* which was distributed to over one million health care professionals, including physicians, pharmacists, and nurses (Ref. 88). The article reviews the data generally and advises caution in the use of salicylates in those viral illnesses particularly associated with the development of RS.

3. *FDA Consumer.* FDA also included an article on RS in the October issue of its publication, *FDA Consumer* (Ref. 89). This article reviewed the information on RS in terms understandable to the lay public and pointed out that aspirin and other salicylates may be associated with RS. Reprints of the article were sent to all consumer affairs offices of FDA for distribution to the public.

4. *Surgeon General's newspaper column.* The Surgeon General issued a newspaper column that discussed the suspected relationship between aspirin and RS and advised against giving aspirin to children with chicken pox, influenza, or a flu-like illness (Ref. 90). Approximately 8,000 copies of the newspaper column were distributed in early October.

5. *Radio public service announcements.* The Surgeon General also made recordings explaining that there may be an association between Reyes syndrome and aspirin and cautioning parents not to give aspirin when their children have flu or chickenpox (Ref. 91). Approximately 8,000 copies of these radio announcements were sent to radio stations on October 8, 1982.

6. *Question-and-answer brochures.* An RS information brochure in question-and-answer format has been made available on request to pharmacies and primary care physicians (Ref. 92). Approximately 673,000 copies of the brochure have been supplied for distribution.

7. *Dear Consumer letter.* A "Dear Consumer" letter offering copies of the question-and-answer brochure was mailed October 8, 1982, to approximately 13,000 consumers (Ref. 93).

8. FDA continues to work with health professional groups, including physicians (particularly pediatricians), and all other related organizations to transmit relevant information.

9. FDA continues to work with consumer and other organizations to transmit relevant information.

B. *Other informational activities.* A number of other publications disseminated information concerning the relationship between salicylates and RS. For example, the *Journal of the American Medical Association* of June 11, 1982, included a report of the Michigan study in a paper entitled, "Aspirin as a Risk Factor in Reye's Syndrome" (Ref. 35). The June 1982 issue of *Pediatrics* included a special report on "Aspirin and Reyes Syndrome" which included the recommendation of its Committee on Infectious Diseases of the American Academy of Pediatrics that "aspirin should not be prescribed under usual circumstances for children with varicella [chickenpox] or those suspected of having influenza on the basis of clinical or epidemiologic evidence" (Ref. 47). The recommendation also urged that appropriate governmental agencies undertake appropriate review and necessary action to inform the public at large.

In addition to Federal governmental efforts, a number of State health agencies have taken action to publicize the association between salicylates and RS. For example, the report of the Michigan studies notes that the possible association between aspirin and RS had received extensive publicity in Michigan.

III. Possible Labeling Requirements Under Consideration

Having reviewed the four State studies in light of the questions concerning the studies recognized by its own staff as well as the questions raised by industry representatives, consumer representatives, and health professionals, FDA is considering proposing a rule that would require the labeling of certain OTC and prescription salicylate-containing products to bear a warning against use in persons under 16 with flu or chickenpox. In order to assist the agency in determining whether to propose an RS-salicylate warning, FDA is in this advance notice requesting comments on the available data—e.g., on the design, execution, and analysis of the relevant studies and on the quality and strength of any demonstrated RS-salicylate association. FDA has suggested above some possible responses to questions concerning the studies that have already been raised; comments on these tentative responses are also invited.

On September 20, 1982, the Secretary announced the texts of warning

statements that the agency is considering proposing to be required on the labeling of salicylate-containing products. For over-the-counter (OTC) drugs, a proposed warning might read: "Warning: This product contains a salicylate. Do not use in persons under 16 years of age with flu or chicken pox unless directed by your doctor. The use of salicylates to treat these conditions has been reported to be associated with a rare but serious childhood disease called Reyes syndrome." The agency believes that the term "flu" is commonly understood to include influenza and a variety of other viral illnesses. Thus, flu and chicken pox would cover the viral illnesses that have been associated with RS. For prescription drugs, a proposed warning might read: "Drugs of this class, salicylates, have been reported to be associated with the development of Reyes syndrome in children under 16 years of age with chicken pox, influenza, and influenza-like infections." In addition to comments concerning the data on the relationship between salicylates and RS, the agency invites comments on the specific working of any RS warnings that might be proposed for salicylate-containing products.

The agency also invites comments on the appropriate scope of any proposed RS warnings for salicylate-containing products. FDA is considering proposing that RS warning statements appear in the labeling of all systemically absorbed salicylate-containing prescription drugs for human use that are administered orally, rectally, or parenterally and of all systemically absorbed salicylate-containing OTC drugs for human use that are administered orally or rectally. The salicylate in the product may be present either as a single ingredient or in combination with one or more other ingredients. Thus, a proposed rule would apply not only to products that contain aspirin, but also to drug products that contain other salicylates, such as aminosalicylic acid, sodium salicylate, sodium aminosalicylate, magnesium salicylate, choline salicylate, bismuth subsalicylate, aluminum aspirin, and calcium carbaspirin. Salicylate-containing drug products that would not be included would be those that are administered topically, and those that are used as mouthwashes.

Salicylate-containing drug products are probably the most widely used OTC drug products on the market. Salicylates are commonly used in analgesic drug products for the temporary relief of occasional minor aches, pains and headache and in antipyretic products for the reduction of fever. Salicylates are also often combined with OTC cold, cough, and allergy drug products for their analgesic and antipyretic effect. Although these classes of products constitute the largest use of salicylates, salicylates are also used in other categories of drug products, such as antidiarrheals.

Salicylates are usually used in prescription drug products in combination with other active ingredients, although some salicylates, such as aminosalicylic acid, may be used as a single active ingredient. Many prescription drug products containing a salicylate, either because of the other active ingredients with which they are combined or because of the specific indication of a particular salicylate, would not be used in children or adolescents under 16 years of age to treat flu or chickenpox. For example, the indications for products containing aminosalicylic acid or sodium aminosalicylate are for use as an antitubercular product. It is possible, however, that such a product could be administered to an individual under 16 years of age during the flu season, and that this might put that individual at risk. And there are other prescription combination salicylate-containing products that, though not administered for treating flu or chickenpox, could also be administered during the flu season to a child or adolescent. For this reason, the agency is considering proposing a rule that would require that all systemically absorbed salicylate-containing prescription drug products for human use administered orally, rectally, or parenterally carry an appropriate warning in their labeling.

The location of an RS warning statement on OTC drug product labeling is another issue on which the agency invites comment. The agency is considering proposing that all OTC drug products subject to the rule bear the required warning statement on all accompanying labeling, such as the outside container or wrapper label, and on the package insert. If the immediate container label contains warnings, that label would also be required to bear the required warning statement. The warning statement would be required to appear as the first warning under the heading "Warning" on all labels and labeling on which it would be required to appear. The agency is also considering proposing that, for prescription drug products subject to the proposed rule, the warning be required to appear in the "Warnings" section of the prescription drug labeling described in § 201.100(d) (21 CFR 201.100(d)).

The agency also in contemplating proposing to amend § 201.314 to require that the labeling for OTC and prescription salicylate-containing drug products subject to the proposed rule packaged only for use in children (pediatric products) not be permitted to recommend the product for us in flu or chickenpox.

The labeling of OTC salicylate-containing drug products subject to the proposed rule under consideration and packaged only for use in adults or that include directions for use in both children and adults would be permitted to continue to include a recommendation that the product be used for the symptomatic relief of flu or chickenpox. Because an adult product could be used in adolescents under 16 years of age, however, any recommendation for use in flu or chickenpox would be required to be followed immediately by the statement, "See salicylate warning."

Recognizing that not all consumers read the warnings contained in the labeling of OTC drugs that they have purchased frequently, the agency might propose to require a statement to be added to the "Directions" section on the immediate container label of OTC drug products, if such label bears such information, and in the "Directions" section of all accompanying labeling. The "Directions" section of the labeling is the section that includes information on how much of the product to take and how often to take it. This section is probably the most widely read section of OTC labeling. The statement that might be proposed to be required in the "Directions" section is as follows: "For persons under 16 years of age see warning against use of salicylate for flu or chickenpox." The agency invites comments on this approach or on alternative ways to bring this information to the attention of the consumer.

The agency also requests information on how rapidly industry would be able to comply with a labeling warning requirement for salicylate-containing OTC and prescription products. FDA believes that it could be feasible to require revised labeling to appear on salicylate-containing products within 90 days of the date a final rule was published in the **Federal Register**. The agency is considering proposing that any product subject to the rule that does not bear the required labeling statements and that is initially introduced or initially delivered for introdution into interstate commerce 90 days after publication of the final rule would be considered misbranded and, therefore, subject to regulatory action.

FDA is not now contemplating an immediate market withdrawal of all salicylate-containing products upon the effective date of a final rule. A requirement for the labeling of all salicylate-containing drug products already shipped in interstate commerce that would take effect soon after a final regulation was published would be impracticable and extremely difficult to monitor or enforce. Most salicylate-containing products subject to the proposed rule under consideration are OTC products, with aspirin-containing products being the most widely sold and available. Aspirin, as well as many other OTC salicylate-containing products, are available not only in pharmacies, but in various types of other retail outlets, including grocery and convenience stores.

FDA does not now possess sufficient information about the effects that market withdrawal of salicylate-containing products would have on the supply of needed medications to suggest a suitable exemption period. The agency invites comment on an appropriate period of time to allow for exhaustion of supplies of salicylate-containing products initially introduced or initially delivered for introduction into interstate commerce before the effective date of a final rule.

IV. Economic and Environmental Impact

FDA has preliminarily examined the Regulatory Impact and Regulatory Flexibility implications of the proposed regulation under consideration in accordance with Executive Order 12291 and the Regulatory Flexibility Act. The agency estimates that a proposal like that being considered would impose direct one-time costs totaling approximately $15–17 million, of which $12–$13 million corresponds to direct expenses of label modifications to be accomplished within a relatively short compliance period. The other one-time costs would be for possible product reformulations and/or new product marketing expenses. The agency also estimates indirect effects on consumer expenditures as a result of shifts of purchases from aspirin-containing to higher prices acetaminophen-containing products in response to label warnings. This expenditure increment would be estimated initially at $40–$60 million per year but would be expected to decline as product proliferation increases price competition in markets for acetaminophen products. These impacts taken together are below the thresholds for a major rule as defined in Executive Order 12291.

The impacts on small business are also believed to be insufficient to warrant a Regulatory Flexibility Analysis. Most of the direct relabeling costs would be expected to be incurred by the larger firms that dominate total sales of affected products. Impacts on small firms of sales shifts from aspirin-containing to acetaminophen-containing would not be expected to be significant because data in the Census of Manufacturers strongly suggest that only a few small firms sell solely or largely aspirin-containing products. The agency requests that interested persons submit any information that would aid FDA in assessing the economic impact of a proposed rule on salicylate-containing product labeling.

The agency also believes that the action under consideration is of a type that would not individually or cumulatively have a significant impact on the human environment. FDA invites comments on any potential environmental consequences of the action discussed in this advance notice of proposed rulemaking.

List of Subjects in 21 CFR Part 201

Drugs, Labeling.

V. References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

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99. Letter from Stanley Temko to Juan del Real dated June 28, 1982 enclosing one newspaper article and four journal articles that are of interest in connection with review of Reye Syndrome.

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107. Memorandum from Division of Biometrics to Stanley Edlavitch dated November 22, 1982, concerning "Analysis of the Reye Syndrome Data Used in the Phase I Report by Biometrics Research Institute, Inc."

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109. Memorandum from Stanley Edlavitch to Paul Fehnel dated November 23, 1982 concerning "Materials for Advance Notice of Proposed Rulemaking".

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111. Case report forms from 2-year Ohio Study.

112. Computer printouts of FDA working group's multiple conditional logistic analyses of data from second year of 2-year Ohio Study.

Interested persons may, on or before February 28, 1983 submit to the Dockets Management Branch (address above) written comments regarding this advance notice of proposed rulemaking. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Richard S. Schweiker,

Secretary of Health and Human Services.

Dated: December 20, 1982.

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federal register

Tuesday
December 28, 1982

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Regulations for Commercial Recovery; Advanced Notice of Proposed Rulemaking

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 971

[Docket No. 21123-235]

Deep Seabed Mining; Regulations for Commercial Recovery; Advance Notice of Proposed Rulemaking

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Public Law No. 96-283, the Deep Seabed Hard Mineral Resources Act (The Act), authorizes the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to issue to eligible United States citizen applicants licenses for exploration for and permits for the commercial recovery of deep seabed hard mineral resources. The Act also requires that NOAA issue regulations with respect to deep seabed mining licenses and permits.

This advance notice of proposed rulemaking pertaining to deep seabed mining activities is issued to provide interested persons with an early opportunity to contribute to the development of regulations for commercial recovery. Interested persons are invited to submit such written data and views as they may desire.

DATE: Comments should be received by March 28, 1983.

ADDRESS: Submit communications, which should identify this notice, to: James P. Lawless, Chief, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resources Management, National Ocean Service, National Oceanic and Atmospheric Administration, 2001 Wisconsin Ave., N.W., Room 410, Page I Building, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Laurence J. Aurbach, Chief, Deep Seabed Licenses, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resources Management, National Ocean Service, National Oceanic and Atmospheric Administration, Suite 105, Page 1 Building, 2001 Wisconsin Avenue, N.W., Washington, D.C. (202) 653-8257.

SUPPLEMENTARY INFORMATION: During 1980 and 1981 NOAA engaged in a rulemaking process to implement the Act and thus put in place the U.S. legal regime to facilitate continued efforts by U.S. citizens to develop deep seabed hard mineral resources (i.e., manganese nodules). The implementing regulations, most of which were issued in final form on September 15, 1981 (46 FR 45890), apply to exploration activities only. Pursuant to the Act and those regulations, NOAA is authorized to issue licenses for exploration for deep seabed hard minerals. In early 1982 NOAA received exploration license applications from four consortia which had been pursuing seabed mining activities prior to enactment of the Act. NOAA anticipates the completion of processing of these applications in 1983. Meanwhile, as pre-enactment explorers, these consortia are authorized to continue with exploration activities.

In order for U.S. pioneer consortia to proceed with their efforts toward commercial recovery, which under the Act is not authorized to begin before January 1, 1988, NOAA realizes that they soon will be faced with the decision as to whether to commit significant new levels of resources to further technology development. In addition, other U.S. citizens may be considering the possibility of entering the field of deep seabed mining. In order to make these major financial decisions, these persons will need to be able to assess the framework of the legal regime for commercial recovery under which U.S. citizens would operate.

NOAA also recognizes that deep seabed hard minerals may be critical to meeting the long-range national interests of the United States. Thus it is appropriate to assure that U.S. citizens can continue with their orderly planning for the development of these resources.

In view of the above considerations, NOAA is hereby initiating efforts to establish the regulatory framework under the Act pursuant to which U.S. citizens will be able to engage in the commercial recovery of deep seabed hard mineral resources.

NOAA's final rules for exploration were supported by a programmatic environmental impact statement (PEIS) covering the impacts of exploration plus foreseeable commercial recovery activities, a combined Regulatory Impact Analysis and Regulatory Flexibility Analysis, and a discussion paper dated November 1980. These documents cover, in addition to exploration issues, many of the issues relating to the commercial recovery regulations. In this regard, NOAA also intends to categorize these upcoming regulations as "major" under Executive Order 12291. Thus, it will retain the approach and language of the above documents to the extent they are appropriate for commercial recovery an no need for modification is evident, and supplement them as necessary to address commercial recovery issues. Accordingly, this advance notice covers major issues that NOAA believes are unique to commercial recovery, or where there may be significant differences between exploration and commercial recovery, and does not address issues satisfactory resolved in the exploration regulations.

NOAA solicits comments on the issues identified in this notice and on any other issue involved in developing commerical recovery regulations. After evaluating comments on this advance notice and conducting other preliminary discussions, NOAA will issue a notice of proposed rulemaking. All comments submitted in response to this advance notice will be available for examination during normal business hours in Room 105 of 2001 Wisconsin Ave., N.W., Washington, D.C. Any person interested in receiving regulatory documents as they are developed in the future should so inform NOAA at the above address and should furnish his or her name, address, affiliation, and phone number.

The following discussion identifies general issue areas and sets forth questions in each. Currently foreseeable issues include the following:

Rights of Licensees and Non-licensees to a Permit. Under 15 CFR 970.102(c), a licensee who is otherwise eligible under the requirements of the Act and implementing regulations is entitled to a permit for commercial recovery from an area covered by its license. The Act suggests that Congress expected that a permit applicant will be a licensee. However, there are conceivable situations where this may not be the case.

- Should any special requirements for commercial recovery or conditions be attached to the entitlement referenced above?
- May an applicant who has not secured a licenese apply or a permit without establishing a priority of right through a license? Or may a permit application carry with it a priority of right to an unlicensed site? If not, should an applicant be permitted to file for both a license and a permit at the same time? In order to confirm a priority of right, is there any authority or need for NOAA to make substantial or full compliance determinations for permit applications?

Financial Responsibility. In order to certify a permit application pursuant to Section 103(c)(1) of the Act, the Administrator must find that the "applicant will be financially responsible to meet all obligations which may be required * * * to engage in the * * * commercial recovery proposed in the application." An

applicant must establish that he will be financially responsible to meet all obligations which may be required to carry out his plan for commercial recovery. This can be demonstrated in various ways, but ultimately NOAA must be able to relate the applicant's resources to his proposed expenditures.

- What evidence should NOAA require concerning resources provided by the applicant, its member companies, lenders, or equity investors?
- Must these resources by legally committed, at the time of application, or can a plan demonstrate the source of financing and the applicant's reason to expect that these resources will be committed, including what legal entity will be responsible for meeting this expectation?
- Should documentation such as cash flow analyses be required, to show that the operations once started will continue to be funded?

Technological Capability. In order to certify a permit application as called for by Section 103(c)(2) of the Act, the Administrator must find that the "applicant will have the technological capability to engage in * * * commercial recovery."

- Must an applicant demonstrate in its permit application that it has proven technological capability, through complete systems tests of recovery equipment at sea, transportation, processing and waste disposal technology, prior to submitting its permit application? Or would an application be acceptable if it presents analogous experience or sub-system demonstration of equipment, or other theoretical demonstration of ability ot build and operate the system, with a plan to test after receiving the permit?
- NOAA will need documentation that the applicant will have personnel and support contractors, properly qualified and trained, to recover nodules, transport them to shore, process them, and dispose of wastes. What level of detail will be necessary? For example, is it necessary to list specific people, or is a description of necessary qualifications, training programs, and appropriate credentials sufficient?
- Assuming that recovery technology evolves during the permit term, should the applicant be required to apprise NOAA of each incremental improvement?
- Section 109(b) of the Act states that NOAA is to require use of best available technologies (BAT) to protect safety, health, and the environment where commercial recovery activities have a significant effect on these areas, unless incremental benefits are clearly insufficient to justify the incremental costs. Since no such significant effects have as yet been identified, what criteria for or evidence of significance may be appropriate? What criteria should NOAA use to balance these costs and benefits? If such effects were significant, how should NOAA determine what are the best available technologies? Under what circumstances is it appropriate to require BAT regarding activities under previously issued permits?

Resources Assessment. Section 103 of the Act requires that an applicant's commercial recovery plan include a resource assessment and that the area applied for be a logical mining unit. Thus documentation of resources must be provided.

With respect to resource assessment, what level of detail and what factors are appropriate for the resource assessment which must accompany the recovery plan under section 103(a)(2)(C) of the Act?

To what extent and with what documentation should the applicant be required to justify, based upon license phase (and earlier) findings, a certain size logical mining unit?

Conservation of Resources. The Act in Section 110 stresses "prevention of waste" and "regard for * * * the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources" as two goals to be considered in developing terms, conditions and restrictions (TCR). It further notes "national need" for hard mineral resources and several other factors to be taken into account in establishing TCR. Within this framework, NOAA intends to encourage the wise use of the deep seabed manganese nodule resource so as to insure that its role as a resource for the future is not precluded by first generation mining.

As one option, NOAA could require the applicant to justify the logic of its proposed mining plan with regard to the timing of mining rich zones (see PEIS, page 137).

Should NOAA specify mining patterns in order to enhance the opportunity for second generation mining (PEIS, page 136)?

Should the applicant's proposed nodule recovery efficiency (presumably estimated during license phase mining system tests) have to fall above some threshold value, below which mining might be judget excessively inefficient?

Although the Act's concern for conservation (Section 110) makes it clear that a NOAA TCR should not affect, except incidentally, the decision of which minerals or metals are to be recovered, it may be appropriate to require that waste disposal be conducted in such a manner that manganese is not rendered "unavailable" for the future (PEIS, pages 137–139). In this regard, should NOAA require or otherwise provide for the retention of manganese-rich tailings from an operation whch does not plan to recover manganese during processing, rather than allowing it to be disposed of, perhaps permanently through ocean disposal? What approaches may be appropriate to provide for the long term availability for use in the U.S. of manganese, which may not be needed in the current market?

What criteria are appropriate to consider, if necessary, to prevent unwarranted generation of waste, as well as preparation of contingency plans to recover these wastes?

Environmental Effects and Safeguards. In order to prevent significant harm to the marine environment, Section 109(b) of the Act requires NOAA to issue appropriate TCR, including in certain cases use of BAT (see above). The PEIS discusses exploration activities as well as commercial recovery using anticipated "first generation" systems and procedures.

Until more is learned during research about benthic repopulation, it might be advisable to provide for avoiding a linear alignment of commercial mining sites, possibly by providing for limited areas to be left unmined to act as "bridges" to facilitate repopulation of mined areas (PEIS, pages 132–134). If this approach were taken, what factors would be appropriate to determine when such a linear alignment should not be permitted?

Although under the Act, Section 109(f), "stable reference areas" are not to be established unilaterally by the U.S., NOAA is proceeding with an examination of criteria for potential site selection for such areas, as part of its broader consideration of benthic impacts (PEIS, pages 134–135). If such areas were to be established in the future, what relationship should there be between these areas and mineable areas? What procedure shuld be used if stable reference areas were to be established?

With respect to the Act's requirement that a permittee monitor its activities, should NOAA state performance or prescriptive measures with respect to monitoring? Are other approaches more appropriate?

To what extent should the permittees be responsbile for monitoring long-term, farfield, cumulative effects of all nodule

mining activities in the North Equatorial Pacific?

• NOAA is mindful of the potential risk that a permittee might be required under the Act to cease operation upon discovery of a significant adverse environmental impact (see, for example, Sections 103(a)(2)(D)(ii), 106(a) and 106(c) of the Act). To help assure that potentially significant adverse environmental impacts listed in the PEIS may be mitigated, if they occur, by the imposition of corrective measures, should applicants be required to submit contingency plans describing how they would modify activities if it became necessary to mitigate such impacts? Alternatively, should NOAA not require such contingency plans in applications, but instead let the permittee assume the risk of a NOAA order to cease operations or to implement government-prescribed corrective measures? Examples of mitigation could include reducing the effects of the surface discharge (e.g., through discharge at some depth below the surface) or of the benthic plume (PEIS, pages 99–111).

• What documentation, if any, should be provided with permit applications which could be used in obtaining from the Environmental Protection Agency a National Pollutant Discharge Elimination System (NPDES) permit, as required by Section 109(e) of the Act?

• Following receipt of an application for a permit, NOAA intends to supplement the site-specific EIS prepared during the license process, which may already have been supplemented to address testing of mining systems. Should NOAA prescribe that, by the time of permit application or a year prior to testing under a permit for recovery, detailed environmental data for the minesite shall have been submitted?

NOAA Actions Relating to Onshore Activities. Onshore, environmental impacts occur from the port, transportation, processing, and waste disposal facilities. Authority to control those facilities is vested in Federal, state, and local agencies. NOAA intends to act as lead agency for preparation of an environmental impact statement relating to a commercial recovery permit, and thus to facilitate the onshore process with appropriate Federal, state and local agencies which would be responsible for issuing other permits.

• In this role, what information will NOAA need and should the applicant provide on issues such as alternative locations, compliance with Federal, state, and local laws, regulations, and permitting processes, and waste disposal requirements (see Technical Guidance Document, Section 3.5)?

• NOAA could complete its actions on a permit application significantly before other agencies could complete their actions on related permits. The Act gives guidance on the timing of NOAA actions on a permit application, but generally allows the Administrator to extend the time periods if the Administrator finds there is good reason to do so. Because factors the Administrator considered in his decision-making could change significantly based on the actions of other agencies, should he withhold final action on a permit application until other agencies complete their actions? Should the regulation address what NOAA should do if it processed the permit application to expedite issuance, and then a post-issuance action by another agency caused a major change in the assumptions upon which the NOAA permit was issued?

Processing Outside the U.S. Under Section 102(c)(5) of the Act, if processing outside the U.S. is necessary to make the project economically viable, NOAA can authorize processing outside the U.S., but only with assurances that the processed minerals will be returned to the U.S. for domestic use if the Administrator determines that the national interest so requires. What form of assurance (written statement, TCR, surety bond) would be appropriate? What criteria should NOAA use to determine the economic viability of the activity? What factors are relevant in considering "national interest"? What information should the applicant provide? Should environmental regulations or impacts at the foreign site be considered? Is economic viability for processing plants different from the normal business risks of any other heavy industrial facility located in the U.S.?

Other Issues. NOAA invites public comment on any other issue which should be considered in developing these regulations.

If there is sufficient public interest in or considerations raised with respect to any of these issues, NOAA will hold one or more workshops or discussion sessions to solicit further comment from interested persons in advance of issuing a Notice of Proposed Rulemaking. If appropriate, NOAA may issue a discussion paper for further comment. Those who are concerned about specific issues should identify the areas of their interest in their correspondence to NOAA so they can be placed on appropriate mailing lists.

This advance notice of proposed rulemaking is issued under the authority of section 308 of Pub. L. 96–283.

List of Subjects in 15 CFR Part 971

Administrative practice and procedures, Environmental protection, Marine resources, Marine safety, Reporting and recordkeeping requirements, Seabed mining.

Dated: December 22, 1982.

John V. Byrne,

Administrator.

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INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-5237
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235
United States Government Manual	523-5230

SERVICES

Agency services	523-5237
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

54053-54268.....1
54269-54418.....2
54419-54758.....3
54759-54924.....6
54925-55198.....7
55199-55378.....8
55379-55454.....9
55455-55626.....10
55627-55902.....13
55903-56128.....14
56129-56308.....15
56309-56468.....16
56469-56616.....17
56617-56810.....20
56811-56978.....21
56979-57252.....22
57253-57442.....23
57443-57650.....27
57651-57906.....28

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Memorandums:

November 29, 1982..... 54053
December 23, 1982..... 57653

Executive Orders:

10621 (Amended by EO 12396)..... 55897
11390 (Amended by EO 12396)..... 55897
12239 (Revoked by EO 12396)..... 55897
12335 (Amended by EO 12397)..... 57651
12396..... 55897
12397..... 57651

Proclamations:

4941 (Amended by Proc. 5002)..... 54269
5002..... 54269
5003..... 55899
5004..... 55901
5005..... 56309
5006..... 56617
5007..... 56811

4 CFR

2..... 56979
3..... 56979
4..... 56979
5..... 56979
6..... 56979
7..... 56979
8..... 56979
9..... 56979
11..... 56979
12..... 57655
21..... 56979
22..... 56979
27..... 56980
28..... 56980
30..... 56979
31..... 56979
32..... 56979
33..... 56979
34..... 56979
35..... 56979
36..... 56979
52..... 56979
53..... 56979
75..... 56979
81..... 56979
82..... 56979
91..... 56979
92..... 56979
93..... 56979

Proposed Rules:

28..... 54972

5 CFR

213..... 57655
315..... 57655
351..... 57655
551..... 57655
734..... 57655
738..... 57655
752..... 57655
950..... 57655
1201..... 54419
2429..... 55379, 55903

Proposed Rules:

213..... 54974
352..... 57724
733..... 57724
890..... 54974

7 CFR

2..... 56619
16..... 57253
24..... 57656
52..... 55455
53..... 54925
55..... 54420
56..... 54420
59..... 54420
68..... 54271
70..... 54420
271..... 55903, 56469
272..... 55463, 55903
273..... 55463, 55903, 57666
274..... 57666
275..... 57666
276..... 57666
278..... 56469
279..... 56469
319..... 54273, 55199
400..... 55886, 55888
421..... 56813
431..... 56820
432..... 56827
610..... 56472
725..... 56473
800..... 54055, 54275, 55469
905..... 54926, 55199, 56619, 56982
906..... 56311
907..... 54281, 55379, 56312, 57253
910..... 54421, 55469, 56473, 57443
926..... 55910
982..... 56312
1046..... 56486
1065..... 55200
1098..... 56486
1106..... 57443
1126..... 54421
1132..... 54421
1135..... 57445
1139..... 55201
1421..... 54281
1497..... 54284
1822..... 55627
1901..... 54422
1922..... 55380

1942 54422
1944 ..... 54422, 55627
1948 54422

Proposed Rules:
52 54086
272 57725
273 57725
915 56500
967 54975
983 57222
987 54307
1011 57728
1106 54977
1124 55490
1135 54978
1207 55245
1430 56505
1700 56505

8 CFR
214 ..... 55202, 56488
238 55388

9 CFR
71 ..... 55636, 56982
78 55636
91 56983
92 ..... 54285, 55388, 57254
317 54286
381 54286

Proposed Rules:
92 ..... 57288, 57291
113 ..... 54090, 54307, 55246, 57054
166 57292

10 CFR
2 ..... 56314, 57446
4 57482
9 56314
19 57446
20 57446
21 57446
30 57446
40 57446
50 ..... 55203, 57670
51 57446
55 56984
61 57446
70 57446
73 57446
170 57446
430 57198

Proposed Rules:
50 57054
70 55951
170 56505

12 CFR
9 57255
29 55911
201 ..... 54424, 57482
204 55204–55209
211 54057
217 54759
220 55912
523 ..... 56314, 56985
531 56316
541 56985
543 56985
544 56985
545 ..... 55656, 56985
546 56985
547 56985
549 56985
552 56985
561 56985
563 56985
563b 56985
564 ..... 56318, 56985
565 56985
569a 56985
575 56985
576 56985
577 56985
578 56985
583 56985
584 56985
614 54760
701 ..... 54424, 57483
745 54424
1204 56319–56323

Proposed Rules:
3 56862
6 56862
7 56862
8 56652
207 54980
220 54980
221 54980
224 54980
534 57293
543 56363
612 56140
1204 ..... 56364, 57729

13 CFR
101 ..... 56129, 57484
301 57256

14 CFR
21 ..... 54287, 54288
39 ..... 54289–54291, 54760, 54761, 55657, 55658, 56620–56622, 57257, 57484, 57485
71 ..... 54291, 54762, 54763, 55389, 55659, 56623, 56624, 57259–57262, 57486, 57487
73 ..... 54763, 55390
75 54763
91 ..... 56324, 57262
97 ..... 54292, 55659, 57265
121 ..... 56327, 56460
253 54764
302 56129
387 56130

Proposed Rules:
Ch. I 54829
23 56456
39 ..... 54830, 56653, 57295
61 ..... 54414, 56654
71 ..... 54308, 54309, 54831, 55687, 56654–56656, 57497, 57498
73 56656
75 ..... 54309, 55688, 56365, 56659
120 56366
121 56366
135 56366
241 57733
248 57733
291 57733
297 57733

15 CFR
368 57671
369 57671
370 57671
372 57671
373 57671
387 57671
388 57671
904 ..... 54429, 56131

Proposed Rules:
325 56972
929 56506
971 57904

16 CFR
13 ..... 55210, 55211, 57488
1000 54927
1306 57488
1500 57489

Proposed Rules:
13 ..... 54452, 55398, 57499
1101 57296

17 CFR
1 56996
3 ..... 56996, 57266
4 56996
15 56996
16 56996
18 56996
21 56996
32 56996
33 56996
145 56996
147 56996
155 56996
170 56996
180 56996
200 ..... 54764, 55211, 56843
210 ..... 54764, 56835
229 ..... 54764, 55661
230 54764
239 ..... 54764, 55661
240 ..... 54057, 54764, 55661, 57267, 57679
249 ..... 54764, 55661
260 54764
270 56835

Proposed Rules:
1 57055
240 55491
270 56509

18 CFR
2 57268
3 57270
271 ..... 54928, 57270
274 54063

Proposed Rules:
271 ..... 55246, 57056–57060
385 54981
1300 57297

19 CFR
4 54064
10 55470
18 55470
19 55470
22 55470
24 55470
101 55913
113 55470
125 55470
127 55470
132 55470
142 55470
144 55470

Proposed Rules:
4 54092
148 54092
177 55400

20 CFR
416 55212
609 54686
614 54696

21 CFR
5 ..... 54750, 55470
74 ..... 54429, 56489, 57681
81 ..... 54429, 56489, 57681, 57691
82 ..... 54429, 56489, 57681
145 ..... 55471, 56845, 57692
146 57692
172 55475
175 54430
176 56845
178 57692
193 ..... 55214, 56845
201 54750
330 54750
444 56489
510 56845
520 55472
522 ..... 55472, 56845
524 57692
558 ..... 54929, 56846
866 56846
1308 57693

Proposed Rules:
145 55496
182 ..... 54454, 56513
184 ..... 54454, 54456, 56513, 56871, 57738
186 54454
201 57886
310 55497
314 56871
333 ..... 54981, 57738
347 57738
348 ..... 54982, 57738
356 57738
357 ..... 55076, 55497, 56871
358 54646
886 55497

22 CFR
9 55594
22 56328
51 56329

23 CFR
Proposed Rules:
1209 57298

24 CFR
10 56624
15 55669
50 56266
200 54790
203 54790
204 54790
213 54790
220 54790
221 54790
222 54790
226 54790
227 54790
233 54790
235 ..... 54430, 54790
237 54790
240 54790
300 55669

804 ..... 54293, 54790
805 ..... 54293, 54790, 55136
812 54790
841 ..... 54790, 55136
860 54293
880 54293
881 54293
882 54293
883 54293
884 54293
885 56490
886 54293
888 56133
890 ..... 54431, 57270

Proposed Rules:
16 56660
571 55868
860 55689
866 55689
888 55764

25 CFR

273 57274

26 CFR

1 ..... 54296, 54791, 54803, 55477, 56330, 56490
7 57489
35 ..... 54065, 55215, 57021
601 56330

Proposed Rules:
1 ..... 54093, 55247, 55696, 55697, 56367, 57502, 57503
7 57503
11 54093
31 55248
54 54093
301 57503
601 ..... 54459, 54461

27 CFR

9 ..... 55915, 57694, 57696

Proposed Rules:
9 ..... 55492, 55954-55961, 56369

28 CFR

2 ..... 56334, 56846
540 ..... 55128, 56134

Proposed Rules:
2 54982
540 55131
551 ..... 55131, 56144

29 CFR

102 54432
1903 55478
1904 57699
1910 54433
2510 56847
2610 55670
2619 ..... 56134, 57021
2621 ..... 55672, 57702
2622 55670

Proposed Rules:
1910 57739

30 CFR

901 56492
906 56342
914 56493
931 56800
944 55672
946 55675

Proposed Rules:
55 ..... 55499, 57883
56 ..... 55499, 57883
57 ..... 55499, 57883
75 55499
77 55499
221 ..... 54462, 56871
250 56871
902 57511
903 55249
913 00000
914 57511
916 57299
927 57236
934 55499
936 ..... 54472, 00000
939 57246
942 54474
946 57513

31 CFR

53 ..... 55481, 56351
55 56351
81 56351
90 56351
92 56351
93 56351
120 56351
121 56351
122 56351
127 56351

Proposed Rules:
1 54475
10 56144

32 CFR

166 56847
199 57491
802 57493
1285 54929
1662 56494

Proposed Rules:
701 54104

33 CFR

1 54298
2 54298
110 56354
114 54298
115 54298
117 ..... 54298-54301, 57493
165 ..... 54301, 55391
209 55916

Proposed Rules:
110 ..... 54310, 56661
117 55400
157 56786
165 56370
207 54832

34 CFR

Proposed Rules:
64 56871
201 54718
202 54718
203 54718
204 54718
300 54311
302 54718

35 CFR

103 54071
105 54071
107 54071
109 54071
111 54071
113 54071
119 54071
123 54071

Proposed Rules:
103 54105
113 54105
119 54105
123 54105

36 CFR

7 ..... 54930-54932, 55391, 55917
331 57703

Proposed Rules:
7 57300

38 CFR

3 54435
17 ..... 55482, 57705

Proposed Rules:
3 ..... 56880, 56881

39 CFR

3 56495
4 56495
6 56495
8 56495
3001 55392

Proposed Rules:
3001 ..... 55698, 57514

40 CFR

50 54896
52 ..... 54072, 54312, 54808, 54933-54936, 55393, 55678, 55919, 56497, 56625
60 ..... 54073, 54258, 54259
61 56626
81 ..... 54080, 56625
123 55680
180 ..... 55221-55225, 56135, 56136
204 57709
205 57709
211 57709
300 55488
415 55226
440 54598
465 54232
716 ..... 54642, 56850, 57023
761 54436

Proposed Rules:
Ch. I 55880
35 56372
52 ..... 54476, 54984, 55400, 55500, 55964, 55965, 56516, 56518, 56882,
60 ..... 55966, 56118, 57515
65 56883
86 ..... 54250, 56662
123 ..... 56520, 57022, 57301, 57302, 57741
130 56372
158 56884
162 ..... 55967, 57624, 57635
180 ..... 54106, 55249, 55699
201 ..... 54107, 54313
202 54313
204 54108
205 54108-54111
228 ..... 54834, 56663, 56665
403 54477
439 56373
455 56373
461 55502
464 55502
467 56373
468 55502
610 57742

41 CFR

Ch. 7 57494
1-3 57023
1-16 57023
1-30 57023
15-3 57495
101-36 ..... 54810, 54937
101-47 56499

Proposed Rules:
Ch. 9 56256
3-16 57515
3-50 57515
101-20 57520

42 CFR

52d 55227
55a 55227
57 54437
58 54437
86 55227
401 54939
405 ..... 54302, 54811, 54939, 56282
488 56282
489 56282

Proposed Rules:
124 54314
405 54113
447 54113

43 CFR

Public Land Orders:
503 (Revoked in part by PLO 6342) 57275
3833 56300
6342 57275

Proposed Rules:
4 56521
3200 56151
3710 57521
3720 57521
3730 57521
3740 57521
3800 57521
3810 57521
3820 57521
3830 57521
3840 57521
3850 57521
3860 57521
3870 57521
4100 55402
8360 57404

44 CFR

2 56850
6 54815
64 ..... 54816, 55921, 55922, 56850
65 ..... 54941, 57495
67 ..... 54941, 55228, 55241, 56627
70 ..... 54440-54444, 56629-56636
205 ..... 55756, 57275

Proposed Rules:
59 55752

60 55752
67 ..... 54477, 54478, 54835, 55251, 56668–56671, 56884, 57061, 57522, 57523

45 CFR

5b 57040
74 55227
91 57850
97 56466
301 57277
302 57277
303 ..... 57277, 57282
304 ..... 57277, 57282
305 ..... 57277, 57282
600 54081
601 57284
612 54943
680 54081
681 54081
682 54081
683 54081
684 54081
1300 56466
1336 55227
1601 54943

Proposed Rules:

1180 56871

46 CFR

67 54305
536 56138

Proposed Rules:

507 55969

47 CFR

Ch. I 57040
0 ..... 55924, 56852
1 ..... 56636, 57049
2 ..... 55241, 56852, 57286
22 56856
63 54944
67 55681
73 ..... 54444, 54446, 55242, 55243, 55681–55683, 55924, 56355, 56356, 56638
74 ..... 54446, 55931,
87 ..... 54449, 56636, 56852
90 ..... 54450, 57049
95 57049
97 55241

Proposed Rules:

15 55251
34 55974
35 55974
67 ..... 54479, 55699
73 ..... 54519–54522, 55256, 55974, 56672
76 54523
81 ..... 54836, 56673
83 56673
95 56677

49 CFR

Ch. X 54081, 55686
1 57286
7 55683
171 ..... 54817, 54824
172 ..... 54817, 54824
173 ..... 54817, 54824
175 ..... 54817, 54824
177 54824
178 54824
195 55396
225 56357
450 57287
451 57287
452 57287
453 57287
531 55684
581 56640
601 55683
1003 55939
1011 55950
1033 57287
1043 55939
1057 54083
1249 56359
1306 54083

Proposed Rules:

Ch. X 54985, 55975
29 55700
571 ..... 54839, 57302
1000 56885
1003 55976
1039 55257
1043 ..... 55976, 55980
1084 ..... 55976, 55980
1162 57303
1220 56152
1306 57303
1307 57303

50 CFR

11 56856
12 56856
16 56360
20 55397
23 54968
255 57432
540 55488
611 56650,
663 56138
671 ..... 54451, 57052

Proposed Rules:

23 57524
29 54840
611 ..... 54841, 57306
652 54985
663 57079
671 54125,
675 ..... 54841, 57306

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
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DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Listing of Public Laws

Last Listing December 23, 1982

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

H.R. 6005 / Pub. L. 97–375. Congressional Reports Elimination Act of 1982. (December 21, 1982; 96 Stat. 1819) Price: $2.25.

H.R. 5553 / Pub. L. 97–376. To provide for the use and disposition of Miami Indians judgment funds in dockets 124–B and 254 before the United States Court of Claims, and for other purposes. (December 21, 1982; 96 Stat. 1828) Price: $1.75.

H.J. Res. 631 / Pub. L. 97–377. Making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes. (December 21, 1982; 96 Stat. 1830)

H.R. 7144 / Pub. L. 97–378. District of Columbia Appropriation Act, 1983. (December 22, 1982; 96 Stat.) Price: $2.25.

H.R. 6417 / Pub. L. 97–379. To amend Public Law 96–432 relating to the United States Capitol Grounds. (December 22, 1982; 96 Stat.) Price: $1.75.

S. 1444 / Pub. L. 97–380. To authorize the Administrator of General Services to donate to State and local governments certain Federal personal property loaned to them for civil defense use, and for other purposes. (December 22, 1982; 96 Stat.) Price: $1.75.

S. 1681 / Pub. L. 97–381. To designate the southern Nevada water project the "Robert B. Griffith Water Project". (December 22, 1982; 96 Stat.) Price: $1.75.

S. 1694 / Pub. L. 97–382. Indian Mineral Development Act of 1982. (December 22, 1982; 96 Stat.) Price: $1.75.

S. 2034 / Pub. L. 97–383. To designate the lock and dam known as the Jones Bluff Lock and Dam, located on the Alabama River, as the "Robert F. Henry Lock and Dam". (December 22, 1982; 96 Stat.) Price: $1.75.

S. 2710 / Pub. L. 97–384. To establish the Charles C. Deam Wilderness in the Hoosier National Forest, Indiana. (December 22, 1982; 96 Stat.) Price: $1.75.

H.R. 2329 / Pub. L. 97–385. Conferring jurisdiction on certain courts of the United States to hear and render judgment in connection with certain claims of the Cherokee Nation of Oklahoma. (December 23, 1982; 96 Stat.) Price: $1.75.

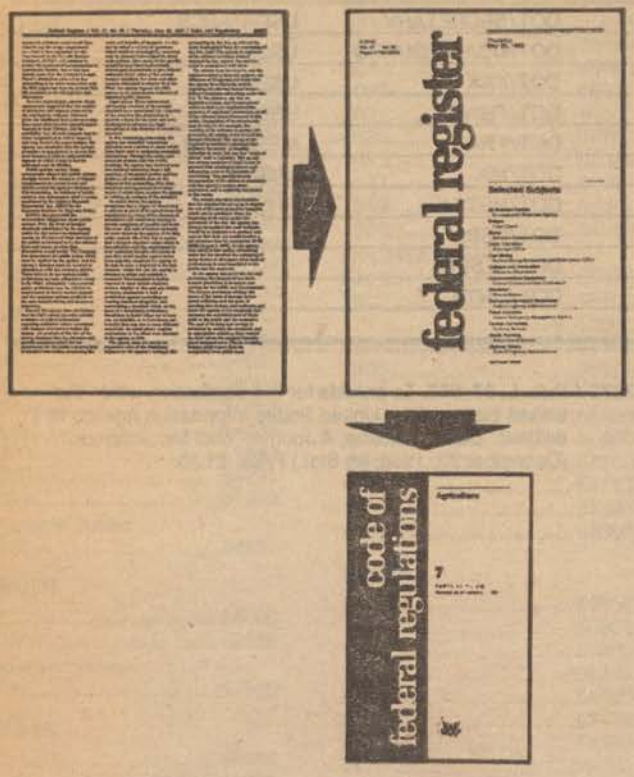
H.R. 4364 / Pub. L. 97–386. To declare that the United States holds in trust for the Pascua Yaqui Tribe of Arizona certain land in Pima County, Arizona. (December 23, 1982; 96 Stat.) Price: $1.75.

S. 2611 / Pub. L. 97–387. To amend the Peace Corps Act. (December 23, 1982; 96 Stat.) Price: $1.75.

S. 3073 / Pub. L. 97–388. To provide for the distribution within the United States of the United States Information Agency film entitled "Dumas Malone: A Journey With Mr. Jefferson". (December 23, 1982; 96 Stat.) Price: $1.75.

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