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Federal Register

Friday
April 29, 1983

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Administrative Practice and Procedure
Customs Service

Advertising
Federal Trade Commission

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Child Support
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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Two-Day-a-Week Publication Program

The Office of the Federal Register proposes to terminate the formal program of agency publication on assigned days of the week. See page 19283 in the **Federal Register** of Thursday, April 28, 1983.

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 752

Adverse Actions

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: This amendment to OPM's regulations is made to comply with an opinion and order of the Merit Systems Protection Board which held that OPM's regulatory provisions for emergency suspensions during the notice period of an adverse action exceed OPM's regulatory authority and thus are invalid. Accordingly, OPM is rescinding its regulatory provision which, under certain circumstances, provided an exception to the requirement that a Government agency give a Federal employee 30 days of advance notice when proposing an adverse action. By separate amendment, OPM is proposing to add a new provision that under certain circumstances, a Government agency may change or withdraw the position duties of a Federal employee during the 30 days' advance notice period of a proposed adverse action.

EFFECTIVE DATE: April 29, 1983.

FOR FURTHER INFORMATION CONTACT: Cynthia Field, Office of Planning and Evaluation (202) 254–5517.

SUPPLEMENTARY INFORMATION: Prior to passage of the Civil Service Reform Act of 1978, civil service regulations provided for emergency suspensions without pay as an exception to the general requirement that a Government agency give 30 days of advance notice when proposing an adverse action against a Federal employee. Under the regulations, an agency was allowed a maximum period of five days to process an emergency suspension, during which time the employee was placed in a nonduty, pay status. Once an emergency suspension was effected, the employee remained in a nonduty status, and in addition, was placed in a nonpay status. An emergency suspension expired when the agency made a determination on whether to take the proposed adverse action. Thus, the total length of an emergency suspension was invariably no more than 30 days. As a result, because a suspension of 30 days or less was not an action requiring 30 days of advance notice, the provision for emergency suspension was consistent with then existing law.

With passage of the Civil Service Reform Act, Congress made a suspension of more than 14 days an adverse action requiring advance notice of 30 days. The provision permitting emergency suspensions, which OPM carried over into its new regulations, therefore conflicted with the new statutory notice requirement. In *Cuellar v. United States Postal Service*, MSPB Order No. SF075299045 (November 13, 1981), the Merit Systems Protection Board considered an appeal from an emergency suspension imposed pursuant to 5 CFR 752.404(d)(3) and overturned it because the agency had failed to give the appellant the 30 days of advance notice required by 5 U.S.C. 7513(b)(1). The Board held that 5 CFR 752.404(d) is invalid since OPM had exceeded its statutory authority to regulate in issuing this regulation.

OPM agrees that the new statutory notice requirement prohibits emergency suspensions which call for the withholding of pay during the notice period. A clear purpose of 5 U.S.C. 7513(b)(1) is to ensure that an employee remains on the payroll for at least 30 days after an agency proposes an adverse action. Accordingly, OPM is amending 5 CFR Part 752 by rescinding 5 CFR 752.404(d)(3) in order to comply with this Opinion and order. By separate amendment, OPM is proposing to add a regulation permitting agencies, under certain cricumstances, to place employees in a nonduty status with pay during the notice period.

Pursuant to section 553(b)(3)(B) of Title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to ensure that agencies will not take actions under this regulatory provision which has been held to be invalid.

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 affects only Federal agencies and employees.

List of Subjects in 5 CFR Part 752

Administrative practice and procedure, Government employees.

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

§ 752.404 [Amended]

Accordingly, OPM is amending 5 CFR 752.404 by removing paragraph (d)(3).

(5 U.S.C. 7513, 7514, 1302)

[FR Doc. 83-11405 Filed 4-28-83; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Table Grapes (European or Vinifera Type)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the voluntary U.S. Standards for Grades of Table Grapes (European or Vinifera Type). This rule will add two seedless varieties to those now listed in the standards and permit all seedless varieties to be covered by the same minimum berry size requirements; provide for adjustment to recent changes in California and Arizona maturity regulations; and, add a new subsection applicable to maturity of table grapes subject to U.S. import regulations.

The Agricultural Marketing Service has the responsiblility, in cooperation with industry, to maintain grade

standards in line with current cultural and marketing practices.

EFFECTIVE DATE: April 29, 1983. The Director of the Federal Register approves the incorporation by reference of certain publications in 7 CFR Part 51 effective on April 29, 1983.

FOR FURTHER INFORMATION CONTACT: Michael V. Morrelli, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250. (202) 447–2011.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated as a "non-major" rule. It will not result in an annual effect of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because it reflects current marketing practices.

A proposal to amend the U.S. Standards for Grades of Table Grapes (European or Vinifera Type) was published in the **Federal Register** on March 21, 1983 (48 FR 11718–11719) with a comment period ending April 20, 1983. Copies of the proposal were distributed to interested persons for review and comment. All responses received favored the proposed changes. Changes are as follows:

(1) Permit all seedless varieties to be covered by the same size requirements by adding "Superior Seedless, Flame Seedless and other seedless varieties" to the applicable size sections of the U.S. Fancy and U.S. No. 1 Table grades.

(2) Reference maturity requirements for grapes grown in Arizona and California to the respective State regulations in effect on the effective date of the amendment of these standards by incorporating, by reference, the current Arizona and California regulations. This will correct the technical conflict which currently exists between State maturity regulations and maturity requirements of the U.S. standards.

(3) Add a subsection that will require grapes subject to U.S. import regulations to meet the maturity requirements specified in the import regulations.

It is found that it is contrary to public and industry interests to postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and good cause exists for making this amendment effective upon publication in that: (1) the domestic grape harvest will begin on or about May 1, 1983; (2) the regulatory provisions of a Federal marketing order and U.S. import regulations will become effective May 1, 1983; (3) no changes were made in the proposed rule except for the incorporation by reference of current Arizona and California maturity regulations.

List of Subjects in 7 CFR Part 51

Fresh fruits, vegetables and other products (inspection, certification and standards), Incorporation by reference.

PART 51—[AMENDED]

Accordingly, 7 CFR Part 51 is amended as follows:

1. In § 51.882, paragraph (i)(1)(ii) is revised to read:

§ 51.882 U.S. Fancy Table.

* * * * *

(i) * * *

(1) * * *

(ii) For Thompson Seedless, Perlette, Delight, Beauty Seedless, Superior Seedless, Flame Seedless and other seedless varieties, 75 percent shall be at least ten-sixteenths of an inch; and,

* * * * *

2. In § 51.884, paragrpah (i)(1)(i) is revised to read:

§ 51.884 U.S. No. 1 Table.

* * * * *

(i) * * *

(1) * * *

(i) Thompson Seedless, Perlette, Delight, Beauty Seedless, Superior Seedless, Flame Seedless and other seedless varieties nine-sixteenths of an inch.

* * * * *

3. § 51.887 is revised to read:

§ 51.887 Maturity requirements.

(a) In the case of grapes grown in Arizona or California, "mature" means grapes in any lot shall meet the maturity requirements for the variety as set forth in the applicable State Agricultural Laws and Regulations in effect on the effective date of this amendment.

(1) Arizona maturity regulations are contained in Title 3, Chapter 7, Article 1, Section R3–7–104, Subsection 7, 1982 Arizona Official Compilation of Administrative Rules and Regulations, Arizona Fruit and Vegetable Standardization and are incorporated by reference under 5 U.S.C. 552(a) and 1 CFR Part 51.[1]

(2) California maturity regulations are contained in the 1981 Administrative Code—Title 3 of California, Group 4, Article 25, and are incorporated by reference under 5 U.S.C. 552(a) and 1 CFR Part 51.[1]

(b) Grapes subject to U.S. import regulations shall meet the maturity requirements specified in such regulations.

(c) Grapes produced in States other than Arizona or California, or grapes imported from countries outside the United States during periods in which U.S. import regulations do not apply, shall meet the minimum percentage of soluble solids set forth in Table III as determined by use of a standard hand refractometer.

TABLE III

Variety	Percent of soluble solids
Muscat	17.5
All varieties not listed in this table	16.5
Cardinal, Emperor, Perlette, Ribier, Olivette Blanche, Rish Baba, Red Malaga, and similar varieties	15.5

(1) The minimum percentage of soluble solids for any lot shall be determined from the juice of at least 10 percent, by weight, of whole bunches of the least mature grapes in that container which appears to have the least mature grapes. No lot shall be considered as failing to meet these requirements unless samples from two containers which appear to have the least mature grapes test below the required percentage of soluble solids.

(Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended [7 U.S.C. 1622, 1624])

Done at Washington, D.C., on: April 25, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83–11596 Filed 4–28–83; 8:45 am]

BILLING CODE 3410–02–M

[1] copies of these regulations may be examined at the Office of the Federal Register Information Center, Room 8401, 1100 L Street, N.W., Washington, DC 20408. They may be requested from the California Department of Food and Agriculture, Fruit and Vegetable Quality Control, Standardization Section, Room A–265, 1220 N Street, Sacramento, CA 95814 or Arizona Fruit and Vegetable Standardization, 2720 West Weldon, Phoenix, AZ 85007.

7 CFR Part 54

Regulations for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends § 54.27 of the regulations governing the grading and certification of meats, prepared meats, and meat products by increasing the fees for voluntary Federal meat grading and certification services to reflect increased program operating costs.

EFFECTIVE DATE: May 31, 1983.

FOR FURTHER INFORMATION CONTACT: David K. Hallett, Chief; Meat Grading and Certification Branch; Livestock, Meat, Grain, and Seed Division; Agricultural Marketing Service, USDA; Room 1-M, Annex Building; Washington, D.C. 20250 (Telephone 202/382-1246).

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This action was reviewed under U.S. Department of Agriculture procedures established to implement Executive Order 12291 and was classified as a nonmajor rule pursuant to Section 1(b)(1), (2), and (3) of that order. Accordingly, a regulatory impact analysis is not required. This action also was reviewed under the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*). William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule increases fees to cover escalating costs of providing voluntary Federal meat grading and certification services. The increased fees reflect a minimal increase in the cost-per-unit graded and/or certified currently borne by all entities using the services. The increased fees, therefore, will not have a significant economic effect on meatpackers, processors, or consumers, and will not affect normal competition in the marketplace.

Background

The Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 *et seq.*, authorizes the Secretary of Agriculture to provide voluntary Federal meat grading and certification services, to facilitate the orderly marketing of meats and meat products, and to enable consumers to obtain the quality of meat which they desire. It also provides for the collection of fees from users of Federal meat grading and certification services which are approximately equal to the costs of providing services. The hourly fees for service are established in accordance with the salaries and fringe benefits of meat graders, the costs of supervision, travel, training, and all administrative costs of operating the program. As these costs increase, the fee rates also must be increased so that the program remains financially self-supporting as required by law.

Comments

On November 23, 1982, the Agricultural Marketing Service published in the **Federal Register** (47 FR 52691) an interim final rule increasing the fees for Federal meat grading and certification services, effective November 28, 1982. This rule was published on an interim basis with request for comments as a means of providing full public participation in the rulemaking process. Additionally, this rule was implemented on an interim basis without a prior proposal because increased renvenues were needed immediately to cover the increased costs of providing service. Comments on this amendment were requested by January 28, 1983.

During the 60-day comment period, the Agency received five letters in response to the interim final rule. Four comments were received from meat and livestock associations and one from a meatpacking and processing firm.

Discussion of Comments

All five comments reflected dissatisfaction with the fee increase and expressed the view that any increase during the current economic plight of the meat industry was excessive and not justifiable. The commentors questioned how the collected fees are spent, and they requested a detailed breakdown of program operating costs. Additionally, the commentors requested additional information on program cost increases and more justification for the fee rate increases. The comments contained general and specific observations on increasing the fee rates, and one comment suggested alternatives to increasing the fees.

In determining the increased fee rates, the Agency considered all costs associated with providing service. Although one commentor assumed that less than 50 percent of the base hourly fee rate is used to recover the direct costs of meat graders, approximately 70 percent of the fee rate is used for this purpose. These direct costs include the meat grader's base salary rate and overtime rate; the cost of the grader's fringe benefits, which include Agency contributions for life and health insurance, workmen's compensation, medicare, retirement, annual leave, sick leave, uniform allowances, etc.; and the cost of reimbursable travel and transfer costs which are not charged directly to applicants of the service. The remaining 30 percent of the fee rate is used to recover all other direct and indirect program operating costs. These costs include supervisory and clerical salaries and fringe benefits, employee training and career development, supervisory travel, office rents, communications, utilities, equipment, supplies, and all support services of the Division and Agency. The following detailed breakdown of the fees, as requested by the commentors, is based on the actual fiscal year 1983 budgeted allotment of revenue to offset the expenses of operating the meat grading and certification program.

DIRECT PROGRAM COSTS

	Percent
Salaries (Graders, Supervisors, Clerks, etc.)	56.33
Fringe Benefits	15.55
Travel and Transportation	10.95
Rent, Communications, Utilities	2.51
Printing, Reproduction, Supplies, Equipment	0.74
National Finance Center's Billings and Collections	1.44
Other Services (Training, Federal Telecommunications System, etc.)	2.21
Nonpermanent Training and Development	0.82
Fair Labor Standards Act Settlements	1.45
Total	92.0

INDIRECT PROGRAM COSTS

	Percent
Division and Agency Overhead (Includes Information, Financial, Personnel, and Management Support Services)	8.0

For fiscal year 1983, both the direct and indirect costs of providing service escalated making it necessary to increase the fee rates as required by the Agricultural Marketing Act of 1946. The increased base hourly rate was established on the projections of the estimated hours of revenue expected during the fiscal year. The increased operating expenses of the meat grading and certification program for fiscal year 1983 are summarized as follows:

1. $670,000—The amount of the 4-percent Federal salary increase granted to employees in October.

2. $116,000—The 1.3-percent assessment for Medicare coverage paid by the Agency.

3. $147,000—The increased amount charged by the National Finance Center,

USDA, for processing meat grading and acceptance certificates.

4. $292,000—One-third of the $875,000 cost increase which was awarded to meat graders as a result of a litigation settlement made by the Department of Justice with the American Federation of Government Employees. This settlement involved backpay claims to meat graders under the Fair Labor Standards Act.

5. $172,000—The nonpermanent cost increase for organizational training and career development.

6. $192,795—The increased costs assessed by the Division and Agency for overhead expenses.

7. $119,660—The projected cost increase for all other direct and indirect program activities including travel, communications, utilities, equipment, supplies, printing , etc.

Prior to increasing the fee rates on an interim basis, the Agency considered several cost-cutting alternatives. As suggested by one commentor, the Agency evaluated the need for maintaining the current number of graders and supervisors nationwide. The commentor believed that fewer meat graders should be needed because the demand for meat grading and certification had declined as a result of plant closings and increased marketing of ungraded beef. While it is true that fewer plants operate today than several years ago, the nationwide demand for the service has not changed much. In fact, over the last several years the tonnage of graded and certified meats has actually increased due to increased requests for certification services. Also, although there has been an increase in the sale of ungraded beef, the demand for grading services has not lessened significantly. Plants using grading services still request meat graders to review most or all carcasses slaughtered and grade those that qualify for USDA Prime and Choice.

Another alternative considered by the Agency and suggested by a commentor involved a reduction in the training and supervision of meat graders. This option, however, was considered not to be in the best interests of the U.S. meat industry and consumers. Without adequate supervision and training, inaccurate and nonuniform applications of the U.S. grade standards and specifications could occur which would cause gross economic inequities among segments of the meat industry. Also, this would negatively impact on the reliability of Federal grades as consumers' guidelines in selecting the quality of meat they desire. The uniform and accurate application of grade standards and specifications nationwide is essential to maintaining the effectiveness, integrity, and credibility of grading and certification services.

One commentor was concerned that the increased fee rates may render grading and certification cost-ineffective for the users of the service and more especially for the small entities using the service. This commentor requested a copy of the review that was made under U.S. Department of Agriculture procedures pertaining to a regulatory impact analysis. Although the interim final rule and this final rule both may imply under **SUPPLEMENTARY INFORMATION** that a written analysis was made by the Agency, such is not the case. A review was made under U.S. Department of Agriculture procedures established to implement Executive Order 12291 to determine if the final rule could be classified as a major rule. The rule was classified nonmajor because (1) it will not result in an annual effect on the economy of $100 million or more, (2) there will be no major increase in production costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographical regions, and (3) the rule 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. Therefore, the rule was classified as nonmajor and a regulatory impact analysis is not required.

In reviewing this rule, it was determined that the financial impact of the fee rate increase on the industry and the consumer will be minimal. The new fees reflect an extremely small increase in the cost-per-pound of meat graded and/or certified currently borne by those entities using meat grading and certification services. In fact, the cost of grading and certification will remain approximately one-tenth of a cent per pound graded and/or certified. Prior to the fee increase, the per pound cost of grading and certification on a nationwide average was approximately $0.00140 per pound. Under the increased fee rates, this cost is only $0.00145 per pound. The relative value of the commodity also was considered in the rulemaking process. For example, the cost of beef grading on a per carcass basis will remain only about 25 cents. Since a typical beef carcass now has a value of nearly $700, the 25 cents grading cost is extremely small. Therefore, it was determined that the increased fees would not have a significant economic effect on meatpackers, processors, or consumers and will not affect normal competition in the meat industry.

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

Pursuant to the authority in 5 U.S.C. 553, it is found that other public procedure and notice with respect to these amendments are impracticable and unnecessary, and good cause if found for making these amendments effective as a final rule without changes.

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

List of Subjects in 7 CFR Part 54

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

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

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

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

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

§ 54.27 Fees and other charges for service.

* * * * *

(a) *Fees based on hourly rates.* Except as otherwise provided in this section, fees for service shall be based on the time required to render the service, calculated to the nearest 15-minute period, including time required for the preparation of certificates and travel of the official grader in connection with the performance of service. A minimum charge for one-half hour shall be made for service pursuant to each request notwithstanding that the time required to perform service may be less than 30 minutes. The base hourly rate shall be $25 per hour for work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on Federal legal holidays; $30 per hour for

work performed before 6 a.m. or after 6 p.m., Monday through Friday, and anytime Saturday or Sunday except on Federal legal holidays; and $50 per hour for all work performed on Federal legal holidays.

* * * * *

Done at Washington, D.C. April 25, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-11542 Filed 4-28-83; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 235 and 245

[Amendments 9, 24, 27, 45 and 58, Respectively]

Procurement Standards and Other Technical Changes

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for the National School Lunch Program, Special Milk Program, School Breakfast Program and State Administrative Expense Funds, and the regulations on determining eligibility for free and reduced price meals and free milk in schools, to make several technical changes. These technical changes revise the procurement standards to reflect the current requirements of the Department's Uniform Federal Assistance regulations and delete obsolete provisions. This rule brings these regulations into conformance with current Departmental and legislative requirements.

EFFECTIVE DATE: May 31, 1983.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302; (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under Executive Order 12291 and has been classified as "not major." This rule will not have an annual effect on the economy of $100 million or more, nor will it have a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or foreign markets.

This rule has also been reviewed with regard to the requirements of Pub. L. 96-354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule does not contain any reporting or recordkeeping provisions which are subject to approval by the Office of Management and Budget (OMB).

Background

On July 16, 1982, the Department published a proposed rule (47 FR 30997) which proposed to: (1) Reduce Federal regulatory requirements for School Food Authorities contracting with food service management companies; (2) eliminate the requirement for State agencies or FNSROs, as applicable, to monitor at least 20 percent of School Food Authorities contracting with food service management companies; (3) eliminate the requirement that an Advisory Board assist food service management companies in menu planning; (4) make the food service management company requirements consistent for the school lunch and breakfast programs; (5) eliminate the requirements for School Food Authorities to promote activities to involve parents and the community in the school lunch program; (6) allow State agencies to define poor management, but continue State agency and FNSRO involvement in correcting poor management problems; (7) rewrite portions of the regulations to eliminate unnecessary provisions and redundant language; (8) revise procurement standards to implement the Department's Uniform Federal Assistance Regulations 7 CFR Part 3015; and (9) delete the provision of the breakfast program regulations which requires commodity assistance based upon the number of breakfasts served to children, as required by Pub. L. 96-499.

Commentors were given 60 days to submit comments on the proposed rule. Seventy-five written comments concerning the proposed rule were received. The majority of the commentors focused on eliminating the requirement for parent and community involvement in the school lunch program; eliminating the regulatory requirements for food service management companies contracting with School Food Authorities; and revising the procurement standards to reflect the Department's Uniform Federal Assistance Regulations—Part 3015.

The following paragraphs discuss the concerns of the commentors.

Parent-Community Involvement—Thirty-eight commentors discussed the effect of eliminating the regulatory requirements for parent and community involvement in the lunch program. Twelve of these commentors favored elimination of the requirement and twenty-six opposed it. Commentors in favor of eliminating the requirement believed that involving parents and the community in the lunch program is a time consuming requirement and unnecessary in the implementation of a good lunch program.

The majority of those opposed to the proposal stated two main reasons for maintaining the requirement for parent and community involvement. First, parent and community involvement promotes the development of community participation in the program and thus furthers cultural and ethnic considerations in the lunch program. Secondly, such involvement improves the acceptability of school lunches and increases program participation levels. In response to these concerns, the Department is maintaining the requirement for a plan for parent and community involvement in the lunch program.

Food Service Management Companies—Seventy commentors discussed the proposed provision which reduced the Federal regulatory requirements for School Food Authorities which contract with food service management companies. Seven of these commentors favored the proposed reductions in requirements, while sixty-three opposed them. The major reasons stated for reducing the requirements were to allow more State and local flexibility in the administration of the school lunch program and facilitate the contracting of food service management companies with School Food Authorities. However, the majority of commentors believed that reducing the Federal regulatory requirements for food service management companies weakens the local School Food Authorities capability to maintain high nutritional, health and safety standards when contracting for school meal services. Also, commentors stated that the Department initially issued the food service management company rules in 1979 because of the concern over possible program abuse. Commentors believed that the Department must continue to provide regulatory control which will protect the quality and accountability of the lunch

program whether it is operated by food service management companies or local School Food Authorities. Some commentors further recommended that the Department strengthen the current regulatory requirements for food service management companies. Two other areas of concern were the amount of responsibility which would be placed on the State without Federal regulatory support and the increased administrative burden on School Food Authorities which oftentimes lack personnel to develop, monitor and control contracts.

In response to the overwhelming support for the regulations as currently written, the Department is not amending the regulations regarding contracts with food service management companies.

Procurement Standards—Twenty commentors discussed the proposed revisions to the procurement standards. Three commentors favored the proposed revisions and seventeen opposed them. Some commentors misunderstood the intent of the revisions. The proposal updated the procurement standards to reflect the current procurement requirement of the Department and OMB Circular A–102 and cross-referenced these documents rather than paraphrased the content as the regulations are currently written. The commentors opposed to the proposal stated that cross-referencing Part 3015 and OMB Circular A–102 rather than paraphrasing the procurement standards in the school program regulations would impose a burden on State and local agencies because States would have to make Part 3015 and OMB Circular A–102 available to School Food Authorities. Because the Departmental regulations and OMB circulars are available from governmental agencies, the procurement standards are not paraphrased in the final rule. More importantly, cross-referencing the Department's Part 3015 regulation and the OMB Circular, rather than paraphrasing the contents, ensures national uniformity in the application of the procurement standards. If obtaining copies of Part 3015 and OMB Circular A–102 proves difficult, the Department will reconsider this decision.

The proposal did not address the procurement standards for the Special Milk Program (SMP) and State Administrative Expense Funds (SAE). The Department proposed the Uniform Federal Assistance Regulations on July 20, 1981 (46 FR 37252) and accepted comments. The final regulations were published on November 10, 1981. The uniform standards established by Part 3015 became applicable to the SMP and SAE at that time. Therefore, the Department is revising the SMP and SAE regulations in this final rule to update the procurement and the SAE property management standards. Also, the corresponding terms which refer to procurement standards and property management standards are deleted.

Obsolete Provision

In Part 245, a paragraph which referred to State eligibility criteria and which is now obsolete is revised in this rulemaking.

Conclusion—Because of the negative responses from commentors the Department has determined that it would not be beneficial to school food service operations to finalize all the provisions presented in the proposed rule. This final rule implements some technical changes to update the regulations and revises the procurement standards. These revisions are necessary for conformance with the Department's comprehensive procurement standards and with the OMB Circular A–102. The requirements as stated in the current National School Lunch Program and School Breakfast Program regulations, regarding contracting with food service management companies and parent and community involvement in the lunch program remain intact.

List of Subjects

7 CFR Part 210

Food assistance programs, National school lunch program, Grant programs—social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Special milk program, Grant programs—social programs, Nutrition, Children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Food assistance programs, School breakfast program, Grant programs—social programs, Nutrition, Children, Reporting and recordkeeping requirements.

7 CFR Part 235

Food assistance programs, National school lunch program, School breakfast program, Special milk program, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure.

7 CFR Part 245

Food assistance programs, Grant programs—social programs, National school lunch program, School breakfast program, Special milk program, Reporting and recordkeeping requirements.

Accordingly, Parts 210, 215, 220, 235 and 245 are amended as set forth below.

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

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

§ 210.8 Requirements for participation.

* * * * *

(e) * * *

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

* * * * *

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

§ 210.19a Procurement standards.

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

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

(c) *Procurement Procedure.* The State agency or School Food authority may use their own procurement procedures which reflect applicable state and local laws and regulations, provided that procurements made with Program funds

adhere to the standards set forth in OMB Circular A–102 and 7 CFR Part 3015.

PART 215—SPECIAL MILK PROGRAM

1. Section 215.14a is revised to read as follows:

§ 215.14a Procurement standards.

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

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

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

PART 220—SCHOOL BREAKFAST PROGRAM

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

§220.7 Requirements for participation.

* * * * *

(e) * * *

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

* * * * *

§ 220.13 [Amended]

2. In § 220.13 paragraph (h) is removed and reserved.

3. § 220.16 is revised to read as follows:

§ 220.16 Procurement standards.

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

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

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

§ 220.18 [Amended]

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

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

§ 235.2 [Amended]

1. In § 235.2 paragraphs (e), (j), (m) and (n) are removed and reserved.

2. Section 235.9 is revised to read as follows:

§ 235.9 Procurement and property management standards.

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

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

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

(d) *Property acquired with State Administrative Expense Funds.* State Agencies shall comply with the requirements of OMB Circular A–102 and 7 CFR Part 3015, Subpart R (46 FR 55654) in their utilization and disposition of property acquired in whole or in part with State Administrative Expense Funds.

§ 235.10 [Removed and Reserved]

3. Section 235.10, *Property Management requirements.* is removed and reserved.

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

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

§ 245.5 Public announcement of the eligibility criteria.

* * * * *

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

announced in the same manner as the original criteria were announced.

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

Dated: April 19, 1983.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 83-11524 Filed 4-28-83; 8:45 am]

BILLING CODE 3410-30-M

Soil Conservation Service

7 CFR Part 601

Functions

AGENCY: Soil Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: This document supplements a function of the Soil Conservation Service under authority delegated pursuant to § 2.62(a)(6), Title 7, Code of Federal Regulations, relating to implementation of a Resource Conservation and Development Program, Title XV, Subtitle H, Agriculture and Food Act of 1981, Pub. L. 97-98.

EFFECTIVE DATE: April 29, 1983.

FOR FURTHER INFORMATION CONTACT: Edgar H. Nelson, Director, Basin and Area Planning Division, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013; 202-447-2847.

SUPPLEMENTARY INFORMATION: A Resource Conservation and Development Program is currently administered through regulations and policies of the Department of Agriculture, issued under the general authority to conduct this type of activity set forth in Title III of the Bankhead-Jones Farm Tenant Act, 7 U.S.C. 1010-1011, and the Soil Conservation and Domestic Allotment Act, 16 U.S.C. 590a-f, and in annual appropriations. This Program has continually evolved since the early 1960's. The current Program is carried out in 194 areas approved by the Secretary of Agriculture. An area typically covers several adjacent counties.

Local people from the area volunteer their time to form an organization usually referred to as an "RC&D Area Council." This organization is comprised of representatives of local sponsoring organizations and other interested persons. Official sponsors of RC&D areas include State and local units of government and other groups such as counties, cities, towns, and soil conservation districts.

Technical and financial assistance to the local organization in preparing and carrying out its area plan is provided by the Soil Conservation Service. The local organization is a focal point for individuals and groups seeking assistance in solving local problems. Personnel of the Soil Conservation Service and other agencies work with the local organizations to explore the availability of assistance from the Department of Agriculture and other sources.

Subtitle H, Title XV of the Agriculture and Food Act of 1981, Pub. L. 97-98, 16 U.S.C. 3451-3461, provides specific supplemental authority to carry out the Resource Conservation and Development Program in light of declared congressional objectives and purposes, which are to provide State and local governments and local nonprofit organizations with the technical and financial assistance needed to operate and maintain planning and implementation processes "needed to conserve and improve the use of land, develop natural resources, and improve and enhance the social, economic, and environmental conditions in rural areas of the United States." Authority for implementation of this Program has been delegated to the Chief, Soil Conservation Service, by the Assistant Secretary for Natural Resources and Environment. This rule amends the present statement of agency functions to reflect that delegation.

This rule relates to internal agency management and organization. Therefore, pursuant to 5 U.S.C. 553, it is found that it is impractical and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register**. Since this rule relates to internal agency management and organization, it is exempt from provisions of Executive Order 12291 and Secretary's Memorandum 1512-1.

List of Subjects in 7 CFR Part 601

Organization and functions (Government agencies).

PART 601—FUNCTIONS

Accordingly, Part 601, Title 7, Code of Federal Regulations is amended as follows:

1. In § 601.1, paragraph (f) is revised to read as follows:

§ 601.1 Functions assigned.

* * * * *

(f) Administer the Resource Conservation and Development Program under Pub. L. 46, 74th Congress, 16 U.S.C. 590a-f; Pub. L. 87-703, as amended, 7 U.S.C. 1010-1011; and Pub. L. 97-98, 16 U.S.C. 3451-3461; except for responsibilities assigned to the Farmers Home Administration.

* * * * *

2. In § 601.3, paragraph (c) is revised to read as follows:

§ 601.3 Functions reserved to the Assistant Secretary for Natural Resources and Environment.

* * * * *

(c) Approving additions to authorized Resource Conservation and Development Projects.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 10.901, Resource Conservation and Development Program. Office of Management and Budget provisions regarding State and local clearinghouse review of Federal and federally assisted programs and projects are applicable)

Dated: April 22, 1983.

Peter C. Myers,

Chief.

[FR Doc. 83-11345 Filed 4-28-83; 8:45 am]

BILLING CODE 3410-16-M

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Poundage Quota and Marketing Regulations for the 1983 Through 1985 Crops of Peanuts

Correction

In FR Doc. 83-5408, beginning on page 9214, in the issue of Friday, March 4, 1983, make the following corrections:

1. On page 9220, the last column, paragraph (e)(2), line 10, "conidered" should read "considered".

2. On page 9221, the last column, paragraph (dd), line 3, "§729.25" should read "§729.225".

BILLING CODE 1505-01-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 409]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period May 1–7, 1983. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: May 1, 1983.

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

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

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910; 47 FR 50196), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1982–83. The marketing policy was recommended by the committee following discussion at a public meeting on July 6, 1982. The committee met again publicly on April 26, 1983, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is good.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons

PART 910—[AMENDED]

Section 910.709 is added as follows:

§ 910.709 Lemon regulation 409.

The quantity of lemons grown in California and Arizona which may be handled during the period May 1, 1983, through May 7, 1983, is established at 295,000 cartons.

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

Dated: April 28, 1983.

D.S. Kuryloski,

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

[FR Doc. 83–11733 Filed 4–28–83; 12:33 am]

BILLING CODE 3410–02–M

7 CFR Part 985

Spearmint Oil Produced in the Far West; Final Salable Quantities and Allotment Percentages for the 1983–84 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Emergency final rule.

SUMMARY: This emergency final rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from, or handled for, producers by handlers during the 1983–84 marketing year which begins June 1, 1983. This action is taken under the marketing order for spearmint oil produced in the Far West to promote orderly marketing conditions.

EFFECTIVE DATE: June 1, 1983 through May 31, 1984.

FOR FURTHER INFORMATION CONTACT: F. M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: The final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

It is found that it is impractical, unnecessary and contrary to the public interest to give preliminary notice because an emergency situation exists which warrants publication without opportunity for a public comment period on this emergency final action. Handlers and growers are currently making preparations for handling and growing 1983 crop spearmint oil. Spearmint roots are normally planted in early April. Therefore, they must know as soon as possible what salable quantities and allotment percentages will be effective for the 1983–84 marketing year so they can plan their operations accordingly.

The salable quantity and allotment percentage for each class of spearmint oil are established in accordance with the provisions of the Marketing Order No. 985, regulating the handling of spearmint oil produced in the Far West, hereinafter referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The salable quantities and allotment percentages were recommended unanimously by the Spearmint Oil Administrative Committee, which works with the USDA in administering the order.

The salable quantity and allotment percentage for each class of spearmint oil for the 1983–84 marketing year beginning June 1, 1983, are based upon recommendations of the Committee and the following data and estimates:

(1) "Class 1" Oil (First Cutting Scotch)

(A) Estimated carryin on June 1, 1983—58,397 pounds.

(B) The Committee's recommendation for the salable quantity—714,951 pounds.

(C) Estimated trade demand (domestic and export) for the 1983–84 marketing year—722,000 pounds.

(D) Recommended desirable carryout on May 31, 1984—50,000 pounds.

(E) Total allotment bases for "Class 1" Oil—1,459,083 pounds.

(F) Recommended allotment percentage—49 percent.

(2) "Class 2" Oil (Second Cutting Scotch)

(A) Estimated carryin on June 1, 1983—5,107 pounds.

(B) The Committee's recommendation for the salable quantity—60,912 pounds.

(C) Estimated trade demand (domestic and export) for the 1983–84 marketing year—62,000 pounds.

(D) Recommended desirable carryout on May 31, 1984—4,300 pounds.

(E) Total allotment bases for "Class 2" Oil—126,901 pounds.

(F) Recommended allotment percentage—48 percent.

(3) "Class 3" Oil (Native)

(A) Estimated carryin on June 1, 1983—46,174 pounds.

(B) The Committee's recommendation for the salable quantity—867,901 pounds.

(C) Estimated trade demand (domestic and export) for the 1983–84 marketing year—860,000 pounds.

(D) Recommended desirable carryout on May 31, 1984—50,000 pounds.

(E) Total allotment bases for "Class 3" Oil—1,771,227 pounds.

(F) Recommended allotment percentage—49 percent.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is alloted a share of the salable quantity by applying the allotment percentage to his allotment base for the applicable class.

When the order was established in 1980, producer stocks of spearmint oil were very large and producer prices severely depressed. Volume regulations in effect under the order since that time have aided in reducing these burdensome stocks and in creating a stable market for all three classes of oil. The Committee objective is to bring excess supplies into balance with needs to maintain a stable market for each class of oil and promote orderly marketing.

In 1980, producer stocks of "Class 1" Oil exceeded one year's needs. The volume regulation for the 1983–84 marketing year is expected to remove the balance of the excess producer held stocks of "Class 1" Oil, and aid in the continued gradual adjustment of supplies resulting in further stabilization of producer prices.

Volume regulations issued for the past three years for "Class 2" Oil have succeeded in reducing heavy producer stocks to an acceptable level. In 1980, producer stocks of this class totalled 119,000 pounds. The projected carryin of producer held stocks at the beginning of the 1983–84 marketing year is expected to be about 5,100 pounds which is not a burdensome carryover. Producer stocks at this level coupled with the proposed volume regulation are expected to result in a stable market for "Class 2" Oil.

Sales of "Class 3" Oil lagged behind expectations in both the 1980–81 and 1981–82 marketing years. However, sales during the 1982–83 marketing year are projected to exceed 1981–82 sales by 30,000 pounds. The volume regulation in effect for the 1982–83 marketing year, coupled with the recent market improvement for "Class 3" Oil is expected to reduce producer held inventories to a reasonable level and approximately equal the carryout deemed desirable by the Committee (50,000 pounds). In 1980, the stocks of "Class 3" Oil totalled 320,000 pounds. The volume regulation for "Class 3" Oil in the 1983–84 marketing year is expected to continue to establish a stable market, thus promoting orderly marketing conditions for this class of oil.

In conformity with the order's provisions, the Committee conducted a drawing on October 5, 1982, and issued additional allotment bases equally to both new and existing producers for the 1982–83 and 1983–84 marketing years. New producers were issued allotment bases in units of 1,788 pounds for "Class 1" Oil and 2,171 pounds for "Class 3" Oil. Existing producers who had initially received small allotment bases and applied for additional allotment base were issued an amount of allotment base that would bring their total base up to a more economic unit. The issuance of the additional allotment bases increased the total of "Class 1" Oil bases by 27,981 pounds and "Class 3" Oil by 27,181 pounds. Although, the total of "Class 1" and "Class 3" Oil allotment bases was increased significantly by this action, the allotment percentages for these classes of oil are considerably more liberal than those established for the 1982–83 marketing year.

The Committee's recommendations were based on expected increased sales of spearmint oil during the 1983–84 marketing year and a substantial reduction in the quantity of spearmint oil held by producers. The Committee's recommendations appear appropriate for the 1983–84 season and are expected to aid in achieving the objectives of the act.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee, and other available information it is further found that to establish a salable quantity and allotment percentage for each class of oil, as hereinafter set forth, will tend to effectuate the declared policy of the act.

PART 985—[AMENDED]

List of Subjects in 7 CFR Part 985

Marketing agreements and orders, Spearmint oil.

Therefore, the salable quantity and allotment percentage applicable to each class of oil for the 1983–84 marketing year (June 1, 1983–May 31, 1984) are established by adding a new § 985.203 under Subpart—Salable Quantities and Allotment Percentages. (7 CFR 985.202; 47 FR 16769) as follows: (The following provisions will not be published in the Code of Federal Regulations.)

§ 985.203 Salable quantities and allotment percentages—1983–84 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year which begins June 1, 1983, shall be as follows:

(a) "Class 1" Oil—a salable quantity of 714,951 pounds and an allotment percentage of 49 percent.

(b) "Class 2" Oil—a salable quantity of 60,912 pounds and an allotment percentage of 48 percent.

(c) "Class 3" Oil—a salable quantity of 867,901 pounds and an allotment percentage of 49 percent.

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

Dated: April 22, 1983.

D. S. Kuryloski,

Director, Fruit and Vegetable Division.

[FR Doc. 83-11575 Filed 4-28-83; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 327

[Docket Number 83-014E]

Imported Products; Withdrawal of Czechoslovakia From the List of Countries Eligible for Importation of Meat Food Product

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Emergency final rule.

SUMMARY: This document withdraws the country of Czechoslovakia from the list of countries eligible for importation of product from cattle, sheep, swine, and goats into the United States under the Federal Meat Inspection Act (FMIA). The FMIA requires that, in order for a country to be eligible to export meat products to the United States, the meat inspection system of the country must assure compliance with requirements that are "at least equal to" the requirements of the FMIA and regulations as applied to official

establishments in the United States, and that reliance can be placed upon certificates, required under the regulations, from authorities of that foreign country. Recent polychlorinated biphenyl (PCB) residue violations in exports of pork products to the United States, as well as the failure of the Czechoslovakian Government to control residues after previous notification by USDA, have demonstrated that the Czechoslovakian meat inspection system no longer meets the provisions of the FMIA with regard to the control of residues in imported product.

EFFECTIVE DATE: April 29, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. Grace Clark, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6971.

SUPPLEMENTARY INFORMATION: The Agency has determined that public health and safety require this rule to be issued as an emergency final rule, effective immediately upon publication and for which notice and public procedure thereon is not appropriate (5 U.S.C. 553 (b) and (d)). Similarly, due to the emergency nature of this action, the Agency has determined that the requirements of Executive Order 12291 should be waived (E.O. 12291 section 8(a)(1)). The emergency makes compliance with Section 603 and timely compliance with Section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the Final Impact Statement will address the issues required in Section 604 of Pub. L. 96-354, the Regulatory Flexibility Act.

Background

Pursuant to the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Secretary of Agriculture is responsible for administering the programs which are designed to ensure that products distributed to consumers are wholesome, not adulterated, and properly marked, labeled, and packaged. In order to fulfill this obligation, the Secretary has delegated to the Administrator of the Food Safety and Inspection Service (FSIS) the authority to issue regulations and implement appropriate procedures to ensure compliance with the requirements of the FMIA. The regulations addressing imported products are codified at 9 CFR Part 327. In these regulations the Administrator has established procedures by which foreign countries desiring to export meat or meat food products to the United States may become eligible to do so. The Administrator has authority to withdraw a foreign country's eligibility to export meat products to the United States under § 327.2(a)(4) (9 CFR 327.2(a)(4)):

> * * * whenever it shall be determined by the Administrator that the system of meat inspection maintained by such foreign country does not assure compliance with requirements at least equal to all the inspection, building construction standards, and other requirements of the Act * * *; or that reliance cannot be placed upon certificates required under this part from authorities of such foreign countries * * *

Detectible levels of PCBs have been found in Czechoslovakian product every year since 1980. Between 1980 and 1982, PCB levels ranging from 0.28 ppm (parts per million) to 1.70 ppm were found during the first half of each year. Product from both plants certified to export to the United States has been involved. Several times FSIS notified Czechoslovakian officials of its residue findings and requested that they locate the source of the PCB contamination and correct the problem. To date, Czechoslovakia has not been able to determine the source of the contamination and continues to export product to the United States containing PCB residues.

On March 8 and March 21, 1983, shipments of product certified by Czechoslovakian officials as meeting U.S. requirements were presented for import inspection. These shipments were found to contain PCB residues of 4.49 ppm and 4.82 ppm, which is in violation of tolerance levels established by the Food and Drug Administration and enforced by FSIS. Under the FMIA, product that contains residue levels above established limits is considered adulterated and must be condemned for human food purposes. This product has been detained and will not be allowed to enter the United States.

PCBs are a class of toxic industrial chemicals that have been used in a wide range of electrical products and hydraulic and heat-transfer fluids. Meat products may be contaminated directly with PCBs through leaking hydraulic or electrical devices or plastics, or through the addition of meat from contaminated animals. PCBs are extremely stable, and when an animal is exposed through feed, water or the environment, the chemical accumulates in the fat tissue. Once introduced, PCBs move up the food chain. Therefore, it is necesary to locate and remove sources of contamination.

Research into the effects of PCB exposure has indicated that they cause various health disorders in laboratory animals, including reproductive failures, gastric disorders, skin lesions, and tumors. Studies of human exposure have indicated a high incidence of skin disorders, digestive disturbances, jaundice, severe headaches, throat and respiratory irritations.

Because of the toxicity of PCBs and the public health hazard they pose, the Czechoslovakian response to USDA's finding has been unacceptable. Czechoslovakian officials have not determined the cause of the contamination, nor taken other corrective action despite the fact that the Department has requested such action on several occasions. Furthermore, Czechoslovakia has certified and exported to the United States product containing levels of PCBs that are in violation of United States laws.

Therefore, the Administrator of FSIS has determined that the Czechoslovakian meat inspection system is not "at least equal to" the requirements of the FMIA and regulations applicable to official establishments in the United States and that reliance cannot be placed upon certificates required under the regulations (9 CFR Part 327) from authorities of such foreign country. Therefore, pursuant to section 327.2 of the regulations (9 CFR 327.2) the Administrator is withdrawing Czechoslovakia from the list of countries eligible for importation of products of cattle, sheep, swine, and goats into the United States.

When the Administrator of FSIS is satisfied that Czechoslovakian meat inspection officials have corrected the PCB residue problem and that the system meets all of the provisions of the FMIA, Czechoslovakia may again be added to the list of countries eligible for importation of products of cattle, sheep, swine, and goats into the United States.

List of Subjects in 9 CFR Part 327

Imported products.

PART 327—[AMENDED]

1. The authority citation for Part 327 is as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 466-466k.

§ 327.2 [Amended]

2. Section 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)) is amended by removing "Czechoslovakia" from the list of countries eligible for importation of product of cattle, sheep, swine, and goats into the United States.

It is found upon good cause that notice and public procedures thereon are not practical and would be contrary to the public interest in this instance (5 U.S.C. 553(b)). Further, good cause is found for making this amendment effective less than 30 days after publication in the Federal Register (5 U.S.C. 553(d)). As indicated above, the meat inspection system of Czechoslovakia with respect to the detection and elimination of residues of PCBs in its meat products exported to the United States no longer meets the requirements of the FMIA and regulations, and its products pose a hazard to consumers in the United States. Therefore, action must be taken immediately to protect the public.

Done at Washington, D.C. on April 25, 1983.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 83-11451 Filed 4-28-83; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 8918]

American Home Products Corp., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has modified its Final Order In the Matter of American Home Products Corporation, et al., issued on Sept. 9, 1981 (46 FR 51900), in accordance with a decision rendered by the Court of Appeals for the Third Circuit on Dec. 3, 1982. The modification deletes the provision that had prohibited the maker of Anacin and Arthritis Pain Formula from making any non-comparative effectiveness or side effects claims for any over-the-counter drug product unless the company possessed a reasonable basis when making such claims.

DATES: Final Order issued September 9, 1981. Modifying Order issued April 8, 1983.

FOR FURTHER INFORMATION CONTACT: FTC/GE, Ernest J. Isenstadt, Washington, D.C. 20580. (202) 523-3463.

SUPPLEMENTARY INFORMATION: In the Matter of American Home Products Corporation, a corporation and Clyne Maxon, Inc., a corporation. Codification appearing at 46 FR 51900 remains unchanged.

List of Subjects in 16 CFR Part 13

Advertising, Aspirin.

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

The Modified Order To Cease and Desist is as follows:

Before Federal Trade Commission

Commissioners:
James C. Miller III, Chairman
David A. Clanton
Michael Pertschuk
Patricia P. Bailey
George W. Douglas

In the matter of American Home Products Corporation, a corporation, and Clyne Maxon, Inc., a corporation; Docket No. 8918.

Modified Order to Cease and Desist

Respondent American Home Products Corporation having filed in the United States Court of Appeals for the Third Circuit a petition for review of the Commission's order issued herein on September 9, 1981; and the Court having on December 3, 1982, rendered its decision modifying the Commission's order and, as so modified, affirming the order; and the time for filing a petition for certiorari having expired and no petition having been filed:

Now, Therefore, it is hereby ordered that, pursuant to 15 U.S.C. 45(i), the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read:

Order

I

It is ordered that respondent American Home Products Corporation, its successors and assigns and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of "Anacin," "Arthritis Pain Formula," or any other non-prescription internal analgesic product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, that a claim concerning the superior effectiveness or superior freedom from side effects of such product has been established or proven unless such representation has been established by two or more adequate and well-controlled clinical investigations, conducted by independent experts qualified by training and experience to evaluate the comparative effectiveness or comparative freedom from side effects of the drugs involved, on the basis of which it could fairly and responsibly be concluded by such experts: (1) That the drug will have the comparative effectiveness or freedom from side effects that it is represented to have, and (2) that such comparative effectiveness or freedom from side effects is demonstrated by methods of statistical analysis, and with levels of confidence, that are generally recognized by such experts. The investigations shall be conducted in accordance with the procedures set forth below:

At least one of the adequate and well-controlled clinical investigations to evaluate the comparative effectiveness of the drug shall be conducted on any disease or condition referred to, directly or by implication; or, if no specific disease or condition is referred to, then the adequate and well-controlled clinical investigations shall be conducted on at least two conditions or diseases for which the drug is effective. The clinical investigations shall be conducted as follows:

1. The subjects must be selected by a method that:

a. Provides adequate assurance that they are suitable for the purposes of the investigation, and diagnostic criteria of the condition to be treated (if any);

b. Assigns the subjects to the test groups in such a way as to minimize bias; and

c. Assures comparability in test and control groups of pertinent variables, such as age, sex, severity or duration of disease or condition (if any), and use of drugs other than the test drugs.

2. The investigations must be conducted double-blind, and methods of double-blinding must be documented. In addition, the investigations shall contain a placebo control to permit comparison of the results of use of the test drugs with an inactive preparation designed to resemble the test drugs as far as possible.

3. The plan or protocol for the investigations and the report of the results shall include the following:

a. Clear statement of the objective of the investigation;

b. An explanation of the methods of observation and recording of results, including the variables measured, quantitation, assessment of any subject's response and steps taken to minimize bias on the part of subject and observer;

c. A comparison of the results of treatments or diagnosis with a control in such a fashion as to permit quantitative evaluation. The precise nature of the control must be stated and an explanation given of the methods used

to minimize bias on the part of the observers and the analysts of the data.

d. A summary of the methods of analysis and an evaluation of data derived from the study, including any appropriate statistical methods.

B. Making any representation, directly or by implication, of superior effectiveness or freedom from side effects of such product unless:

1. The superior effectiveness or superior freedom from side effects so represented has been established according to the terms set forth in paragraph I.A. of this Order, *or*

2. Each advertisement containing such representation contains a clear and conspicuous disclosure that there is a substantial question about the validity of the comparative efficacy or side effects claim, or that the claim has not been proven. Such a disclosure may consist of a clear and conspicuous statement that the claim is "open to substantial question," or that the claim "has not been proven." If other language is used by respondent to convey the required message, respondent shall maintain, for a period of three (3) years after the dissemination of any advertisement containing such disclosure, records sufficient to demonstrate that the required message is effectively conveyed to the advertisement's intended audience.

II

It is further ordered that respondent American Home Products Corporation, its successors and assigns and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of "Anacin," "Arthritis Pain Formula," or any other non-prescription drug product, in or affecting commerce, as "commerce" and "drug" are defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, that such product contains any unusual or special ingredient when such ingredient is commonly used in other non-prescription drug products intended for the same use or uses as the product advertised by respondent.

B. Making any false representation that such product has more of an active ingredient than any class of competing products.

C. Misrepresenting in any manner any test, study or survey or any of the results thereof, concerning the comparative effectiveness or freedom from side effects of such product.

III

It is further ordered that respondent American Home Products Corporation, its successors and assigns and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of "Anacin," "Arthritis Pain Formula," or any products in which "Anacin" or "Arthritis Pain Formula" is used in the name, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose clearly and conspicuously that the analgesic ingredient in such product is aspirin, when such is the case and when the advertisement makes any performance claim for the product.

IV

It is further ordered that respondent American Home Products Corporation, a corporation, its successors and assigns and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of "Anacin," in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, that Anacin relieves nervousness, tension, anxiety or depression or will enable persons to cope with the ordinary stresses of everyday life.

V

It is further ordered that respondent the C.T. Clyne Company, Inc., a corporation, its successors and assigns and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising of "Arthritis Pain Formula" or any other non-prescription internal analgesic product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, that such product contains any unusual or special ingredient when respondent knows or has reason to know that such ingredient is commonly used in other nonprescription internal analgesic products intended for the same use or uses as the product advertised by respondent.

B. Making any representation, directly or by implication, of superior freedom from side effects of such product, unless:

1. Respondent knows or has reason to believe that the superior freedom from side effects so represented has been established according to the terms set forth in paragraph I.A. of this Order, *or*

2. Each advertisement containing such representation contains a clear and conspicuous disclosure that there is a substantial question about the validity of the claim, or that the claim has not been proven. Such a disclosure may consist of a clear and conspicuous statement that the claim is "open to substantial question," or that the claim "has not been proven." If other language is used by respondent to convey the required message, respondent shall maintain, for a period of three (3) years after the dissemination of any advertisement containing such disclosure, records sufficient to demonstrate that the required message is effectively conveyed to the advertisement's intended audience.

VI

It is further ordered that respondents American Home Products Corporation and the C.T. Clyne Company, Inc., shall notify the Commission at least thirty (30) days prior to any proposed change in their respective corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in their respective corporation which may affect compliance obligations under this Order.

It is further ordered that the respondents herein shall within sixty (60) days after service of this Order upon them, and at such other times as the Commission may require, file with the Commission a written report setting forth in detail the manner and form in which they have complied or intend to comply with this Order.

By the Commission.

Issued: April 8, 1983.

Emily H. Rock,

Secretary.

[FR Doc. 83-11474 Filed 4-28-83; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Interpretation of "No-Action" Position Regarding Introducing Brokers and Associated Persons of Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Rule-related notice of interpretation of "no-action" position.

SUMMARY: The Commodity Futures Trading Commission ("Commission") recently published in the **Federal Register** a letter the Commission had transmitted to all registered futures commission merchants ("FCMs") in which the Commission advised those FCMs that, in light of recent amendments to the registration requirements administered by the Commission under the Commodity Exchange Act ("Act"), each FCM and agent of an FCM must determine whether those agents are to continue in business as introducing brokers on and after the May 11, 1983 effective date of the statutory amendments. 48 FR 15890 (April 13, 1983). That letter established procedures by which an agent may obtain a "no-action" position from the Commission until it is registered under the Act as an introducing broker and by which associated persons ("APs") of an FCM who are presently employed by an agent may "transfer" their registrations to an introducing broker.

The Commission indicated in that letter that an FCM must either terminate the association with the FCM of any APs who were not so "transferred" or, in the alternative, include those APs in an existing or newly designated branch office of the FCM. The Commission has now determined to allow affected individuals to remain associated with an FCM even if they are not included in what would currently be denominated as a branch office if, among other conditions, they are compensated directly by the FCM. The Commission is also providing further guidance with respect to certain questions which have arisen in the implementation and interpretation of its "no-action" position.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Rosenzweig, Assistant Chief Counsel, or Robert P. Shiner, Assistant Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street N.W., Washington, D.C. 20581. Telephone: (202) 254–8955 or 254–9703, respectively.

SUPPLEMENTARY INFORMATION: The Commission has recently made available procedures by which an agent of an FCM and the APs employed by that agent may obtain a "no-action" position from the Commission with respect to the registration requirements for introducing brokers and APs of introducing brokers which will become effective on May 11, 1983. As the Commmission explained when it adopted those procedures, APs who are presently associated with an FCM through an agent and who do not wish to become associated with an introducing broker can remain APs of the FCM. The Commission further indicated, however, that where APs' registrations were not "transferred" to an introducing broker, the FCM must either "[n]otify the Commission of the termination . . . of the association with the FCM of any APs employed by the agent . . . or include all APs formerly employed by the agent (and, if appropriate, the agent himself) in an existing or newly-designated branch office of the FCM."[1]

The Commission is aware, however, that a not insubstantial number of "country elevators" and cash grain merchants are agents of FCMs. These elevators and grain merchants, in turn, employ individuals who are registered with the Commission under the Act as associated persons whose activities as associated persons are often incidental to the principal business of the grain elevator or merchant. The Commission is also aware that a grain elevator or merchant may not itself want to become an introducing broker or to do business in the name of an FCM.

The Commission has therefore determined to clarify that individuals who are registered as associated persons of an FCM may continue to remain associated with the FCM as associated person under the Commission's "no-action" position, regardless of whether those APs are actually situated in what would currently be denominated as a branch office of the FCM, provided they meet the conditions of this interpretation. Specifically, the Commission has determined that such individuals shall be deemed to constitute a branch office if they are compensated directly by the FCM, hold themselves out to the public as APs of that FCM, and meet the other conditions stated herein. If, however, such individuals were to receive compensation for the solicitation or acceptance of customers' orders (or the supervision of any person or persons so engaged) through a person other than the FCM, or if such individuals were to solicit or accept orders on behalf of that other person, that person would be an introducing broker and would have to register as such unless it had earlier qualified for the Commission's "no-action" position.[2] Similarly, these APs of an FCM may not solicit or accept customers' or option customers' orders (or supervise any person or persons so engaged) in the offices of, or under the auspices of, an introducing broker. As under current law, an FLM must supervise its APs, including those APs which it compensates directly pursuant to this interpretation, and will be fully responsible for their activities and conduct as associated persons (including compliance with the requirements of the Act and the Commission's regulations thereunder) in the same manner and to the same extent as any of its other associated persons, wherever those APs may be located.

An FCM who elects to continue associated persons under its sponsorship in accordance with this interpretation of the Commission's "no-action" position must list each location other than its home office where such persons will be soliciting or accepting orders and, where more than one individual is at such a location, must also indicate which AP will be the "designated supervisor" at that location. This information should be clearly indicated on the computer-generated listing of APs and agents which has previously been supplied to each FCM by the Commission when that listing is returned to the Commission.

It remains the responsibility of each FCM which chooses to continue the association of its APs under this interpretation to assure itself that such an arrangement will not be contrary to the rules of any contract market of which the FCM is a member. In this regard, FCMs should also be aware that APs associated with an FCM in this manner will not be authorized to act as associated persons with respect to exchange-traded commodity option transactions unless the FCM's designated self-regulatory organization affirmatively agrees to audit the activities of these APs in accordance with the requirements of the Commission's options regulations.[3] Affected persons should also be aware that the Commission will continue to consider the appropriateness of this interpretation as well as whether and in what manner it should be continued

[1] 48 FR 15890, 15892 (April 13, 1983) (footnotes omitted).

[2] 48 FR 15890 (April 13, 1983). *See also* Futures Trading Act of 1982, Pub. L. No. 97–444, §§ 201(1), 207, 208, 212, 96 Stat. 2297, 2302, 2303–2304.

[3] *See* 17 CFR 33.4, *as amended by* 47 FR 56996, 57017–18 (December 22, 1982).

when the Commission adopts final rules relating to the registration of introducing brokers and their associated persons.

The Commission's staff has also received inquiries as to whether APs who "transfer" their registrations to an introducing broker under the Commission's "no-action" position will thereafter be able to become APs of an FCM if the introducing broker ultimately determines not to continue in business as an introducing broker. The Commission recognizes that, pending adoption of appropriate regulations, some agents will not be able to determine conclusively whether they wish to become, or to remain registered as, introducing brokers. The Commission wishes to emphasize, therefore, that its "no-action" position does not require an irrevocable election on the part of an agent or its APs. Accordingly, the Commission contemplates that its final regulations would allow for the expeditious re-registration of APs should an introducing broker ultimately decide not to continue in business as such or if APs of an FCM later determine to become associated with a registered introducing broker.

The Commission's staff has also been asked whether an agent of an FCM may qualify for the Commission's "no-action" position if the FCM's application for registration has not yet been granted. The Commission has previously determined to allow individuals whose applications for AP registration were pending with the Commission on April 7, 1983 date of the Commission's "no-action" letter to "transfer" their applications to an introducing broker and to begin work as an associated person as soon as the AP's application is granted.[4] The Commission believes that similar considerations should apply to an agent of an FCM. Thus, the Commission will allow an agent of an FCM to apply for the Commission's "no-action" position if the FCM had a completed application for registration on file with the Commission on April 7, 1983. Such an agent will be able to commence business as an introducing broker through any APs affiliated with it who have become registered when all of its principals have been "cleared" for fitness.[5]

[4] *Id.* at 15891 n.7. In such a case, the AP would be registered as an associated person of the introducing broker even though the introducing broker may not yet have been registered as such.

[5] Where those principals have applied for registration as associated persons, they will be "cleared" at the time they are registered as APs.

Finally, when the Commission proposed regulations to govern the registration of introducing brokers and the other new categories of registrant established by the Futures Trading Act of 1982, the Commission proposed generally to require the registration as an introducing broker of any person who is compensated either on a per-trade basis or for the referral of customers to an FCM.[6] The Commission's staff has been asked whether those registrants who are not now agents of FCMs (and who therefore do not qualify for the Commission's "no-action" position) will be effectively precluded from continuing to be compensated in this fashion on and after the May 11, 1983 effective date of the statutory amendments to the registration requirements of the Commodity Exchange Act. The Commission wishes to clarify that if it adopts the proposed rule requiring registants receiving such compensation to register in a different capacity, the effective date will be deferred to provide adequate time for such registrants to become so registered.

Issued in Washington, D.C. on April 26, 1983, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-11496 Filed 4-28-83; 8:45 am]

BILLING CODE 6351-01-M

[6] Proposed § 1.57(b), 48 FR 14933, 14935–36, 14985 (April 6, 1983). The Commission's proposal would, however, exempt from that requirement any person who is registered as an FCM, as a floor broker, or as an AP of an FCM or of an introducing broker.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 141

[Docket No. RM82-40-000]

Order Suspending Filing of Form No. EIA 767, "Steam-Electric Plant Air and Water Quality Control Data"

Issued: April 27, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order suspending filing requirement.

SUMMARY: The Federal Energy Regulatory Commission suspends, until further notice, the filing due May 1, 1983 and any future filings of form No. EIA-767, "Steam-Electric Plant Air and Water Quality Control Data", prescribed by 18 CFR 141.59. The form currently is the subject of a proceeding to revise it. Therefore, the filings are suspended until after the proceeding is completed.

DATE: April 27, 1983.

FOR FURTHER INFORMATION CONTACT: Cathy Ciaglo, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426; (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Before Commissioners C. M. Butler III, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

Issued: April 27, 1983.

In the matter of Suspension of Steam-Electric Plant Air and Water Quality Control Data: Form No. EIA-767, Docket No. RM82-40-000, order suspending filing of the form No. EIA-767, "Steam-Electric Plant Air and Water Quality Control Data."

On August 31, 1982 the Federal Energy Regulatory Commission (Commission) issued the "Final Rule to Eliminate Steam-Electric Plant Air and Water Quality Control Data: Form No. 67" (Order No. 257, 47 FR 38869, September 3, 1982). In that rule, the Commission provided that its annual Form No. 67 was superceded by Form No. EIA-767, which is jointly sponsored by the Commission and certain other agencies. The final rule also provided that the new EIA-767 would collect 1981 data only and that the form would be extensively redesigned by the cosponsors for future collections in time for the 1982 filing, due May 1, 1983. The Commission revised its regulations at § 141.59 to provide for the filing of EIA-767 and to provide a May 1st filing date for 1983 and for future years.

The proceeding to redesign the EIA-767 has not been completed in time for the May 1, 1983 filing. Therefore, the Commission suspends the filing of the Form No. EIA-767 until further notice.

As part of the proceeding to redesign the EIA-767, the Energy Information Administration, one of the cosponsors of the form, plans to publish in the **Federal Register** a notice of the proposed revisions, including the 1983 and future filing dates. When this proceeding is completed, the Commission will revise its regulations at § 141.59, as necessary, to reflect the revisions to the form.

The Commission orders:

The May 1983 and future filings of the Form No. EIA-767, "Steam-Electric Plant Air and Water Quality Control Data" prescribed by 18 CFR 141.59 are suspended until further notice.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-11631 Filed 4-28-83; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

Supplemental Security Income for the Aged, Blind, and Disabled; Deeming of Income and Resources

AGENCY: Social Security Administration, HHS.

ACTION: Extension of interim rules and intradepartmental board.

SUMMARY: This notice extends the effective period of the interim rules on deeming of income and resources published in the **Federal Register** on June 4, 1982 (47 FR 24274) and also extends the tenure of the Department of Health and Human Services' (HHS) intradepartmental board established for the purpose of applying those interim rules to certain Supplemental Security Income (SSI) cases. The interim rules and the tenure of the board are extended through December 31, 1983.

DATE: The board will continue to make case-by-case determinations concerning the possible waiver of the usual SSI rules for deeming certain family members' resources and income to a noninstitutionalized SSI claimant through December 31, 1983.

The interim rules applicable to these cases will remain in effect through that date.

FOR FURTHER INFORMATION: Contact Mr. Fred Miranda, Legal Assistant, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7341, for further information regarding extension of the interim rules. Information regarding the submission of a State agency's application for waiver of the usual SSI deeming rules may be obtained from Mr. Timothy D. Roberson, Department of Health and Human Services, Room 656-G Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, (202) 245-7187.

SUPPLEMENTARY INFORMATION: The interim rules provide special SSI deeming criteria to be used in determining whether it would be inequitable to apply the usual SSI deeming rules in certain circumstances. The intradepartmental board has been making case-by-case determinations on whether to waive the usual SSI rules for deeming certain family members' resources and income to a noninstitutionalized individual. Waiver of the usual deeming rules permits SSI eligibility and, in most States, Medicaid eligibility for certain disabled individuals confined at home who otherwise may be unnecessarily institutionalized to acquire such Medicaid eligibility. The interim rules reflect a temporary policy that was developed to deal with this concern (institutionalization in order to obtain Medicaid) while States develop appropriate programs of home and community-based services under their Medicaid programs. The temporary policy and the board were to be effective only through April 30, 1983. However, a number of States had indicated their inability to have such programs in place by April 30, 1983. Therefore, the Secretary decided to extend the interim rules and the tenure of the board through December 31, 1983.

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental Security Income (SSI).

(Catalog of Federal Domestic Assistance Program No. 13,807, Supplemental Security Income Program)

Dated: April 20, 1983.

John A. Svahn,

Commissioner of Social Security.

Approved: April 26, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 83-11544 Filed 4-28-83; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket Nos. 76N-0366 and 83N-0009]

Provisional Listing of FD&C Blue No. 2; Postponement of Closing Date and Stay of Effectiveness

AGENCY: Food and Drug Administration.

ACTION: Final rule; stay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Blue No. 2 for use as a color additive in food and ingested drugs. FDA is establishing a new closing date for FD&C Blue No. 2 to give the agency time to complete evaluation of objections received in response to the final regulation approving the petition for the permanent listing of FD&C Blue No. 2. The regulation that permanently lists FD&C Blue No. 2 and that removes it from the provisional list is stayed until July 1, 1983.

DATES: Effective April 29, 1983; the new closing date for FD&C Blue No. 2 will be July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Bureau of Foods (HFF-332), Food and Drug Administration, 200 C St. SW., Washington, DC. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of April 29, 1983, for the provisional listing of FD&C Blue No. 2 in a regulation published in the **Federal Register** of February 4, 1983 (48 FR 5261). The agency established the April 29, 1983 closing date for FD&C Blue No. 2 to provide time for receipt and evaluation of any objections to the final regulation approving the petition for permanent listing of FD&C Blue No. 2.

After the review and evaluation of the data relevant to the color additive petition to list FD&C Blue No. 2 for use in food and ingested drugs, the agency concluded that FD&C Blue No. 2 was safe for use in food and ingested drugs. Therefore, FDA issued a regulation in the **Federal Register** of February 4, 1983 (48 FR 5252) that would permanently list FD&C Blue No. 2. FDA stated that the regulation would become effective on March 8, 1983, unless stayed by the filing of proper objections.

On March 7, 1983, FDA received a letter stating objections to the listing regulation and requesting a hearing on those objections. Because of the objections, under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)(2)), the regulation (48 FR 5252) that permanently lists FD&C Blue No. 2 and that removes this color additive from the provisional list is stayed until the agency can rule upon the objections. FDA expects that it will need only a brief time to complete the evaluation of the objections. Therefore, FDA concludes that only a brief postponement is necessary at this time. The regulation set forth below will postpone the April 29, 1983 closing date for provisional listing of FD&C Blue No. 2 until July 1, 1983.

Because the current closing date expires on April 29, 1983, FDA has concluded that the use of a notice and public procedure on this regulation is impracticable. Thus, good cause exists for issuing the postponement as a final rule. Moreover, this action is consistent with the protection of the public health because the agency has previously

concluded that the FD&C Blue No. 2 is safe for its intended use under the Color Additive Amendments of 1960. This regulation will permit the uninterrupted use of this color additive until July 1, 1983. To prevent any interruption in the provisional listing of FD&C Blue No. 2 and in accordance with 5 U.S.C. 553(d)(1) and (3), this regulation is being made effective on April 29, 1983.

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 (secs. 701(e), 706 (b), (c), and (d), 70 Stat. 919 as amended, 74 Stat. 399–403 (21 U.S.C. 371(e), 376 (b), (c), and (d))) and the Transitional Provisions of the Color Additive Amendments (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), Chapter I of Title 21 of the Code of Federal Regulations (as amended in the Federal Register of February 4, 1983 (48 FR 5252)) is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. Part 74 is amended:

§ 74.102 [Stayed]

a. By staying § 74.102 *FD&C Blue No. 2.*

§ 74.1102 [Stayed]

b. By staying § 74.1102 *FD&C Blue No. 2.*

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

2. Part 81 is amended:

a. In § 81.1(a) by reinstating and revising "FD&C Blue No. 2" to read as follows:

§ 81.1 Provisional lists of color additives.

* * * * *

(a) * * *

Color additive		Closing date	Restrictions
Food use	Drug and cosmetic use		
* * * * *			
FD&C Blue No. 2 (sec. 74.1102 of this chapter).	July 1, 1983	July 1, 1983	Food and ingested drugs.
* * * * *			

* * * * *

b. In § 81.27(d) by reinstating and revising the entry for "FD&C Blue No. 2" to read as follows:

§ 81.27 Conditions of provisional listing.

* * * * *

(d) * * *

	Final report due	Closing date
* * * * *		
FD&C Blue No. 2	Oct. 30, 1981	July 1, 1983.
* * * * *		

* * * * *

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

§ 82.102 [Stayed]

3. Part 82 is amended by staying § 82.102 *FD&C Blue No. 2.*

Effective date. This regulation is effective April 29, 1983.

(Secs. 701(e), 706 (b), (c), and (d), 70 Stat. 919 as amended, 74 Stat. 399–403 (21 U.S.C. 371(e), 376 (b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated: April 15, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-11555 Filed 4-28-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Red No. 19 and D&C Red No. 37 for Use in Externally Applied Drugs and Cosmetics; 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. 19 and D&C Red No. 37 for use as color additives in externally applied drugs and cosmetics. The new closing date will be June 28, 1983. This brief postponement will provide time for determining the applicability for the statutory standard for the listing of noningested color additives to the results of the scientific investigations of D&C Red No. 19 and D&C Red No. 37.

DATES: Effective April 29, 1983, the new closing date for D&C Red No. 19 and D&C Red No. 37 will be June 28, 1983.

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

SUPPLEMENTARY INFORMATION: FDA established the current closing date of April 29, 1983, for the provisional listing of D&C Red No. 19 and D&C Red No. 37 for use in externally applied drugs and cosmetics by a rule published in the Federal Register of March 1, 1983 (48 FR 8443). The agency extended the closing date until April 29, 1983, to provide time for consideration of the studies submitted by the Cosmetic, Toiletry, and Fragrance Association, Inc. (CTFA). Previously in the Federal Register of March 27, 1981 (46 FR 18954), FDA had published a rule establishing a closing date of February 28, 1983, for the provisional listing of D&C Red No. 19 and D&C Red No. 37 for cosmetic and general drug uses. The agency had extended the closing date until February 28, 1983, to provide time for the completion of chronic toxicity studies and the review and evaluation of these studies. In the Federal Register of February 4, 1983 (48 FR 5262), FDA terminated the provisional listing of D&C Red No. 19 and D&C Red No. 37 for coloring ingested drugs and cosmetics.

As noted in the Federal Register of August 6, 1973 (38 FR 21199), D&C Red No. 19 and D&C Red No. 37 are the subject of a petition (CAP 9C0091) submitted by the Toilet Goods Association, Inc. (now CTFA), for use in coloring drugs and cosmetics. As discussed in the Federal Register of February 4, 1983 (48 FR 5262), the petitioner has amended its color additive petition by withdrawing its request to list these color additives for coloring ingested drugs and cosmetics but has continued to seek permanent listing of these color additives for use in external cosmetic and drug products that are not subject to incidental ingestion. Prior to February 4, 1983, the petitioner submitted analyses of the safety and legal issues involved in the decision on whether to list the external

uses of these color additives, including data regarding skin penetration. However, the agency found the the skin penetration data did not provide an adequate basis upon which to determine whether these color additives were in fact absorbed through the skin.

Thus, on November 24, 1982, CTFA asked the agency to review new skin penetration studies on these color additives. CTFA said it would be able to submit these studies to the agency by February 10, 1983. Because of unforeseen events, however, CTFA was unable to submit these new data until February 16, 1983. The agency agreed to review these data before reaching a conclusion on the safety of D&C Red No. 19 and D&C Red No. 37 for use in externally applied drugs and cosmetics.

The agency is now considering the scientific and legal aspects of the CTFA submissions in support of the external uses of these color additives. Although D&C Red No. 19 and D&C Red No. 37 have been shown to be animal carcinogens upon ingestion, the agency believes that somewhat different questions are raised by the request to list these color additives for noningested use. Thus, FDA finds that a brief extension of the closing date to June 28, 1983, is necessary to provide sufficient time for the agency to determine the applicability of the statutory standard for the listing of color additives for noningested use to D&C Red No. 19 and D&C Red No. 37. It has taken FDA more time to evaluate the data involved in making this decision than the agency anticipated. This postponement will also provide time for the agency to prepare and to publish a **Federal Register** document setting forth its final decision on the petition for the permanent listing of these color additives. The continued use of these color additives in externally applied products for the short time needed for adequate evaluation of the data and for preparation of the **Federal Register** document will not pose a hazard to the public health.

Because of the short time until the June 28, 1983 closing date, FDA concludes that notice and public procedure on this regulation are impracticable.

This regulation will permit the uninterrupted use of these color additives until June 28, 1983. To prevent any interruption in the provisional listing of D&C Red No. 19 and D&C Red No. 37 and in accordance with 5 U.S.C. 553(d) (1) and (3), this regulation is being made effective April 29, 1983.

List of Subjects in 21 CFR Part 81

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

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706(b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376(b), (c), and (d)) and 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. 19" and "D&C Red No. 37" in paragraph (b) to read "June 28, 1983."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing,* by revising the closing date for "D&C Red No. 19" and "D&C Red No. 37" in paragraph (d) to read "June 28, 1983."

Effective date. This final rule is effective April 29, 1983.

(Secs. 701, 706(b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376(b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note))

Dated: April 18, 1983.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-11432 Filed 4-28-83; 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 Yellow No. 10 for Use in Drugs and Cosmetics; 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 Yellow No. 10 for use as a color additive in drugs and cosmetics. The new closing date will be July 1, 1983. This brief postponement will provide time for the uninterrupted use of this color additive while the agency completes its review and considers the scientific and legal aspects of the results of the toxicological studies on D&C Yellow No. 10 submitted by several petitioners. Additionally, during this brief postponement, after completing its review of these studies, the agency will prepare the appropriate **Federal Register** document(s).

DATES: Effective April 30, 1983, the new closing date for D&C Yellow No. 10 will be July 1, 1983.

FOR FURTHER INFORMATION CONTACT: James H. Maryanski, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204; 202–472–5740.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of April 30, 1983, for the provisional listing of D&C Yellow No. 10 in drugs and cosmetics by a rule published in the **Federal Register** of March 27, 1981 (46 FR 18954). The April 30, 1983 closing date was established to provide time for completion of FDA's review and evaluation of the data concerning the use of D&C Yellow No. 10 in drugs and cosmetics, and for the publication of a regulation in the **Federal Register** regarding FDA's final decision on the petition for the permanent listing of this color additive. The regulation set forth below will postpone the April 30, 1983 closing date for the provisional listing of the color additive until July 1, 1983.

FDA's review and evaluation of the data relevant to the use of D&C Yellow No. 10 have required more time than anticipated. The agency therefore concludes that the brief extension of the closing date to July 1, 1983, is necessary. This brief postponement will provide time for the agency to complete its review and prepare the appropriate **Federal Register** document(s). No harm to the public health will result from this extension.

Because of the short time until the April 30, 1983 closing date, FDA concludes that notice and public procedure on this regulation are impracticable, and that good cause exists for issuing this postponement as a final rule. This regulation will permit the uninterrupted use of this color additive until July 1, 1983. To prevent any interruption in the provisional listing of D&C Yellow No. 10 and in accordance with 5 U.S.C. 553(d) (1) and (3), this regulation is being made effective on April 30, 1983.

List of Subjects in 21 CFR Part 81

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

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d))), under the

Transitional Provisions of the Color Additive Amendments of 1960 (Title XI, 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 Yellow No. 10" in paragraph (b) to read "July 1, 1983."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing*, by revising the closing date for "D&C Yellow No. 10" in paragraph (d) to read "July 1, 1983."

Effective date. This final rule shall be effective April 30, 1983.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376 (b), (c), and (d); sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))

Dated: April 18, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-11284 Filed 4-28-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Trimeprazine Tartrate and Prednisolone Capsules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to codify a previously approved new animal drug application (NADA) sponsored by Norden Laboratories, Inc. The NADA provides for safe and effective use in dogs of capsules containing the drug combination trimeprazine tartrate/prednisolone for their antipruritic, antitussive, and anti-inflammatory actions.

EFFECTIVE DATE: April 29, 1983.

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

SUPPLEMENTARY INFORMATION: Norden Laboratories, Inc., Lincoln, NE 68501, is sponsor of NADA 35-161 which provides for use of capsules containing sustained release trimeprazine tartrate combined with prednisolone. The capsules are administered to dogs when combined antipruritic, antitussive, and anti-inflammatory actions are indicated.

NADA 35-161 was originally approved by letter dated July 17, 1967. At that time, approvals were not codified by publication in the Federal Register. Accordingly, the regulations are now amended to codify Norden Laboratories' approved NADA.

This action, codification of a previously approved NADA, does not consititute reaffirmation of the safety and effectiveness data supporting this approval. Because the NADA was approved before July 1, 1975, the sponsor was not required to submit a summary of the safety and effectiveness data and information in accordance with the freedom of information provisions of the animal drug regulations in 21 CFR 514.11(e)(2)(ii).

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.

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.2605 to read as follows:

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

§ 520.2605 Trimeprazine tartrate and prednisolone capsules.

(a) *Specifications.* Each capsule contains 3.75 milligrams of trimeprazine in sustained released form (as the tartrate) and 1 milligram of prednisolone (capsule no. 1) or 7.5 milligrams of trimeprazine in sustained release form (as the tartrate) and 2 milligrams of prednisolone (capsule no. 2).

(b) *Sponsor.* See 011519 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer either capsule orally once daily to dogs as follows:

Animal weight (pounds)	Number of capsules per dose	
	Capsule No. 1	Capsule No. 2
Up to 10	1	
11 to 20	2	1
21 to 40	4	2
Over 40	6	3

(2) *Indications for use.* For the relief of itching regardless of cause, reduction of inflammation commonly associated with most skin disorders of dogs such as eczema caused by internal disorders, otitis, and dermatitis (allergic, parasitic, pustular, and nonspecific). It is also used in dogs as adjunctive therapy in various cough conditions including treatment of "kennel cough" or tracheobronchitis, bronchitis including allergic bronchitis, tonsillitis, acute upper respiratory infections, and coughs of nonspecific origin. The product may also be administered to dogs suffering from acute or chronic bacterial infections, provided the infection is controlled by appropriate antibiotic or chemotherapeutic agents.

(3) *Limitations.* After 4 days, reduce dosage to one-half the initial dose or to an amount sufficient to maintain remission of symptoms. Dosages in individual cases may vary and should be adjusted until proper response is obtained. Do not use the drug in cases of viral infections involving corneal ulceration or dendritic ulceration of the cornea. Clinical and experimental data have demonstrated that corticosteroids administered orally or parenterally to animals may induce the first stage of parturition when administered during the last trimester of pregnancy and may precipitate premature parturition followed by dystocia, fetal death, retained placenta, and metritis. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. April 29, 1983.

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

Dated: April 22, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-11424 Filed 4-28-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 1, 3, and 5

Further Deferral of Effective Dates of Regulations Relating to Labor Standards on Federal and Federally Assisted Construction Projects

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of further deferral of effective dates of regulations.

SUMMARY: This is a notice of continued deferral of the effective dates of certain sections of Department of Labor regulations relating to labor standards applicable to federal and federally assisted construction projects, which were published previously in the **Federal Register** as final rules on May 28, 1982. This action is taken in order to comply with a permanent injunction issued in the U.S. District Court for the District of Columbia on December 23, 1982, and amended by clarifying order of the Court dated January 17, 1983. For additional information on these actions see the following **Federal Register** documents in Parts II and III of this issue of the **Federal Register:**

1. FR Document No. 83–11198 (29 CFR Part 1) (Part II of this issue).

2. FR Document No. 83–11199 (29 CFR Part 5) (Part III of this issue).

DATE: The effective date of these rules is deferred until further notice. This notice is effective on April 29, 1983.

FOR FURTHER INFORMATION CONTACT: William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, Frances Perkins Department of Labor Building, Room S–3502, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone (202) 523–8305.

SUPPLEMENTARY INFOMRATION: In the **Federal Register** of May 28, 1982 (47 FR 23644, 23658, 23678), the Department of Labor issued final regulations, 29 CFR Part 1, entitled "Procedures for Predetermination of Wage Rates"; section 3.3(b) of 29 CFR Part 3 entitled "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants From the United States"; and 29 CFR Part 5, entitled "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)." These regulations were to be effective July 27, 1982.

On July 22, 1982, the District Court for the District of Columbia issued a preliminary injunction enjoining the Department from putting certain provisions of these regulations into effect pending final disposition. *Building and Construction Trades Department, AFL–CIO, et al.* v. *Donovan, et al.*, 543 F. Supp. 1282. The Department published a notice in the **Federal Register** on July 26, 1982 (47 FR 32070), deferring the implementation of these regulations in their entirety until further notice.

On December 23, 1982, the Court issued a permanent injunction with respect to a number of the May 28 regulatory revisions and on January 17, 1983, the Court amended its order to clarify and delineate which sections of the regulations were being enjoined. The Department has appealed this ruling. However, pending resolution of the appeal, the enjoined sections of the May 28 revisions to the regulations have been rewritten to comply with the injunction, by either eliminating the language regarding the issue in the suit or by adding language to continue the requirements in the existing regulations. The regulations published on May 28 which were not enjoined, with the language changes necessitated by the injunction, are being put into effect by separate document appearing elsewhere in today's **Federal Register.**

This document further defers the effective dates of the enjoined sections of the regulations as published in the **Federal Register** on May 28, 1982. If the injunction is subsequently lifted as a result of the Department's appeal, the enjoined sections of the May 28 regulations will be implemented at that time.

Since the Department is operating under the terms of a U.S. District Court injunction, the enjoined sections of these regulations cannot be implemented until final resolution of the appeal. Under the circumstances, separate notice and public comment on this further deferral of the effective date is impracticable, unnecessary and contrary to the public interest and good cause exists for making these postponements effective immediately. This finding is made pursuant to 5 U.S.C. 553(b)(3)(B) and 553(d)(3).

Accordingly, the regulations set forth on the following chart are deferred until further notice:

Section of rule	Enjoined issues	Publication of rule in final form	Originally scheduled effective date	New effective date
29 CFR 1.3(d)	Consideration of Davis-Bacon rates in wage surveys.	May 28, 1982 (47 FR 23652)	July 27, 1982	Deferred until further notice.
29 CFR 1.7(b)	Prohibition against use of metropolitan data in making rural wage determinations (and vice versa).	May 28, 1982 (47 FR 23655)	do	Do.
29 CFR 1.7(d)	Recognition of helpers	do	do	Do.
29 CFR 5.2(n)(4)	Definition of helper	May 28, 1982 (47 FR 23667)	do	Do.
29 CFR 5.5(a)(1)(ii)(A)	Conformance of helper classifications and wage rates.	May 28, 1982 (47 FR 23668)	do	Do.
29 CFR 5.5(a)(3) (ii) and (iii)	Submission of wage payment information	May 28, 1982 (47 FR 23669)	do	Do.
29 CFR 5.5(a)(4)(iv)	Provisions concerning the use of helpers	May 28, 1982 (47 FR 23670)	do	Do.
29 CFR 5.6(a) (2) and (3)	Provisions concerning the "Statement of Compliance" and requests for submission of payrolls.	May 28, 1982 (47 FR 23671)	do	Do.
29 CFR 3.3(b)	Weekly statement of wages paid	May 28, 1982 (47 FR 23678)	do	Do.

(The statutory authority for this action is as follows: 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; and the statutes listed in section 5.1(a) of Part 5)

Signed at Washington, D.C., this 22nd day of April 1983.

William M. Otter,

Administrator, Wage and Hour Division.

[FR Doc. 83-11201 Filed 4-28-83; 8:45 am]

BILLING CODE 4510-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-2351-2]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Emission Standards for 1984 and Later Model Year Light-Duty Vehicles

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period and request for comments.

SUMMARY: On February 18, 1983, EPA published an Interim Final Rulemaking (IFRM) that implemented the all-altitude emission control requirements of Section 206(f)(1) of the Clean Air Act (the Act) for 1984 model year light-duty vehicles (LDVs) (48 FR 7392, February 18, 1983).

In a petition dated March 17, 1983, the National Automobile Dealers Association (NADA) requested that the comment period on the 1984 IFRM be extended to allow additional time to prepare and submit comments. Also, three issues have been brought to EPA's attention concerning the LDV 1984 IFRM.These issues are: (1) The designation of high-altitude locations for 1984 and later LDVs, (2) the elimination of special vehicles designed for the high-altitude market, and (3) a request from General Motors Corporation (GM) to specifically exempt their heaviest LDV from the 1984 all-altitude requirement.

In response to NADA's request, and to allow additional specific comment on the issues mentioned above, EPA is extending the comment period on the 1984 IFRM.

DATE: Comments on the rulemaking action should be submitted to the Agency at the address given below on or before May 31, 1983.

ADDRESS: Copies of the material relevant to this rulemaking are contained in Public Docket No. A–80–1 at the U.S. Environmental Protection Agency, Central Docket Section. The docket is located in West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Wilcox, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105; (313) 668–4390.

SUPPLEMENTARY INFORMATION: Section 206(f)(1) of the Act requires that, beginning in the 1984 model year, all LDVs must meet the applicable Federal emission standards regardless of the altitude at which they are sold. (LDVs that are only certified to meet separate California emission requirements are not bound by this requirement. *See e.g.* S. Rep. No. 95–127, 95th Cong., 1st Sess. 87(1977).) On February 18, 1983, EPA published in the **Federal Register:** (1) An IFRM which implemented this "all-altitude" LDV requirement for 1984, and (2) an NPRM which solicited comments on adopting the same requirements for 1985 and later LDVs.

Although the comment period on the IFRM for 1984 closed on March 21, 1983, EPA is extending the comment period for two reasons. First, the Agency is granting a petition from the NADA dated March 17, 1983, to extend the comment period on the 1984 IFRM to allow more time for the submission of comments.[1] Second, EPA is seeking specific comments on three issues. Two of the issues were identified at the March 22, 1983 public hearing on the 1985 and later NPRM, and one issue was raised separately by GM.

The three issues upon which EPA is seeking specific comments are: (1) The designation of high-altitude locations where exempt vehicles (i.e., those certified only at low altitude) could not be sold, (2) the elimination of special yehicles designed specifically for the high-altitude market, and (3) a request from GM to grant a unique exemption from the all-altitude standards for its heaviest LDV. Each of these issues is discussed in greater detail below.

I. Designation of High-Altitude Locations

On November 10, 1982, the Agency proposed to reduce the number of high-altitude locations where only vehicles certified in compliance with high-altitude standards could be sold (47 FR 50929). The proposed "redesignation" of high-altitude locations would affect 1983 LDVs and 1983 and later light-duty trucks (LDTs). It is based on Section 202(f)(3) of the Act, which contains guidelines for establishing high-altitude regulations for these motor vehicles. That section specifically requires a consideration of air quality effects when designating areas to which the high-altitude standards would apply.

As indicated in the preamble of the redesignation NPRM and reiterated at the associated public hearing on January 12, 1983, the redesignation did not apply to 1984 and later LDVs because these vehicles were subject to the all-altitude requirements of Section 206(f)(1) of the Act.

In developing the regulations to implement Section 206(f)(1), EPA found that certain exemptions were necessary for very low-power vehicles. Such exempted vehicles would only meet standards at low altitude and could not be sold for principal use in high-altitude areas. The Agency interpreted the Act as requiring that, in this instance, high-altitude locations must be designated solely on the basis of altitude, and not on other factors. Therefore, because the revised designation criteria are based not only on altitude, but also on air quality needs EPA concluded that the original list of high-altitude locations should be retained for 1984 and later LDVs.

At the March 22, 1983 public hearing on the proposed all-altitude requirements for 1985 and later LDVs, commenters suggested that EPA's interpretation of Section 206(f)(1) may be overly restrictive. They argued that the redesignation should be adopted for 1984 and later LDVs because the Act does not appear to specifically prohibit the consideration of air quality needs in designating high-altitude locations for these vehicles. Furthermore, they stated that failure to adopt the revised designation criteria would result in a separate list of high-altitude counties for LDVs and LDTs. Such a system, they concluded, would be more costly than necessary and needlessly confusing to consumers and dealerships.

The Agency specifically requests comments on the desirability and the legal rationale for adopting the revised list of designated high-altitude locations for 1984 LDVs, rather than retaining the original list of designated high-altitude locations.

II. Elimination of Special High-Altitude Axles

The 1982–83 high-altitude LDV regulations allow the sale of vehicles equipped with special axle ratios that

[1] Letter and attachment from R. J. Wade, NADA, to R. D. Wilson, U.S. EPA. Available for review in EPA Docket No. A–80–01.

are only certified in compliance with high-altitude standards (45 FR 66984). These axles have higher numerical gear ratios which are designed to counteract the deleterious effects of higher elevations on vehicle performance.[2] Commenters of the March 22, 1983 public hearing stated that the regulations which implement the all-altitude requirement of Section 206(f)(1) of the Act would not allow such special high-altitude axles.

Indeed, under the regulations, vehicles using these higher numerical axle ratios could only be sold if they were certified in compliance with the standards at both low and high altitude. General Motors stated that the need to specifically certify vehicles with such axle ratios at low altitude would be too costly relative to the sales volume at low altitude, and may also adversely affect its corporate Average Fuel Economy (CAFE) rating. for these reasons, GM continued, higher numerical axle ratios, which are currently available for sale at high altitude, would be dropped from its LDV product line beginning in the 1984 model year.

The availability of higher numerical axle ratios does appear important to high-altitude consumers. According to Ford Motor Company when the same basic vehicle was available with two axle ratios, the higher numerical ratio generally accounted for 70 percent of the vehicle sales at high altitude.

Two important points were made at the public hearing regarding the future of these special axle ratios. First, the loss of these special axles in 1984 would adversely affect model availability in high-altitude locations and could be contrary to Congress' desire to protect model availability in these areas. Second, if vehicles with these special axles were somehow allowed at high altitude, such vehicles would still meet emission standards where they were sold (i.e., at high altitude). When these two points are taken together, allowing the continued sale of these vehicles in high-altitude areas does not appear to be at odds with the statute.

Because of this, commenters at the hearing suggested that an exemption be incorporated into the regulations for 1984 and later LDVs to allow special axle ratios to be certified for sale at high altitude only. This exemption would be similar to the provision already present in the regulations which allow the sale of certain vehicle configurations only at low altitude to protect model availability in these areas.

If such a special axle ratio exemption is found to be permissible under the Act, another issue is whether the sale of such vehicles could be allowed for principal use in any area above 4,000 feet, and not just in areas that EPA has designated as high-altitude locations (i.e., any county with 75 percent of its land mass and population above 4,000 feet). It can be argued that the issue of limiting model availability in this instance is strictly altitude dependent and is not limited simply to areas that meet EPA's high-altitude designation criteria, which were adopted for other regulatory purposes.[3] Allowing the sale of vehicles with high-altitude axle ratios for principal use in any area above 4,000 feet; however, would require that a special provision be added to the 1984 and later LDV regulations.

In a related matter, it should be noted that if the revised list of counties for 1983 LDVs is adopted for 1984 and later LDVs, as discussed previously, there will be many more "non-designated" areas above 4,000 feet than if the current list of counties is retained.

The Agency specifically requests additional comments on the legal justification and need for special axle ratio exemptions in high-altitude locations. Comments are also requested on whether it would be inconsistent to allow the sale of both exempted and special axle ration vehicles in non-designated areas above 4,000 feet.

III. General Motors' Request for Exemption

General Motors has brought to EPA's attention a problem concerning the effect of the 1984 all-altitude requirement on a particularly heavy (over 6,000 lbs. gross vehicle weight (GVW)] LDV.[4] General Motors has indicated that, for 1984 only, application of the all-altitude requirement to its Cadillac limousine would be too costly to justify marketing of this vehicle. The limousine is currently equipped with a 6.0-liter modulated displacement engine. General Motors has indicated that as presently designed, the limousine cannot comply with the all-altitude requirement, and that GM believes that it would be impractical to redesign the 6.0-liter engine system for the 1984 model year.

We are inclined to grant GM's request to exclude this vehicle from the 1984 LDV all-altitude requirement. There is no discernible environmental effect which would result from removing this vehicle from the all-altitude requirement, nor would this action have an obvious competitive impact. General Motors has indicated that expected sales of this vehicle are fewer than 1,500 vehicles, and fewer than 50 at high altitude. Moreover, since this vehicle is greater than 6,000 lbs. GVW, we believe it appropriate to remove it from the LDV class. The Clean Air Act specifically envisions that vehicles in excess of 6,000 lbs. GVW can be classified as other than LDVs.[5]

Because GM has idicated that this problem exists only for the 1984 model year, we plan to limit the reclassification of heavy passenger vehicles to only one year. For the one year, we intend to classify passenger vehicles rated over 6,000 lbs. GVW (with equivalent test weights of 5,000 lbs. or more) as other than an LDV; however, apart from the all-altitude requirement, LDV standards would apply.

We invite comment on this action, especially on environmental impact, competitive effect, or model availability.

Dated: April 12, 1983.

Charles L. Elkins,

Acting Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 83-10618 Filed 4-28-83; 8:45 am]

BILLING CODE 6560-50-M

[2] When a vehicle is driven at higher elevations, the air it consumes is less dense due to its lower atmospheric pressure. As air becomes less dense, less oxygen is available in a given volume of air to combine with fuel and produce power. Consequently, vehicle performance at high altitude is degraded.

[3] High-altitude locations were originally designed to provide EPA, state governments, and manufacturers with a reasonable way to enforce the prohibition against selling low-altitude vehicles in high-altitude areas.

[4] Letters from T. M. Fisher, GM, to C. L. Gray, U.S. EPA, dated September 13, 1982, and October 12, 1982. Available in EPA Docket No. A-80-01.

[5] See Section 202(b)(3)(C) of the Clean Air Act.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6375

[W-81075]

Wyoming; Modification of Executive Order of April 15, 1930 and Supplements Thereof

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order will modify the Executive Order of April 15, 1939, and supplements thereof, which withdrew lands for oil shale classification. This modification, affecting 2,542.23 acres, is necessary to permit the filing of a public airport lease application by the town of LaBarge, Wyoming. The lands would

remain closed to surface entry other than airport leases, mining and mineral leasing for minerals other than oil, gas, and sodium.

EFFECTIVE DATE: April 29, 1983.

FOR FURTHER INFORMATION CONTACT: W. Scott Gilmer, Wyoming State Office, 307–772–2089.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order of April 15, 1930, and supplements thereof, which withdrew lands for oil shale classification is hereby modified to permit a public airport lease of the following described lands pursuant to the Act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211–214), as amended by the Act of August 16, 1941 (55 Stat. 621):

Sixth Principal Meridian, Wyoming

T. 28 N., R. 112 W.,
Secs. 1 through 4, All.

The area described contains approximately 2,542.23 acres in Lincoln County, Wyoming.

Inquiries concerning the lands should be addressed to the Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

April 20, 1983.

[FR Doc. 83-11493 Filed 4-28-83; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 83

[Docket No. FEMA-FIA-80]

Federal Crime Insurance Program

AGENCY: Federal Insurance Administration (FIA), FEMA.

ACTION: Final rule.

SUMMARY: These revisions to the Federal Crime Insurance Program are proposed to achieve the following: The definitions of "named insured" and "insured premises" under the residential policy are simplified and the term "conveyance of property away from the premises" as used in the commercial policy is defined. Other revisions provide greater clarity to existing provisions and reflect program experience which has indicated the desirability of more precise terminology.

On December 15, 1981, (46 FR 61146) the Federal Insurance Administration, Federal Emergency Management Agency, published for comment in the **Federal Register** a proposed rule containing revisions which are based upon experience gained in administering the Federal Crime Insurance Program and from suggestions received from interested parties to make the Program more effective in serving the needs of those for whom it was intended and benefit the government as well as the insured.

DATE: This rule will be effective May 31, 1983.

FOR FURTHER INFORMATION CONTACT: Robert J. DeHenzel, Federal Emergency Management Agency, Federal Insurance Administration, Donohoe Building, 500 C Street, S.W., Room 433, Washington, D.C. 20472, Telephone Number (202) 287–0800.

SUPPLEMENTARY INFORMATION: The only written comments received were from an insurance industry organization and the Federal Emergency Management Agency's Inspector General in respect to which the comments were duly considered and some dealt with in the final rule promulgated as of June 1, 1982, 47 FR 19350.

These amendments are the result of the experience gained in the eleven years the Federal Crime Insurance Program has been in operation and were not included in the Federal Regulations revisions promulgated June 1, 1982.

Certain terminology in the residential and commercial policies have lacked adequate definitions and these proposed regulations bring clarity to the policy provisions. These regulations enable insureds to determine whether they are conveying property which can be covered under the insuring agreement of robbery "away from the premises" by defining when conveyance ceases.

The definition of "premises" in the residential policy has lacked clarity and these regulations make it clear that damage to the exterior of buildings such as houses or garages is required to establish burglary.

FEMA had determined in the Notice of Proposed Rulemaking that an Environmental Impact Statement is not needed for this Final Rule. A copy of the Finding of No Significant Impact and An Environmental Assessment is available at the above address.

It has also been determined that this regulation will not have a significant impact on a substantial number of small businesses and that a Final Regulatory Flexibility Analysis is not needed.

List of Subjects in 44 CFR Part 83

Crime insurance.

PART 83—COVERAGE, RATES, AND PRESCRIBED POLICY FORM

Accordingly 44 CFR Part 83 is amended as follows:

§ 83.5 [Amended]

(1) Section 83.5(a) is amended by revising portions of the "Residential Crime Insurance Policy" in the following respects:

a. Insuring Agreement II, entitled "Damage" is revised as follows:

II. *Damage.* To pay for damage to the premises and to the insured property by burglary or robbery, including observed theft, or attempt threat, and for damage to the interior of that portion of any building occupied by the named insured's household at the premises and to the insured property therein or away from the premises by vandalism or malicious mischief which occurs during a burglary or robbery, provided that with respect to damage to the building an insured is the owner thereof or is liable for repairing such damage.

With respect to loss occurring at any part of the premises not occupied exclusively by the named insured's household, this Insuring Agreement applies only to property owned or used by an insured.

b. Insuring Agreement VI, entitled "Policy Period, Territory", is revised to read as follows:

VI. *Policy Period, Territory.* This policy applies only to loss which occurs during the policy period within a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the territories and possessions of the United States and the Trust Territory of the Pacific Islands as defined in 12 U.S.C. 1749bbb–2 and set forth in 44 CFR 55.1.

c. Subparagraphs entitled "Definitions—(a) Named Insured" and (b) "Premises" under the heading entitled "Conditions" is revised to read as follows:

1. *Definitions*—(a) *Named Insured.* "Named Insured" means the insured named in the application. "Insured" means the named insured and any person while a permanent member of the insured's household, other than a residence employee;

(b) *Premises.* "Premises" of paragraph 1 means the premises designated in the application and includes garages and other outbuildings incidental thereto.

d. Paragraph 11 entitled "Cancellation" of the section entitled "Conditions" is amended by inserting two additional sentences after the third sentence of that paragraph as follows:

"The premium due notice for installment or renewal premiums is issued to notify the insured that the policy will be cancelled or will expire, as appropriate, unless the insured pays the premium in sufficient time for it to be received by the insurer, or postmarked by the United States Postal Service, on or before

the due date. The mailing of any premium due notice, cancellation notice, or any other notice required by the policy, to the mailing address shown on the application or policy shall be conclusive evidence of notice to the insured."

§ 83.26 [Amended]

(2) Section 83.26(b), is amended by revising portions of the "Commercial Crime Insurance Policy" in the following respects:

a. The paragraph entitled "Insuring Agreements" is revised to read as follows:

Option 1 includes insurance coverage under all of the individually numbered Insuring Agreements listed under the headings Option 2 and Option 3, thus constituting a combination of equal amounts of robbery and burglary insurance coverage.

Option 2 includes insurance coverage only under the individually numbered insuring Agreements I, II, III and IV listed below:

I. Robbery, Including Observed Theft Inside the Premises.

To pay for loss by robbery or observed theft of money, securities, merchandise, furniture, fixtures, and equipment within the named Premises.

II. Robbery, Including Observed Theft Outside of the premises.

To pay for loss by robbery or observed theft of money, securities, and merchandise, including the wallet or bag containing such property while such property is in conveyance by the insured or his messenger outside the named premises, but no payment shall be made for any loss in excess of $5000 except when the insured or his messenger is accompanied by a guard armed with a firearm. The person carrying the insured property and the armed guard cannot be the same person.

This Insuring Agreement includes theft from a night depository but only if a deposit of money has been made at a night depository of a banking institution by a bonded armored car messenger service.

III. Damage. To pay for damage to the named premises and to money, securities, merchandise, furniture, fixtures and equipment within the named premises, by robbery or attempt thereat, provided the insured is the owner thereof or is liable for such damage.

IV. Policy Period, Territory. To pay for losses under Insuring Agreements I, II and III only when occurring during the policy period within a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and such other territories or possessions of the United States including the Trust Territory of the Pacific Islands as defined in 12 U.S.C. 1749bbb–2 and set forth in 44 CFR 55.1.

Option 3 includes insurance coverage only under the individually numbered Insuring Agreements V, VI, VII and VIII listed below.

V. Burglary, Robbery of a Watchman. To pay for loss by burglary or by robbery of a watchman, while the named premises are not open for business, of merchandise, furniture, fixtures and equipment within the named premises provided that this Insuring Agreement does not extend to the loss of money or securities or to cash value in excess of $50 for any item of jewelry unless such property is forcibly extracted from a locked safe as provided under Insuring Agreement VI entitled "Safe Burglary" which follows.

VI. Safe Burglary. To pay for loss by safe burglary of money, securities and merchandise within the named premises while the premises are not open for business, but no payment shall be made for a loss in excess of $5000 except with respect to loss by safe burglary of a safe rated for burglary resistance as Class E or better weighing at least seven hundred and fifty pounds or securely anchored to the floor.

VII. Damage. To pay for damage to the named premises and to money, securities, merchandise, furniture, fixtures and equipment within the named premises by burglary, robbery of a watchman, safe burglary or attempt thereat provided the insured is the owner thereof or is liable for such damage.

VIII. Policy Period, Territory. To pay for losses under Insuring Agreements V, VI, and VII only when occurring during the policy period within a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and such other territories or possessions of the United States, including the Trust Territory of the Pacific Islands as defined in 12 U.S.C. 1749bbb–2 and set forth in 44 CFR 55.1.

Option 4 shall include insurance coverage under all of the individually numbered Insuring Agreements listed under the headings Option 2 and 3 but constituting a combination of unequal amounts of robbery and burglary insurance coverages.

b. The paragraph (a) under the heading entitled "Exclusions" is revised to read as follows:

(a) To loss due to embezzlement or to any fraudulent, dishonest or criminal act by any insured, a partner therein, or an officer, employee, director, trustee or authorized repesentative thereof while working or otherwise and whether acting alone or in collusion with others; provided that this exclusion does not apply to robbery or safe burglary by other than an insured, an officer or a partner thereof.

c. The heading entitled "Exclusions" is amended to add the following paragraphs (g), (h), (i), (j) and (k).

(g) To loss of personal property of: (1) The insured, an officer or partner thereof, (2) a permanent member of the household of an insured, (3) an employee of an insured; provided that this exclusion does not apply if such personal property is used in furtherance of the conduct of the insured's business.

(h) To loss of any vehicle having four or more wheels designed to be operated on any highway and for which a motor vehicle registration is required for such use.

(i) To loss from burglary or safe burglary at any embassy or consulate of any government other than that of the United States.

(j) To loss from burglary or safe burglary at any named premises which is vacant for a period of more than 60 days.

(k) To loss of property of a business (other than the insured's business) that jointly occupies the named premises with the insured but whose business area is not separated from the insured's business area by a physical barrier. In such an instance the insured shall not be deemed liable to any persons for the property of the other business or businesses despite the location of such property in the same premises named by insured in his or its location.

d. Subparagraph (e) of Paragraph 1 under the heading "Conditions" is revised to read as follows:

(e) *Messenger.* "Messenger" means the insured, a partner therein, an officer thereof, or any employee thereof who is in the regular service of and duly authorized by the insured to have the care and custody of the insured property outside the premises. In addition "messenger" includes a bonded professional guard and an employee of a bonded armored car service.

e. Under the heading "Conditions", paragraph 1 is amended by redesignating paragraphs (f), (g), (h), (i), (j), (k), and (l) and as paragraphs (g), (h), (j), (i), (k), (l), and (m), and by adding a new paragraph (f) to read as follows:

(f) In Conveyance. Money, securities or merchandise is in conveyance while being transported by the insured or his messenger. If the transportation is interrupted for any purpose which is not incidental to or in furtherance of the transportation of the money or property to its destination, the conveyance ceases. Any merchandise offered for sale by the insured or messenger at a location other than the premises named in the policy is not in conveyance. However, the sale of an item merchandise or the performance of a service, other than check cashing, related to the insured's business outside the premises which causes the insured or messenger to collect money from a customer is deemed incidental to and in furtherance of the transportation of money to its destination and the money thus collected and any other money is and remains in conveyance.

Conveyance is interrupted and coverge ceases when (1) the money, securities or merchandise is delivered into and possession relinquished at any premises other than the premises named in the policy, or (2) the money is deposited in a bank, or (3) when an insured or a messenger collecting money, securities or merchandise previously accumulated for his pickup, from more than one location remains with such property in any location for any time longer than reasonably necesssary for him to take custody of such property, or (4) when an insured or a messenger transporting money, securities or merchandise willfully and knowingly undertakes any activity that increases the likelihood of his being exposed to robbery or reduces his ability to carry out his responsibility for the custody of the money or property.

f. Under the heading "Conditions", Paragraph (l), subparagraph (m) as

redesignated is revised to read as follows:

(m) Safe. A safe is a non-portable money storage compartment not on wheels, which is reinforced with a minimum of ¼ inch solid steel plate throughout, with the exception of the door which must be at least one inch thick, solid steel plate and equipped with a combination lock which is an integral part of the door.

A Class E Safe means a steel safe having walls at least 1 inch thick and doors at least 1 and ½ inches thick, or a vault of steel at least ½ inch thick or of reinforced concrete or stone at least 9 inches thick or of non-reinforced concrete or stone at least 9 inches thick or of non-reinforced concrete or stone at least 12 inches thick, with steel doors at least 1 and ½ inches thick.

g. Paragraph 1 under the heading "Conditions" is revised to add a new subparagraph (n) as follows:

(n) Merchandise includes customer's property held for repair or other such work.

(Title XII of the Housing and Urban Development Act of 1969 (Pub. L. 90-488, 88 Stat. 476); Reorganization Plan No. 3 of 1978 (43 FR 41943) and E.O. 12127, dated March 31, 1979 (44 FR 19367) and Delegation of Authority to Federal Insurance Administrator (44 FR 20963))

Issue date: April 20, 1983.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 83-11341 Filed 4-28-83; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 31

[CC Docket No. 82-680; RM-4076; FCC 83-138]

Amendment of Annual Report Form M; Telephone Company Reporting Burdens

AGENCY: Federal Communications Commission.

ACTION: Final rule (Report and Order).

SUMMARY: The Commission has adopted a Report and Order which amends six schedules and eliminates four schedules of Annual Report Form M. This action reduces telephone company reporting burdens by recognizing the effects of inflation, changes in industry and change in the Commission's data needs. This action will reduce carrier filings made each year by approximately 10%.

EFFECTIVE DATE: May 27, 1983.

FOR FURTHER INFORMATION CONTACT: Gerald P. Vaughan, Chief Accounting and Audits Division, Common Carrier Bureau 634-1861.

List of Subjects in 47 CFR Part 31

Communications common carriers, Telephone, Uniform system of accounts.

Report and Order

In the Matter of: Amendment of Annual Report Form M; CC Docket No. 82-680, RM-4076.

Adopted: April 7, 1983.

Released: April 28, 1983.

By the Commission: Commissioner Fogarty absent.

I. Introduction

1. On October 4, 1982, the Commission released a Notice of Proposed Rulemaking (NPRM), (October 12, 1982; 47 FR 44782), which proposed to revise or eliminate ten schedules of Annual Report Form M to reduce telephone carrier reporting burdens. This NPRM was based on a petition filed by American Telephone and Telegraph Company (AT&T). In its petition, AT&T stated that inflation, changes in the telephone industry, and other related events have caused certain reporting requirements to become burdensome or impractical and have required submission of some insignificant data.

2. In the NPRM we proposed to revise one schedule to make its revenue categories consistent with current tariff structure and subaccounts. We proposed to raise reporting limits on five schedules so that carriers would report less detailed data. We also proposed to raise the reporting limits of another schedule, but we also solicited comments on whether that schedule should be eliminated as an alternative to raising its limits. Finally, we proposed to eliminate three other schedules.

3. Based on the comments and reply comments received in this proceeding, we have decided to adopt all of our proposals including the alternative of eliminating one schedule instead of raising its reporting limits. Accordingly, this order revises one schedule, raises the reporting limits of five schedules, and eliminates four schedules.

II. Background

4. Form M is an annual report required to be filed by subject telephone carriers having annual operating revenues in excess of $1 million. This report is filed in accordance with § 43.21 of Part 43 and § 1.785 of Part I of our Rules and provides information on the stock and stockholders; officers and directors; funded debt; property, franchises, and equipment; employees and their salaries; and financial operations of the reporting companies.

5. This rulemaking proceeding was initiated primarily to respond to the problems raised in AT&T's petition. A more comprehensive review of Annual Report Form M will be made in Docket No. 78-196 (in which a new Uniform System of Accounts is being developed) to assure that the information collected continues to be needed for regulatory purposes, does not duplicate information available from other governmental sources, and is obtained with the least possible burden on the carriers.[1]

III. Proposed Revisions

6. Schedule 34, Operating Revenues, requires the reporting of operating revenues for the primary revenue accounts prescribed in Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies (USOA), and requires additional details for various subaccounts and tariff categories. We proposed no change in the primary accounts, but we did propose revisions in the subaccounts and tariff categories to make them consistent with current tariff structures and subaccounts. This included eliminating categories that were not offered or offered only to a limited extent and renaming other categories to make them more descriptive of the services currently being offered.

7. Schedule 39, Special Expenses Attributable to Formal Regulatory Cases, requires reporting of expenses totaling $500 or more which are attributable to formal regulatory cases before Federal, State and other regulatory commissions and to court cases in which a commission is a party. We proposed to raise the reporting limit from $500 to $10,000.

8. Schedule 43, Donations or Payments For Services Rendered By Persons Other Than Employees, requires reporting payments of $10,000 or more made to each recipient (not an employee) for certain services rendered, or made as donations. The Commission proposed to raise this reporting limit from $10,000 to $25,000.

9. Schedule 12C, Analysis Of Entries In Property Held For Future Telephone Use, requires listing separately each accounting entry of $10,000 or more in account 100.3, "Property held for future telephone use." The Commission proposed to raise the reporting limit to $50,000 to reduce the companies' burdens in reporting these data.

10. Schedule 13A, Analysis of Telephone Plant Acquired (Account 276), requires reporting separately the amont of each acquisition of telephone

[1] *Second Supplemental Notice of Proposed Rulemaking and Order*, Docket No. 78-196, 88 FCC 2d 83 (1981).

plant included in account 276 at any time during the year, except minor acquisitions which had a purchase price each of less than $5,000. The Commission proposed raising this limit from $5,000 to $50,000 which would reduce the companies' reporting burdens without any significant effect on the amount of dollars reported.

11. Schedule 16, Miscellaneous Physical Property (Accounts 103 and 315), requires the separate reporting of data with respect to miscellaneous physical property at each location representing a book cost of $10,000 or more. We proposed to raise the reporting limit from $10,000 to $50,000 which would reduce the companies reporting burdens without any significant effect on the amount of dollars reported.

12. We also proposed, in line with AT&T's petition, to raise the reporting limits in Schedule 70B, Compensation of Officers, Directors, Etc., from $40,000 and $20,000, depending on the carriers' annual operating revenues, to a single reporting limit of $75,500 for all carriers. This proposal would permit carriers to report the aggregate of such payment within six compensation groupings. The Commission also solicited, on its own initiative, comments on whether this schedule should be eliminated as an alternative to the changes proposed.

13. We also proposed to eliminate Schedule 70C, Wages and Hours, as opposed to AT&T's petition to amend the reporting requirements concerning the number of employees in classifications according to hourly rates of pay.

14. Finally, we proposed to delete Schedule 60C, Analysis of Pension and Benefit Funds, and Schedule 60D, Investment of Pension and Benefit Funds. Schedule 60C provides an analysis of pension and benefit funds by requiring the reporting of increases and decreases made to the fund over the year. Schedule 60D requires the reporting of the description of pension and benefit fund investments to include the face amount, cost, book value, estimated market value and yield.

IV. Summary of Comments

15. The NPRM permitted all interested parties to file comments on the specific proposals on or before November 8, 1982, and reply comments on or before November 23, 1982. Comments were filed by AT&T; GTE Service Corporation (GTE); U.S. Department of Labor (Labor); U.S. Department of Commerce (Commerce); Stephen Aug, as an individual; Arkansas Public Service Commission (Arkansas); North American Telephone Association (NATA); MCI Telecommunications Corporation (MCI); United States Independent Telephone Association (USITA); United Telephone System, Inc., (UTS); Public Utilities Commission of California (California); and the Colorado Public Utilities Commission (Colorado). Reply comments were filed by AT&T, NATA, Labor, and MCI.[2]

16. The comments basically favor the proposals. However, several respondents suggest specific modifications to various areas. A brief summary of all comments as they relate to our proposals is set forth below.

Schedule 34, Operating Revenues

17. AT&T, GTE, Colorado, and Arkansas favor our proposal to revise the subaccounts and tariff categories to make them consistent with current tariff structures and subaccounts.

18. Commerce requests that we obtain more information than our proposal would require for account 510, "Message tolls," and account 512, "Toll private line services." For account 510 Commerce requests that separate revenue data be collected for telephone (voice) and data services, and for account 512 it requests that wideband transmission service be reported as a separate service. Commerce states that the Interindustry Economics Division of its Bureau of Economic Analysis uses Form M data in the construction of input-output accounts of the U.S. economy and that it would be able to more accurately identify and quantify the users of these services with revenues identified as it suggests. In its reply comments AT&T objects to Commerce's requests. AT&T states that customers use voice and data services interchangeably which makes their separation impractical. AT&T also claims that wideband transmission service should not be collected separately because Telpak wideband transmission service, which is the most significant toll private line service, is no longer being offered on an interstate tariff basis.

19. UTS objects to reporting private line information at the proposed level of detail. UTS calculates that private line revenues represent less than four percent of its total operating revenues. UTS recommends that the Commission restrict the reporting requirements to only those subcategories within Local Service, Toll Service, Miscellaneous, and Uncollectable Revenues, and that detailed information from subsidiary records be provided to the Commission on an exception basis when requested.

20. California, while in agreement with the philosophy of revising the reporting categories, asks if this Commission has considered whether the smaller independent telephone companies have the capability of gathering and reporting the proposed information and whether the cost of smaller companies' compliance with the proposal would exceed the benefits to be received.

Schedule 39, Special Expenses Attributable to Formal Regulatory Cases

21. AT&T, GTE, Commerce, and Colorado favor the proposed raising of the reporting limit for regulatory cases from the present $500 to $10,000. Three parties oppose the proposed change.

22. Mr. Aug strongly opposes any increase in this reporting limit. He believes increasing this limit would cause a loss of valuable information on the cost of regulation. Mr. Aug suggests that the costs of all regulatory cases below the reporting limit be aggregated and reported as a single figure.

23. MCI states that raising this limit to $10,000 is not in the public interest. MCI believes that such an increase in this limit would allow a company to disaggregate costs into different cases so that they might avoid reporting such expenses for formal regulatory purposes. MCI recommends raising the limit to only $5,000.

24. UTS states that carriers would benefit more if the reporting requirement is raised to $25,000 and if this schedule is restricted to expenses associated with only full rate case filings in order to exclude the cost of such items as requests for depreciation rate increases.

25. In its reply comments, AT&T states that an analysis of 1980 statistics shows that, while 53% of the cases are under $10,000, they represent only 3% of the total dollars reported. AT&T claims, therefore, that raising the limit to $10,000 would significantly reduce the reporting burden while continuing to provide the Commission with useful information.

Schedule 43, Donations or Payments for Services Rendered by Persons Other Than Employees

26. AT&T, GTE, Commerce, and UTS favor our proposal to increase the reporting limits for donations or payments for services rendered by persons other than employees from the current $10,000 to $25,000.

27. Mr. Aug favors lowering the reporting limit to $500 to keep a bank of information about potential or actual conflicts of interest. AT&T's reply comments state that Mr. Aug does not

[2] Labor's reply comments were filed after the due date but are being considered in this proceeding.

offer any evidence of such conflict of interest and that the continued collection of these data does not contribute to a significant regulatory purpose.

28. MCI contends that the current limit of $10,000 is a significant amount of money for an individual to receive from a company on a consulting basis. It states that MCI, this Commission, and the public have a right to know whose consulting services a telephone company is buying. It also believes that the FCC and other regulatory commissions which might use consultants would want to know the extent such consultants have worked for a particular carrier because it might influence the consultants' judgement. AT&T's reply comments state that MCI's suggestion that professional consultants' judgement can be influenced through a change in the level of reporting on this schedule is without merit. AT&T contends that the practical method of obtaining this information is directly from the consultant since not every carrier is required to file a Form M. AT&T also notes that even if such information is not collected or reported in the Form M, it would still be generally available to regulatory commissions when specifically requested.

29. Colorado objects to the proposal on the basis that it would be precluded from determining in state proceedings if such payments provide a direct benefit to the ratepayers. AT&T, in its reply comments, states that these data will continue to be available for a particular state's ratemaking purposes as required.

Schedule 12C, Analysis of Entries in Property Held for Future Telephone Use (Account 100.3)

30. Our proposal to increase the reporting limit, which requires listing separately on this schedule each entry in account 100.3, "Property held for future use," from $10,000 to $50,000 is favored by all respondents who address this issue. These respondents are AT&T, GTE, Commerce, USITA, UTS, and Colorado.

Schedule 13A, Analysis of Telephone Plant Acquired (Account 276)

31. Our proposal to increase the reporting limit for Schedule 13A from $5,000 to $50,000 is favored by all respondents who address this issue. These respondents are AT&T, GTE, Commerce, USITA, UTS, and Colorado.

Schedule 16, Miscellaneous Physical Property (Accounts 103 and 315)

32. AT&T, GTE, Commerce, Arkansas, USITA, and Colorado favor the increase in the reporting limit requiring the separate reporting of data with respect to miscellaneous physical property at each location from $10,000 to $50,000.

33. Two respondents suggest modifications to our proposal. NATA requests that there be no change to this reporting requirement. NATA cites Docket 82-681 [8] in which the Commission proposes the use of account 103, "Miscellaneous physical property," as an interim accounting procedure pending development of final accounting guidelines for recording new CPE provided under leases. NATA believes that some information and detail relating to this new leased CPE would be eliminated from this schedule. Additionally, NATA claims that it is unclear as to whether the proposed $50,000 limit referred to the book value per item of miscellaneous property or per category of assets.

34. UTS also expresses concern about the lease accounting proposed in Docket 82-681. UTS states that the $50,000 would necessitate reporting beyond the intent of Schedule 16 and recommends that the Commission allow carriers to capture unregulated lease activity in another investment account besides account 103. With this change, UTS would favor the $50,000 proposed reporting limit.

Schedule 70B, Compensation of Officers, Directors, Etc.

35. AT&T, GTE, Commerce, USITA, and UTS favor the elimination of this schedule, which is the alternative proposal, rather than raising the salary limits as AT&T had petitioned.

36. Only one party, Colorado, objects to the elimination of this schedule. Colorado also objects to raising the limit for this schedule to $75,500. Colorado states that a limit of $75,500 would reduce its ability to monitor expenses. It recommends a reporting limit of $50,000. AT&T's reply comments state that these data will continue to be available for a particular state's ratemaking purposes as required.

Schedule 70C, Wages and Hours

37. AT&T, GTE, Arkansas, Commerce, USITA, UTS, and Colorado favor the elimination of this schedule which requires the reporting of the numbers of employees in classifications according to hourly rates of pay.

38. Labor objects to the elimination of this schedule. It states that Schedule 70C information has been used since 1946 to record and study occupational wage rates in the industry and is used by many services and agencies. AT&T states in its reply comments that wage and employment information similar to that reported on this schedule is provided directly to Labor.

Schedule 60C, Analysis of Pension and Benefit Funds; and Schedule 60D, Investment of Pension and Benefit Funds

39. AT&T, GTE, Commerce, Arkansas, UTS, and Colorado favor the Commission's proposal to eliminate these schedules which require the reporting of an analysis of pension and benefit funds and a description of pension and benefit fund investments.

40. California requests that these schedules not be eliminated because, upon divestiture, each individual Bell Operating Company will have to set up its own pension and benefit funds. AT&T states in its reply comments that even if Pacific Telephone and Telegraph (i.e., California area) has its own individual pension and benefit fund after divestiture, a possibility which AT&T considers unlikely, California could be furnished the Shareowners' Annual Report which includes pension and benefit fund data, or some other suitable form such as IRS Form 5500.

Other Comments

41. GTE, while agreeing with the proposed changes of the NPRM, suggests revision of eleven other Form M schedules.[9]

V. Discussion

42. Most of the comments favor the proposed revisions. In some cases, a number of the respondents suggest lower reporting limits and more detailed reporting while others want higher reporting limits and less detailed reporting. After reviewing these comments in relation to our proposal, we have decided to revise Form M as proposed. Further analysis of the comments as they relate to our proposal is set forth in the following paragraphs.

Schedule 34, Operating Revenues

43. We proposed to revise Schedule 34 to make the revenue categories more identifiable with modern tariff structures and subaccounts. AT&T, GTE,

[8] *Modifications Required by Detariffing of Customer Premises Equipment*, CC Docket 82-681, FCC 82-426 (released October 1, 1982).

[9] Schedule 50, Outside Plant Statistics; Schedule 51, Statistics Relating to Central Office; Schedule 52, Telephones in Service; Schedule 53, Telephone Calls; Schedule 54, Telegraph Stations, Data Stations and Data Access Arrangements; Schedule 58A, Stations Left in Place; Schedule 58B, Station Apparatus in Stock; Schedule 56, Interstate Private Line Statistics; Schedule 60B, Pension Paid; Schedule 70A, Total Compensation of Employees By Month; and Schedule 71, Accidents to Employees.

Arkansas, USITA, and Colorado agree with this proposal.

44. Commerce requests that telephone (voice) and data services be collected separately under account 510, "Message tolls" and that wideband transmission service be collected as a separate service under account 512, "Toll private line services." AT&T, on the other hand, claims that the separation of voice and data services is impractical because customers use them interchangeably and that the collection of wideband transmission service separately is unnecessary because the major wideband transmission service, Telpak, is not offered on an interstate tariff basis.

45. We have carefully considered Commerce's request for additional data and have decided that they should not be adopted. Based on AT&T's reply comments we are convinced that the additional reporting would be burdensome to the carriers. Moreover, we are not persuaded that this additional burden is warranted by Commerce's stated need to more accurately identify and quantify users of the services.

46. UTS wants less information reported for account 504, "Local private line services," and account 512, "Toll private line services." It argues that, since local and toll private line revenues represent a minimum portion of its total operating revenues, these revenues should not be reported in the detail proposed. We agree that the revenues of private line services are a low percentage of the overall revenues reported in this schedule. However, the revenue dollars for these services are substantial and could increase with recent regulatory changes which increase competitive activities. We will, therefore, retain the detailed reporting for local and toll private line revenues as proposed for this schedule.

47. California asks whether this Commission has considered the capability of the smaller independent companies to report the proposed information, and also asks whether the costs of reporting the information would exceed its benefits. We do not believe that the proposed modification of this schedule would impose excessive costs on the smaller companies. A smaller independent company would normally concur in the tariffs filed by an issuing carrier. Therefore, its revenue categories would be the same or very similar to the categories of the larger carrier. Furthermore, the NPRM provided an opportunity for all interested parties to comment on the proposal. The only carrier to request less reporting on this schedule was UTS. Its comments, which request less detail in the private line area, as discussed above, address the immateriality of the information rather than the burden of reporting it. Therefore, we believe smaller independent telephone companies will be able to comply with the proposed reporting without difficulty. (See Attachment A).

Schedule 39, Special Expenses Attributable to Formal Regulatory Cases

48. We proposed to increase the limit for reporting regulatory cases from $500 to $10,000. Comments by AT&T, GTE, Commerce, Arkansas, USITA, and Colorado agree with our proposal.

49. Three parties offer alternative reporting limits. Mr. Aug recommends that the limit remain at the current $500 level. MCI suggests increasing the limit but only to $5,000. UTS, on the other hand, proposes an increase in the reporting limit to $25,000.

50. Mr. Aug believes that an increase in this reporting limit would eliminate valuable information regarding the cost of regulation. However, AT&T points out in its reply comments, raising the limit to $10,000 would eliminate only 3% of the reported dollars but would eliminate over half of the reporting burden. Mr. Aug has not shown what regulatory need would be served by collecting data for the 3% of the dollars that are below the $10,000 limit. Therefore, we have decided not to retain the $500 reporting limit.

51. MCI recommends a $5,000 reporting limit because it believes that the proposed $10,000 limit would allow carriers to avoid reporting costs in the Form M by fragmenting matters into different cases. We do not believe that a company would disrupt its data collection process to avoid the reporting of insignificant amounts, and we do not believe a $5,000 limit would provide sufficient relief from the burden of reporting relatively insignificant data. Therefore, we are not adopting MCI's suggestion.

52. UTS recommends that the minimum reporting requirement be raised to $25,000 and that the schedule be restricted to expenses associated with only full rate cases which would eliminate the need to report expenses applicable to such items as requests for depreciation rate increases. We have decided not to adopt UTS's recommendation because it would eliminate a large percentage of the reported data and the report would not be sufficient for our regulatory purposes.

53. We find that a $10,000 reporting limit provides the advantage of reducing the carriers' reporting requirements while providing this Commission with sufficient regulatory information. We, therefore, are revising the reporting limit for Schedule 39 to $10,000 as proposed.

Schedule 43, Donations or Payments for Services Rendered by Persons Other Than Employees

54. We proposed to raise the reporting limit for donations or payments for services rendered by persons other than employees from $10,000 to $25,000. Comments by AT&T, GTE, Commerce, Arkansas, USITA, and UTS agree with our proposal.

55. Three respondents recommend alternatives. Mr. Aug suggests a reduction in the reporting limit to $500, while MCI and Colorado suggest that the current reporting limit of $10,000 be retained.

56. Mr. Aug's primary concern with raising the reporting limit was that a vast bank of information about potential or actual conflicts of interest would be eliminated. He believes that kind of information available to the Commission and the public should be increased by lowering the reporting limit. We believe, however, that this reporting limit which was set over 9 years ago should be increased rather than reduced if for no other reason than to recognize inflationary trends. Mr. Aug's recommendation to lower the current limit to $500 would create additional reporting costs and burdens for the carriers to provide information for which we have found no regulatory need. Therefore, we have decided not to adopt Mr. Aug's recommendation to lower this reporting limit.

57. MCI believes that the increase in this limit would deprive regulatory commissions and the public of information which MCI believes necessary to evaluate the affiliations of consultants when hiring them or interpreting their public statements. We do not feel that this schedule is the only available source of information on the affiliations of consultants. AT&T states that regulatory commissions have access to such information when specifically requested from the carriers and that reporting in the Form M is not necessary. Additionally, the individual consultants could surely provide the data. Moreover, we do not feel that more precise amounts for any one consultant is of main importance or that a reduction in information reported on this schedule will have an influence on the judgment of a professional consultant. We believe that an increase in a reporting limit of $10,000, which was set in 1973, to $25,000 is reasonable.

58. Colorado feels that the increase in the reporting limit will not allow it to perform its function of determining whether donations or payments are justified for regulatory purposes. AT&T, in its reply comments, assures Colorado that this increase would not preclude Colorado from obtaining these data when required for state regulatory purposes. We believe that Colorado should be able to obtain any additional information it needs beyond that reported in Form M directly from the carriers. Therefore, we are not persuaded by Colorado's arguments that we should retain the current reporting limit for this schedule.

59. We do not believe that the respondents provide adequate reasons to retain the $10,000 limit, or to reduce it. We find that the reporting limit should be revised to reflect the inflationary trends over the past years and to reduce the reporting burden of the carriers. We, therefore, are revising the reporting limit for Schedule 43 to $25,000 as proposed.

Schedule 12C, Analysis of Entries in Property Held for Future Telephone Use and Schedule 13A, Analysis of Telephone Plant Acquired

60. We proposed to raise the reporting limits for Schedule 12C and Schedule 13A from $10,000 and $5,000, respectively, to a limit of $50,000 on each schedule. Comments by AT&T, GTE, Commerce, Arkansas, USITA, UTS, and Colorado agree with this proposal. Accordingly, for reasons given in the Notice, we are revising the reporting limit of these schedules to the proposed limit of $50,000.

Schedule 16, Miscellaneous Physical Property

61. We proposed to raise the reporting limit for the book cost of each item of miscellaneous physical property from the current $10,000 level to $50,000. AT&T, GTE, Commerce, Arkansas, USITA, and Colorado favor the proposal. NATA and UTS do not agree with our proposal.

62. NATA and UTS raise questions concerning the relationship of this proposed reporting and our recent NPRM in Docket 82-681, *supra*. In Docket 82-681 we proposed to record unregulated leased assets in account 103, "Miscellaneous physical property," and revenues from those leases in account 315, "Income from miscellaneous physical property", on an interim basis. NATA believes that, since these accounts will be the subject of some very important proceedings in the years to come, an increase in the reporting limit would eliminate pertinent information from the Form M. UTS is concerned that the additional requirements created by Docket 82-681 would necessitate reporting beyond the intent of Schedule 16.

63. The concerns of NATA and UTS with the accumulation of information relating to unregulated leases in Schedule 16 are beyond the scope of this docket. Our proposals are directed toward reducing the carriers' reporting burden while obtaining sufficient information for regulatory purposes. We will address the appropriate reporting for unregulated leases in Docket 82-681. We will therefore revise the reporting limit for Schedule 16 to $50,000.

Schedule 70B, Compensation of Officers, Directors, Etc.

64. Our NPRM proposed that the reporting limits for reporting compensation of persons other than officers and directors be raised to $75,500. As a separate alternative to that proposal, we also solicited comments on whether this schedule should be eliminated entirely. AT&T, GTE, Commerce, USITA, and UTS favor the elimination of this schedule.

65. Colorado is the only party to object to our proposals. Colorado not only objects to the proposal to eliminate the schedule, but also opposes any increase in the reporting limit beyond a $50,000 level. Colorado believes that the $75,500 reporting limit would restrict its ability to monitor expenses which may have a direct effect on the ratepayers. AT&T states, in its reply comments, that this information will be available, as required, for a particular state's ratemaking purposes, while not burdening carriers which operate in other states. We believe that state commissions, such as Colorado, will not be foreclosed from obtaining this information relevant to state ratemaking. Therefore, we conclude that the elimination of this schedule and its reporting requirements would not interfere with this Commission's regulatory obligations nor place the states' regulatory functions at a disadvantage. Accordingly, we are eliminating this schedule in its entirety.

Schedule 70C, Wages and Hours

66. Our NPRM proposed to eliminate this schedule in its entirety. AT&T, GTE, Commerce, Arkansas, USITA, UTS, and Colorado agree with our proposal.

67. The only party to disagree with our proposal to eliminate this schedule is Labor. Labor states that it has used these data in its industry wage survey program, which is used by many services and agencies, since 1946. Labor indicates that it depends on the information because it is not available elsewhere in the Federal Government. AT&T states, however, that it provides wage and employment data similar to data reported on Schedule 70C directly to Labor. Labor did not provide any reply comments which would show that the information provided by AT&T would not satisfy its requirements. We do not believe that we should collect information, though useful in the past, which is not needed by this Commission for its regulatory purposes, especially when the information can be obtained directly from the telephone industry by the party who uses it. Therefore, we will eliminate this schedule as proposed.

Schedule 60C, Analysis of Pension and Benefit Funds; and, Schedule 60D, Investment of Pension and Benefit Funds

68. AT&T, GTE, Commerce, Arkansas, UTS, and Colorado agree with our proposal to eliminate these schedules.

69. California is the only party to recommend that the schedules be retained. California believes that, since each Bell operating company will establish its own pension and benefit fund once the companies are divested from AT&T, the information should continue to be required on Form M. However, this Commission does not believe that this information is needed for our regulatory purposes. We therefore wish to relieve the carriers from this reporting burden. California claims that, if this information is not available in the Form M, it would have difficulty in obtaining it elsewhere. AT&T, in its reply comments, assures California that the pension and benefit information could readily be obtained from Pacific Telephone and Telegraph Company. We do not believe that all carriers should be burdened with reporting information that is not more widely utilized. This is especially true when the information can be obtained directly from the individual carriers. Therefore, we are eliminating this schedule in its entirety as proposed.

Other Comments

70. As indicated in paragraph 41, GTE requests elimination of eleven schedules which were not included in this NPRM. Since these schedules were not included in the NPRM, they are outside the purview of this proceeding. Therefore, we are not considering them at this time. We will consider them at some future date as we continue the process of revising and updating our reporting requirements.

VI. Regulatory Flexibility Act

71. In compliance with the provisions of Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that these reporting changes can be readily implemented by all carriers filing Annual Report Forms M without significant economic impact, and, in fact, will ease the reporting requirements of these carriers, both large and small. The rationale for the proposed changes is outlined in the above discussion.

VII. Ordering Clauses

72. Accordingly, *it is ordered*, That Annual Report Form M shall be amended as discussed above effective May 27, 1983.

73. *It is ordered*, That the Table of Contents and the Indices for Form M will be amended accordingly.

74. *It is further ordered*, pursuant to Section 220(i) of the Communications Act, 47 U.S.C. 220(i), That the Secretary shall cause a copy of this Notice to be served on each state commission.

75. *It is further ordered*, That this proceeding *is terminated*.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 83-11512 Filed 4-28-83; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 48, No. 84
Friday, April 29, 1983

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 752

Adverse Actions

AGENCY: Office of Personnel Management.

ACTION: Proposed regulation.

SUMMARY: These amendments to OPM's regulations are being proposed to add a new provision to provide that, under certain circumstances, a Government agency may change or withdraw the position duties of a Federal employee during the 30-day notice period of a proposed adverse action. By separate amendment, OPM is rescinding its regulatory provision which, under certain circumstances, provided an exception to the requirement that a Government agency give a Federal employee 30 days of advance notice when proposing an adverse action.

DATE: Comments must be received on or before June 28, 1983.

ADDRESS: Written comments may be sent to Appellate Policies Division, Office of Planning and Evaluation, Room 7459, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Cynthia Field, Office of Planning and Evaluation,(202) 254–5517.

SUPPLEMENTARY INFORMATION: Prior to passage of the Civil Service Reform Act of 1978, Civil Service regulations provided for emergency suspensions without pay as an exception to the general requirement that a Government agency give 30 days of advance notice when proposing an adverse action against a Federal employee. Under the regulations, an agency was allowed a maximum period of five days to process an emergency suspension, during which time the employee was placed in a nonduty, pay status. Once an emergency suspension was effected, the employee remained in a nonduty status, and in addition, was placed in a nonpay status. An emergency suspension expired when the agency made a determination on whether to take the proposed adverse action. Thus, the total length of an emergency suspension was invariable no more than 30 days. As a result, because a suspenson of 30 days or less was not an action requring 30 days of advance notice, the provision for emergency suspension was consistent with then existing law.

With passage of the Civil Service Reform Act, Congress made a suspension of more than 14 days an adverse action requiring advance notice of 30 days. The provision permitting emergency suspensions, which OPM carried over into its new regulations, therefore conflicted with the new statutory notice requirement. In *Cuellar v. United States Postal Service,* MSPB Order No. SF075299045 (November 13, 1981), the Merit Systems Protection Board considered an appeal from an emergency suspension imposed pursuant to 5 CFR 752.404(d)(3) and overturned it because the agency had failed to give the appellant the 30 days of advance notice required by 5 U.S.C. 7513(b)(1).

OPM agrees that the new statutory notice requirement prohibits emergency suspensions which call for the withholding of pay during the notice period. A clear purpose of 5 U.S.C. 7513(b)(1) is to ensure that an employee remains on the payroll (of an agency with authority to spend funds for the payroll) for at least 30 days after the agency proposes an adverse action. Accordingly, OPM, in a separate amendment, is rescinding its regulations concerning emergency suspensions.

The occasional problems for which emergency suspensions were designed, however, will recur. That, is there will be instances of misconduct that will cause an agency to believe that it would be injurious to an employee, his coworkers, members of the public, or some other Government interest to retain the employee in duty status during the advance notice period. Therefore, OPM proposes to add a regulation permitting agencies, under certain circumstances, to place employees in a nonduty status with pay during the notice period. The new regulation is proposed pursuant to 5 U.S.C. 7513(a), which empowers OPM to regulate in the field of adverse actions upon the standard of efficiency of the service, and section 7513(b)(1), which both requires and authorizes pay during the 30-day notice period following a proposal of adverse action, even when the affected employee is in a nonduty status.

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 if affects only Federal Government employees.

List of Subjects in 5 CFR Part 752

Administrative practice and procedure, Government employees.

Office of Personnel Management.

Donald J. Devine,

Director.

PART 752—[AMENDED]

Accordingly, OPM proposes to amend 5 CFR 752.404 by adding a new § 752.404(b)(3) to read as follows:

§ 752.404 Procedures.

* * * * *

(b) *Notice of proposed action.* * * *

(3) Under ordinary circumstances, an employee whose removal has been proposed shall remain in a duty status in his regular position during the 30 days' advance notice period. In those rare circumstances where the agency detemines that the employee's continued presence in the work place during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency shall consider whether any of the following alternatives is feasible:

(i) Assigning the employee to duties where he or she is no longer a threat to safety, the agency mission, or to Government property;

(ii) Placing the employee on leave with his or her consent;

(iii) Placing the employee on involuntary sick or other leave when he or she is incapacitated for duty;

(iv) Carrying the employee on appropriate leave (annual, sick, leave

without pay, or absence without leave) if he or she is absent for reasons not originating with the agency; or

(v) Curtailing the notice period when the agency can invoke the provisions of § 752.404(d)(1).

If none of these alternatives is available, the agency may place the employee in a paid, nonduty status during all or part of the advance notice period.

(5 U.S.C. 7513, 7514, 1302)

[FR Doc. 83-11504 Filed 4-28-83; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO-361-A20]

Milk in the Chicago Regional Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider changes in the Chicago Regional order that have been proposed by six dairy farmer cooperative associations. The proposals would change the basis upon which supply plants qualify for pooling. As proposed, supply plants would not have to ship milk to distributing plants unless called upon to do so by the market administrator. The proponent cooperatives have requested that these proposals be adopted on an expedited basis so that the amendments can be effective by September 1, 1983. The cooperative associations contend that the requested order changes are needed to reflect changed marketing conditions and to insure orderly marketing in the Chicago Regional area.

DATE: The hearing will convene May 24, 1983.

ADDRESS: The hearing will be held at the Holiday Inn, Highway 12 & 18 at I-90, Madison, Wisconsin 53704 (608/222-9121).

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 administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Holiday Inn, Highway 12 & 18 at I-90, Madison, Wisconsin 53704 beginning at 9:30 a.m. (local time) on May 24, 1983, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Chicago Regional marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

Evidence also will be taken on whether the supply plant performance requirements for pool plant status and/or the provisions for diverting producer milk appropriately may be termporarily adjusted at the Director's discretion pursuant to § 1030.7(b)(5), or suspended, if the amendment proceeding could not be completed by September 1, 1983.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Central Milk Sales Agency

Proposal No. 1

Amend § 1030.7(b) to eliminate the requirement for shipments from pool supply plants to pool distributing plants to achieve qualification for pooling under the order.

Pool supply plants would achieve the status of pool reserve plants by demonstrating the ability to supply pool distributing plants in the event a call is issued. Pool reserve plants should thus be required to receive a minimum of 47,000 pounds of uncommingled Grade "A" receipts from producers at least one day each month.

Pool reserve plants shall be located in the defined geographic marketing area of Federal Order No. 30 or in the currently unregulated portion of the state of Wisconsin. Additionally, those pool supply plants located in the defined geographic area of Federal Order No. 68 who are now regulated under the current provisions of Order No. 30 will continue to be a pool plant under the order as proposed to be amended herein providing they continue to meet the minimum requirements specified above. Plants outside the designated reserve plant area shall pool by meeting a requirement of shipping 50 percent of the plants' Grade "A" receipts to distributing plants regulated by Federal Order No. 30.

Proposal No. 2

Amend § 1030.7(b) to include a provision under which the market administrator may, upon request and appropriate investigation of the need for such request, issue a "call" to move milk from pool reserve plants to pool distributing plants.

Such calls should be limited to the smallest and closest area possible to fill the need of such call.

Failure to respond to any such call so issued by the market administrator shall result in loss of pooling status for a period of twelve months beginning the month in which such refusal to ship occurred.

Proposal No. 3

Amend § 1030.13 to require that milk of each producer pooled by a handler be physically received at least once each month at the facility where such milk is reported as producer milk.

Proposed by Dean Foods Co.; Borden, Inc.; and Hawthorne Mellody

Proposal No. 4

Amend § 1030.7(b) by replacing the following "* * * is not less than 25 percent for September, 30 percent for each of the months of October and November, and 20 percent for all other months, * * * with

"* * * is not less than 10 percent for September, 15 percent for each of the months of October and November, and 5 percent for all other months, * * *"

Proposal No. 5

Amend § 1030.7(b)(5) by increasing the percentage amount the director of the Dairy Division may increase or decrease the shipping requirement percentages of a supply plant or unit of supply plants. This can be accomplished by deleting the words "10 percentage points" and adding the words "15 percentage points."

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 6

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be obtained from the Market Administrator, Robert G. Thomas, Building A, Suite 200, 800 Roosevelt Road, Glen Ellyn, Illinois 60137 or from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator, Chicago Regional Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on April 25, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-11543 Filed 4-28-83; 8:45 am]
BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1701

Proposed Addition to REA Bulletin 181-3, Accounting Interpretations for Rural Electric Borrowers

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend Appendix A—REA Bulletins by issuing a "File With" to REA Bulletin 181-3, Accounting Interpretations for Rural Electric Borrowers, to include uniform accounting requirements for electric borrowers participating in the National Rural Electric Cooperative Association Deferred Compensation Program.

Employees of tax-exempt rural electric cooperatives may participate in deferred compensation programs if they comply with certain revenue rulings and U.S. tax code sections. This proposed rule will set forth uniform accounting requirements for REA borrowers participating in the NRECA Deferred Compensation Program. Although the proposed rule has been specifically prepared for REA borrowers participating in the NRECA Deferred Compensation Program, the entries detailed in Part II, Questions and Answers can be used in accounting for other deferred compensation plans.

DATE: Public comments must be received by REA no later than June 28, 1983.

ADDRESS: Submit written comments to Roland S. Heard, Chief, Technical Accounting and Auditing Staff, Borrower Accounting and Services Division, Rural Electrification Administration, Room 2231, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Roland S. Heard, Chief, Technical Accounting and Auditing Staff, above address, telephone number (202) 382-8227. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend Appendix A—REA Bulletins by issuing a "File With" to REA Bulletin 181-3, Accounting Interpretations for Rural Electric Borrowers. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not: (1) Have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity and therefore has been determined to be "not major." This action does not fall within the scope of the Regulatory Flexibility Act and is not subject to OMB Circular A-95 review. This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Copies of the draft "File With" are being sent directly to all REA electric borrowers. Copies are also available upon request from the address indicated above. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

Background

REA Bulletin 181-3, Accounting Interpretations for Rural Electric Borrowers, sets forth specific accounting requirements for REA borrowers. Detailed background information and specific accounting requirements related to the NRECA Deferred Compensation Program are provided in the text of the proposed "File With" below.

Proposed Addition to REA Bulletin 181-3, Accounting Interpretations for Rural Electric Borrowers.

Rural Electrification Administration
Accounting Interpretations (Electric)
No. 403 (REA Bulletin 181-3)

Accounting for NRECA Deferred Compensation Program [1]

I. General

Deferred compensation plans were authorized for employees of tax-exempt

[1] Accounting Interpretation No. 403 was prepared for REA borrowers participating in the NRECA Deferred Compensation Program; however, entries detailed in Part II, Questions and Answers can be used in accounting for other deferred compensation plans.

rural electric cooperatives by the Revenue Act of 1978 (IRS Code Section 457). Revenue Ruling 60–31 sets forth the rules for the exclusion from income of deferred compensation and states that a deferred compensation arrangement based on the bare contractual promise of the employee to pay the deferred salary at some time in the future does not result in current taxable income, even though there is no risk of forfeiture. As a result of this ruling, deposits to the NRECA Deferred Compensation Program must remain the property of the employer until distributed to the employee.

II. Questions and Answers

Question: What are the accounting requirements for borrowers participating in the NRECA Deferred Compensation Program?

Answer: Based upon the provisions of the NRECA Deferred Compensation Program, the following accounting entries shall be used to record the actions described:

(1)

Dr. 186.2	Miscellaneous Deferred Debits—Deferred Compensation	XXXX
Cr. 131.1	Cash—General	XXXX

To record annual deposit to NRECA Deferred Compensation Fund

Dr. 128	Other Special Funds—Deferred Compensation	XXXX
Cr. 128.1	Special Funds Reserve—Deferred Compensation	XXXX

To increase the deferred compensation reserve by amount of annual deposit to NRECA Deferred Compensation Fund

(2)

Various	Distribution to accounts on same basis as participating employees' salary	XXXX
Cr. 186.2	Misc. Deferred Debits—Deferred Compensation	XXXX

To record monthly accrual of deferred compensation

Note.—If an employee joins the deferred compensation program during the year, use entry #1 to record the additional deposit to the NRECA Deferred Compensation Fund and increase the monthly accrual in entry #2 to reflect this deposit.

(3)

NRECA provides an annual statement showing activity in the employees' accounts, units owned and value of units at statement date. Therefore, individual employee records do not have to be maintained.

However, an entry should be made to show aggregate change in fund value during the year. This entry can be made by summarizing changes on the individual Statement of Accounts sent by NRECA for distribution to participating employees, as shown:

Value of Units Held in Each Fund at December 31, 19×2 – Value of Units Held in Each Fund at December 31, 19×1 = Change in Fund Value

Dr. 128	Other Special Funds—Deferred Compensation	XXXX
Cr. 128.1	Special Funds Reserve—Deferred Compensation	XXXX

To record an increase in fund value as of December 31, 19×2

or

Dr. 128.1	Special Funds Reserve—Deferred Compensation	XXXX
Cr. 128	Other Special Funds—Deferred Compensation	XXXX

To record a decrease in fund value as of December 31, 19×2

(4)

Payments made to participating employees because of retirement, or separation for other reasons will generally result in the following entries:

Dr. 131.1	Cash—General	XXXX
Cr. 128	Other Special Funds—Deferred Compensation	XXXX

To record receipt of funds from NRECA

Dr. 128.1	Special Funds Reserve—Deferred Compensation	XXXX
Cr. 131.1	Cash—General	XXXX

To record payment to employee for deferred compensation

(5)

If the borrower has elected to bear the market risk of the funds, which guarantees that the amount of money an employee receives will not be less than the amount of salary deferred, the following entry will be necessary if total payment(s) from NRECA are less than amount of salary deferred:

Dr. 926	Employee Pensions and Benefits	XXXX
Cr. 131.1	Cash—General	XXXX

To record payment to employee for deferred compensation. Payment made because amount returned did not equal salary deferred

The amounts included in Account 128, Other Special Funds, are offset by the amounts in Account 128.1, Special Funds Reserve. Therefore, the balance sheet presentation shall not include the amount held for the NRECA Deferred Compensation Program.

In view of the need and desirability for uniform accounting requirements for REA borrowers participating in the NRECA Deferred Compensation Program, the Administrator is proposing to issue the above accounting interpretation as an addition to REA Bulletin 181–3, Accounting Interpretations for Rural Electric Borrowers.

Indexing Terms

As required by 1 CFR 18.20, the following are the indexed terms and list of subjects for this regulation.

List of Subjects in 7 CFR Part 1701

Electric utilities, Loan programs—energy.

Dated: April 7, 1983.

Harold V. Hunter,

Administrator.

[FR Doc. 83-11399 Filed 4-28-83; 8:45 am]

BILLING CODE 3410-15-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 53

Criteria and Procedures for Determining the Adequacy of Available Spent Nuclear Fuel Storage Capacity

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The proposed rule would establish procedures and criteria for determining whether a person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity. This determination is necessary before the Department of Energy may enter into contractual arrangements with the person generating or owning spent nuclear fuel to provide interim Federal storage capacity for limited amounts of spent nuclear fuel. The proposed rule is necessary to meet NRC responsibilities under Section 135(b) and (g) of the Nuclear Waste Policy Act of 1982.

DATE: Submit comments by June 28, 1983. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received before this date.

ADDRESS: Submit written comments to the Secretary of the Commission; U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received and the regulatory analysis may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: F. X. Cameron, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 443–5997.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Waste Policy Act of 1982 (Pub. L. 97–425, January 7, 1983, 96 Stat. 2201 *et seq.*, 42 U.S.C. 10101 *et seq.*) establishes a comprehensive framework

for the disposal of spent nuclear fuel and high-level radioactive waste generated by domestic civilian nuclear power reactors. The Act establishes procedures and schedules for the selection and development of geologic repositories for spent nuclear fuel and high-level radioactive waste, provides a mechanism for financing the cost of this disposal, and sets forth other provisions related to nuclear waste research, storage, and disposal.

Subtitle B of Title I of the Act establishes a program for the interim storage of spent nuclear fuel while the repository for ultimate disposal is selected and developed. The primary responsibility for providing interim storage of spent nuclear fuel rests with the persons owning and operating civilian nuclear power reactors. This responsibility is to be implemented through the effective use of existing storage facilities at the reactor sites and by the timely addition of new on-site storage capacity where practical. The Federal Government has the responsibility to encourage and expedite the provision of interim storage capacity by the reactor owners. In addition, the Federal Government has the responsibility to provide up to 1900 metric tons of storage capacity for spent nuclear fuel from reactors that cannot reasonably provide adequate storage capacity on site.

Section 135(g) of the Act directs the Commission to establish criteria and procedures for making the determination that a person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the reactor site, or at the site of any other reactor operated by that person, when needed to ensure the continued orderly operation of the reactor. Section 135(b) of the Act provides that the Department of Energy shall enter into a contract under Section 136(a) with a person who owns or generates spent nuclear fuel that would provide for Federal ownership, transport, and storage of spent fuel, only if the Commission makes two affirmative determinations:

1. A person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the reactor site, or the site of any other reactor operated by that person, when needed to ensure the continued orderly operation of the reactor.

Section 135(g) directs the Commission to establish criteria and procedures for making this determination by rule, and provides the following guidance:

a. The criteria must ensure the maintenance of a full core reserve storage capability at the reactor site, unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of the reactor; and

b. The criteria must identify the feasibility of reasonably providing adequate spent fuel storage capacity, taking into account economic, technical, regulatory, and public health and safety factors, through the use of the following:

- Expansion of existing storage facilities, including high-density fuel storage racks, or fuel rod compaction;
- Transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system;
- Construction of additional spent nuclear fuel pool capacity; or
- Such other technologies as may be approved by the Commission.

2. The person owning and operating the reactor is "diligently pursuing licensed alternatives to the use of Federal storage capacity" for the storage of spent nuclear fuel expected to be generated in the future. These alternatives include the following:

- Expansion of storage facilities at any reactor site operated by such person;
- Construction of new or additional storage facilities at any reactor site operated by such person;
- Acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks for use at any reactor site operated by such person;
- Transshipment to another civilian nuclear power reactor owned by such person.

In developing the criteria and procedures contained in proposed Part 53, the NRC has been cognizant of the Congressional concern that the interim Federal storage program be used to provide only a limited amount of storage capacity on an exceptional-use basis to utilities that are unable to provide their own storage capacity in time to prevent shutting down the reactor. While the availability of Federal storage capacity must not be foreclosed by overly strict criteria and standards, the person requesting the determination must clearly demonstrate that Federal storage is the only reasonably feasible option remaining.

The Proposed Action

1. Subpart A—General Provisions.

Sections 53.1 through 53.5 address a number of general issues, including purpose and scope of the rule, definitions, communications with the Commission, and interpretations of the rule. The rule applies to all persons owning and operating domestic civilian nuclear power reactors who submit a request for a Commission determination under Section 135(b) of the Nuclear Waste Policy Act. This determination consists of a decision by the Commission as to whether adequate spent nuclear fuel storage capacity to ensure the continued orderly operation of a particular reactor cannot reasonably be provided in timely manner by the person owning and operating that reactor.

2. Subpart B—Request for a Commission Determination.

Subpart B specifies the procedures that must be followed and the information that must be submitted by a person seeking a Commission determination. The proposed rule requires the submission of information on spent nuclear fuel storage capacity and need, feasible storage alternatives, and evidence that the person requesting the determination has been diligently pursuing alternatives. This information will enable the Commission to determine—

- Whether additional capacity is needed, in what amount, and in what time frame, and
- Whether it is practical for the person making the request to implement alternatives to Federal interim storage in light of technical, economic, regulatory, and public health and safety constraints.

Subpart B also sets forth procedures related to the filing and distribution of a request for a Commission determination. These procedures provide for publication of notice of receipt of a request in the **Federal Register** to inform the public that Commission action on the request is pending.

No request for a Commission determination will be formally accepted prior to the effective date of the rule. However, persons with an immediate need for a determination may submit a request upon publication of the proposed rule in order to allow the staff to begin consideration of the request. However, the formal date of receipt of the request shall be deemed to be the effective date of the rule.

The making of a Commission determination under section 135(b) of the Nuclear Waste Policy Act is not a "proceeding * * * for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control * * *," under Section 189a. of The Atomic Energy Act. Accordingly, there is no opportunity for a hearing in connection with a request for a Commission determination. Similarly, there is no right to petition the Commission for review of the Executive Director for

Operations initial determination under subpart C of the proposed rule. Of course, if a licensee seeks permission to implement a licensed alternative to Federal interim storage of spent fuel, an opportunity for a hearing would be available in that proceeding. Although some of the same facts might be in issue, a Commission determination under Section 135(b) would be entirely separate from the decision of the presiding officer in a licensing proceeding. The proposed rule should not be construed as expressing any Commission position on the feasibility of a particular storage technology. The application of a specific technology will require Commission evaluation and approval. For example, in the case of the full scale use of fuel rod compaction, the Commission would review issues related to criticality, heat transfer, accident evaluation, and structural and materials considerations.

3. Subpart C—Issuance of a Commission Determination.

Subpart C establishes the criteria and standards that the Commission will use to make the statutory determinations—

—That adequate storage capacity cannot reasonably be provided in a timely manner; and

—That the person requesting the determination has been diligently pursuing licensed alternatives to the use of Federal storage capacity.

In making the determination on the ability of the requesting person to reasonably provide adequate capacity, the Commission will consider any technical, economic, regulatory, or public health and safety factors that would constrain implementation of alternatives to Federal storage. Although it is not possible to anticipate all the constraints that could affect the ability of an individual reactor owner to implement a spent fuel storage alternative, these constraints could include such factors as structural limitations; inability to meet the Commission's regulatory requirements due to factors beyond the licensee's control; the state of the technology; the extent to which implementation would disrupt operation of the reactor; unavailability of necessary storage or shipping equipment; local or state ordinances limiting the expansion or addition of storage capacity or transhipment; unusual licensing delays; the time required for licensing, design, and construction; extraordinary cost to consumers; and offsite and occupational radiation exposure considerations. Depending on the particular facts, a single factor or a combination of factors could make implementation of a given alternative impractical. While it is not anticipated that either occpational or offsite public health and safety will be a determining factor as long as the applicable Commission regulations are met, the criteria do allow for those unusual circumstances where radiation exposure is unreasonably out of proportion to the amount of additional storage capacity needed, or the time period for which it is needed.

In determing whether the requesting person has been diligently pursuing licensed alternatives to the Federal storage of spent nuclear fuel, the Commission will consider whether the person has initiated timely action either to provide the necessary storage capacity or to evaluate the feasibility of providing the necessary storage capacity. Although license applications are one example of these actions, the preparation of reports or studies that thoroughly investigate the technical feasibility, costs, and public health and safety aspects of alternative storage options will also be considered by the Commission.

Section 135(g) of the Act requires the Commission's criteria to ensure the maintenance of full core reserve storage capability at the site of the reactor unless the Commission determines that such capability is not necessary for the continued orderly operation of the reactor. Commission policy has been to permit contiuned operation at licensed reactor facilities where less than a full core reserve is maintained because such operation does not constitute an undue risk to the health and safety of the public. While a full core reserve capability is not an NRC safety requirement, the Commission has recognized that the maintenance of a full core reserve would be a prudent management practice on the part of the reactor operator. It would be needed to prevent extended reactor outages in the event a core must be discharged in order to inspect the reactor pressure vessel and to conduct routine and unscheduled maintenance. Although a reactor can be quickly and safely shut down with fuel in core, without full core reserve, if the core had to be discharged, the reactor would have to remain shut down while arrangements for shipping and storage were made and excuted. During this time, the utility would have to purchase supplemental power at substantial additional cost to its customers. A recent Department of Energy study on spent nuclear fuel storage estimated that if full core reserve were needed and not available, it would result in 50–90 days of reactor shut down and loss of power.[1] The costs to a utility's customers of an unscheduled outage is often in excess of $500,000 per day in replacement power costs alone. In addition to the potentially high costs of operating without full core reserve, a statistical evaluation of full core removal from nuclear power plants indicates that a full core discharge would be expected to occur about once every six years at any given nuclear power plant, and could occur as often as once every three years.[2]

The Commission interprets "continued, orderly operation" to mean the avoidance of extended reactor shut down due to lack of storage capacity. The Commission considers the likelihood of the need for full core reserve, and the resulting costs from not having full core reserve discharge capabilty, to be inconsistent with continued orderly operation. Therefore, the Commission has made a generic finding that, for the purposes of a determination under this part, full core reserve is necessary for the continued orderly operation of the reactor. The legislativie history of the Nuclear Waste Policy Act suggests that the maintenance of full core reserve is closely related to the concept of continued, orderly operation. As first introduced in the Senate, the bill provided for a determination of whether adequate storage capacity could be provided to ensure continued, orderly operation "through the maintenance of a full core reserve capability." S. 1662, 97 Cong., 2d Sess., section 302(a), 128 Cong. Rec. S4139, S4141 (daily ed., April 28, 1982). This language was later changed to that now found in the Waste Act which gives the Commission the flexibility to examine whether full core reserve is needed for continued, orderly operation. In this context, the Commission believes that a generic finding that full core reserve is necessary for continued, orderly operation is consistent with Congressional intent.

Where two or more reactors share a particular site, the maintenance of a single full core reserve capability will normally be sufficient to ensure continued orderly operation. However, the person requesting the determination has the opportunity to demonstrate that special circumstances require the maintenance of more than a full core reserve at the site. These special circumstances could include the inability to utilize available storage space for some reason, for example,

[1] U.S. Department of Energy, Spent Fuel Storage Requirements (DOE/RL–82–1, 1982).

[2] Pickard, Lowe, and Garrick, Full Core Removal Study (1979).

incompatibility between the storage pool and the fuel type.

Because a license is not involved and the determination is based primarily on technical findings, Subpart C provides that the Executive Director for Operations, or his designee, shall make the initial determination. However, this determination is subject to Commission review, at the Commission's disicretion. The final determination must be made within 6 months of the receipt of the request.

Commissioner Ahearne's Additional Views.

The criteria are to ensure maintenance of a full core reserve "unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor."[3]

As the Commission stated in response to a Congressional question concerning a similar provision in an earlier version of the waste legislation, "The regulatory interests of NRC—primarily, protection of the health and safety of the public—are not significantly involved in such a determination."[4] This continues to be the case. The NRC has very little to say on this issue. If the Congress had required us to find that full core reserve was necessary, I do not believe we could. However, I agree we have no basis for determining that full core reserve capability "is *not* necessary for the contiuning orderly operation of [reactors]," and thus agree with the generic determination on this issue which is contained in this rulemaking. (emphasis added)

Commissioner Asselstine's Additional Views.

Commissioner Asselstine would appreciate comment on whether a short public comment period would be appropriate after the Commission publishes a notice of receipt of a determination request in the **Federal Register** as required in § 53.11(c).

Environmental Impact: Negative Declaration

The proposed rule, if adopted, would not result in any activity that significantly affects the quality of the human environment. The Commission has determined that, under the National Environmental Policy Act and the criteria in 10 CFR Part 51, an environmental impact statement is not required for this proposed regulation.

The environmental impact appraisal forming the basis for this determination is contained in the draft regulatory analysis prepared for this proposed regulation. The availability of the draft regulatory analysis is noted below.

Paperwork Reduction Act Statement

The information collection requirements contained in this proposed rule will affect fewer than 10 respondents. Therefore, Office of Management and Budget clearance is not required pursuant to the Paperwork Reduction Act of 1980 (42 U.S.C. 3501 *et seq.*).

Regulatory Analysis

The Commission has prepared a draft regulatory analysis of the proposed regulation. The analysis identifies and examines the costs and benefits of the proposed regulation and its alternatives. The draft analysis is available for inspection, and copying for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed addition of 10 CFR Part 53 applies solely to certain owners and operators of civilian nuclear power reactors, none of which can be considered small entities.

List of Subjects in 10 CFR Part 53

Administrative practice and procedure, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting requirements, Spent nuclear fuel, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Nuclear Waste Policy of 1982, and 5 U.S.C. 553, notice is hereby given that adoption of a new 10 CFR Part 53 is contemplated.

1. A new Part 53 is added to 10 CFR Chapter I to read as follows:

PART 53—CRITERIA AND PROCEDURES FOR DETERMINING ADEQUACY OF AVAILABLE SPENT NUCLEAR FUEL STORAGE CAPACITY

Subpart A—General Provisions

Sec.

53.1 Purpose and scope.
53.2 Definitions.
53.3 Communications.
53.4 Interpretations.
53.5 Information collection requirements.

Subpart B—Request for a Commission Determination

53.11 Filing and distribution of a determination request.
53.12 Contents of a request: General information.
53.13 Contents of a request: Specific information.
53.14 Additional information.
53.15 Withdrawal of a determination request.
53.16 Elimination of repetition.

Subpart C—Issuance of a Commission Determination

53.27 Initial determination.
53.28 Final determination.
53.29 Notice of issuance of a final determination.
53.30 Criteria for a Commission determination.

Authority: Secs. 53, 57, 62, 63, 65, 69, 81, 193, 104, 161, 68 Stat. 930, 932, 933, 934, 935, 936, 937, 948, as amended (42 U.S.C. 2073, 2077, 2092, 2083, 2095, 2099, 2111, 2133, 2134, 2201); secs. 201, 209, as amended, 88 Stat. 1242, 1248 as amended, (42 U.S.C. 5841, 5849); secs. 132, 135, 96 Stat. 2230, 2232 (42 U.S.C. 10152, 10155). For the purposes of Sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 53.11, 53.12, 53.13, 53.14, and 53.16 are issued under Sec. 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Subpart A—General Provisions

§ 53.1 Purpose and scope.

(a) The regulations in this part establish procedures and criteria for making the determination required by Section 135(b) of the Nuclear Waste Policy Act of 1982 (96 Stat. 2201 and 2233) that a person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the reactor site, or at the site of any other reactor operated by that person, when needed to ensure the continued orderly operation of the reactor, and that such person is diligently pursuing licensed alternatives to the use of Federal storage capacity for the storage of spent nuclear fuel expected to be generated by such person in the future.

(b) The regulations in this part apply to any person owning and operating a civilian nuclear power reactor who requests a Commission determination.

§ 53.2 Definitions.

As used in this part:

"Civilian nuclear power reactor," means—a civilian nuclear power plant required to be licensed under Section 103 or 104(b) of the Atomic Energy Act of 1954.

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[3] Nuclear Waste Policy Act of 1982, section 136(g).

[4] Letter from C. Kammerer to Senator Hart dated November 23, 1981 (question 8 concerning Section 302(a) of S. 1662).

"Commission" means—the Nuclear Regulatory Commission or its duly authorized representative.

"Full core reserve" means—the capability to store all of the fuel in a single reactor core at one time at an on-site storage facility.

"Spent nuclear fuel" means—fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

§ 53.3 Communications.

Except where otherwise specified, each communication and report concerning the regulations in this part should be addressed to the Document Control Desk, U.S. Nuclear Regulatory Commission, Attention: Executive Director for Operations, Washington, DC 20555, or may be delivered in person to the Commission's Document Control Desk between the hours of 8:00 a.m. and 5:00 p.m. (local time), at 7920 Norfolk Avenue, Bethesda, MD.

§ 53.4 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than written interpretation by the General Counsel will be considered binding on the Commission.

§ 53.5 Information collection requirements.

The information collection requirements contained in this part will affect fewer than 10 respondents. Therefore, Office of Management and Budget clearance is not required pursuant to the Paperwork Reduction Act of 1980 (42 U.S.C. 3501 *et seq.).*

Subpart B—Request For a Commission Determination

§ 53.11 Filing and distribution of a determination request.

(a) The person submitting a request for a Commission determination shall file a signed original and 20 copies of the request with the Commission at the address specified in § 53.3, with a copy also provided to the appropriate Regional Administrator at the address specified in Appendix D to Part 20 of this chapter. The request must be signed by the person requesting the determination or the person's authorized representative under oath or affirmation.

(b) Any request for a Commission determination under this part, must be filed no later than June 30, 1989. A request for a Commission determination must be filed no earlier than *(effective date of the rule)* or two years before the person making the request anticipates loss of full core reserve, whichever is later.

(c) Upon receipt of a request for a determination, the Commission will publish notice of receipt of the request in the **Federal Register.** The Commission will also make the request available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and in the Local Public Document Room for the reactor site.

(d) Fees applicable to a request for a Commission determination under this part are set forth in Part 170 of this chapter.

§ 53.12 Contents of request—General information.

A request for a Commission determination under this part must include the following general information:

(a) Name and address of the person owning or generating the spent nuclear fuel for which the determination is sought.

(b) The civilain nuclear power reactor or reactor site for which the request is being made,

(c) Explanation of why the determination under § 53.1(a) is needed, including a discussion of such factors as—

(1) The type and capacity of existing and planned spent nuclear fuel storage facilities at the reactor site for the next 10 years and for the remainder of the license term;

(2) The existence of any contractual arrangement for the storage of spent nuclear fuel away from the reactor site;

(3) The number and location of spent nuclear fuel assemblies presently in storage at the reactor site, and the number of additional spent nuclear fuel assemblies that will require storage during the term of the license;

(4) The amount of storage capacity necessary to maintain full core discharge capability for the reactor;

(5) The anticipated date of reactor shutdown due to the lack of necessary storage capacity under the following conditions:

(i) If full core discharge capability is maintained; and

(ii) If full core discharge capability is not maintained;

(6) An estimate of the amount of spent nuclear fuel and schedule, for which interim Federal storage would be necessary under conditions in (c)(5)(i) and (ii) of this section.

§ 53.13 Contents of a request: Specific information.

The request must include the following information on each alternative spent nuclear fuel disposal technology that may eliminate or decrease the need for Federal interim spent nuclear fuel storage set forth in paragraph (c) of this section:

(a) An analysis of any substantial technical, economic, regulatory, or public health and safety constraints that would prevent the use of any of the alternatives set forth in paragraph (c) of this section. These constraints could include factors such as structural limitations; inability to meet the Commission's regulatory requirements due to factors beyond the licensee's control and despite the licensee's good faith efforts; the state-of-the-technology; the extent to which implementation would disrupt operation of the reactor; unavailability of necessary storage or shipping equipment; local or State laws limiting or preventing the timely expansion or addition of storage capacity or transshipment; unusual licensing delays; the time required for licensing, design, and construction; extraordinary costs to consumers; offsite and occupational radiation exposure considerations; and

(b) Detailed information on the actions taken and planned by the person making the request to pursue each of the alternatives set forth in paragraph (c) of this section including references to license applications, research studies or reports conducted or sponsored by the person seeking the determination, the timing of all such actions, and other relevant material;

(c) Spent nuclear fuel storage alternatives—

(1) Expansion of existing storage facilities including high-density fuel storage racks or fuel rod compaction;

(2) Construction of new or additional spent nuclear fuel storage facilities at the site of any civilian nuclear power reactor operated by such person;

(3) Acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, for use at the site of any civilian nuclear power reactor operated by such person; and

(4) Transshipment of spent nuclear fuel to the site of another civilian nuclear power reactor owned by such person; and

(5) Any other technologies that have been approved by the Commission.

§ 53.14 Additional information.

(a) The Commission may require additional information from a person making a request for Commission determination under this part concerning any portion of the request.

(b) The Executive Director for Operations, or his designee, may deny a request for a Commission determination under this part if the person making the request fails to respond to a request for additional information under paragraph (a) of this section within thirty (30) days from the date of the request for additional information, or such other time as the Executive Director may specify. This denial shall be without prejudice to the right of the person making the request to file another request for a Commission determination under this part.

§ 53.15 Withdrawal of a determination request.

(a) The Commission or the Executive Director for Operations, as appropriate, may permit a person to withdraw a request for a Commission determination under this part without prejudice at any time prior to the issuance of an initial determination under § 53.27.

(b) The Secretary of the Commission will cause to be published in the **Federal Register** a notice of the withdrawal of a request for a Commission determination under this part.

§ 53.16 Elimination of repetition.

In any request under this part, the person making the request may incorporate by reference information contained in a previous application, statement, or report filed with the Commission provided that these references are clear and specific.

Subpart C—Issuance of a Commission Determination

§ 53.27 Initial determination.

(a) Not later than four (4) months after the receipt of a request for a Commission determination under this part from a person generating or owning spent nuclear fuel, the Executive Director for Operations, or his designee, shall make an initial determination of whether—

(1) Adequate storage capacity to ensure the continued orderly operation of the civilian nuclear power reactor at which the spent nuclear fuel is generated cannot reasonably be provided by the person owning and operating the reactor at that site, or at the site of any other civilian nuclear power reactor operated by the person, and that the capacity cannot be made available in a timely manner through any method described in paragraph (a)(2) of this section despite the licensee's diligent and good faith efforts to pursue such methods, and

(2) Such person is diligently pursuing licensed alternatives to the use of Federal storage capacity for the storage of spent nuclear fuel expected to be generated by the person in the future so as to assure the availability of additional storage capacity as soon as possible through alternatives including—

(i) Expansion of storage facilities at the site of any civilian nuclear power reactor operated by the person;

(ii) Construction of new or additional storage facilities at the site of any civilian nuclear power reactor operated by the person;

(iii) Acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, for use at the site of any civilian nuclear power reactor operated by the person; and

(iv) Transshipment to another civilian nuclear power reactor owned by the person.

(b) In making an initial determination under this section, the Executive Director for Operations, or his designee, shall be guided by the criteria set forth in § 53.30.

(c) An initial determination under this section shall be in writing and shall contain a full explanation of the facts upon which the determination is based and the reasons for granting or denying the request. An affirmative determination shall, at a minimum, specify the amount of spent nuclear fuel that cannot reasonably be stored on site and the schedule for when Federal storage is needed, and may contain conditions on which the determination is dependent. A copy of the initial determination shall be sent to the person who filed the request.

§ 53.28 Final determination.

(a) An initial determination under § 53.27 shall be filed with the Office of the Secretary of the Commission. Such initial determination shall constitute the final determination of the Commission thirty (30) days after its issuance, unless the Commission decides to review the initial determination under paragraph (b) of this section.

(b) Within thirty days after the Executive Director for Operations or his designee, makes an initial determination, the Commission may on its own motion review the determination.

(c) The Commission may, at its discretion, extend the time for review of an initial determination under paragraph (b) of this section; provided, however, that if the Commission has not completed its review or issued a final determination within six (6) months of the filing of a request under this part, the initial determination of the Executive Director shall constitute the final determination of the Commission.

(d) No petition or other request for Commission review of an initial determination under § 53.27 will be entertained by the Commission.

§ 53.29 Notice of issuance of a final determination.

(a) Upon the issuance of a final Commission determination or after the expiration of the time for Commission review of an initial determination under § 53.28, the Secretary of the Commission will notify, in writing, the person making the request, and the Office of Civilian Radioactive Waste Management of the Department of Energy of the final determination.

(b) The Secretary of the Commission will also publish notice of the issuance of the final determination in the **Federal Register.**

§ 53.30 Criteria for a Commission determination.

(a) In making the determination required by § 53.27(a)(1), the Commission shall consider the existence of technical, economic, regulatory, or health and safety factors that would make the implementation of any alternative to Federal interim storage of spent nuclear fuel set forth in § 53.13(c) impractical such as—

(1) Suitability of the site for implementation of an alternative, including considerations of structural integrity.

(2) Inability to meet the Commission's regulatory requirements for implementation and licensing of an alternative due to factors beyond the licensee's control and despite the licensee's diligent and good faith efforts.

(3) Inability to obtain necessary storage or shipping equipment in a timely manner.

(4) Modifications that would result in the excessive reduction of code design margins.

(5) Extraordinary costs of implementation that are clearly unreasonable in view of the amount of additional storage capacity needed or the time for which additional storage capacity is needed.

(6) Unforeseen or unavoidable delays in the licensing or implementation of an alternative due to factors beyond the licensee's control and despite the licensee's diligent and good faith efforts.

(7) Legal impediments to the implementation of an alternative, such as state and local laws or preexisting contractual agreements, that cannot be alleviated in a timely manner.

(8) Occupational or off-site radiation exposure or on-site construction hazards, that are clearly unreasonable in view of the amount of additional storage capacity needed or the time for which additional storage capacity is needed.

(b) In making the determination required by § 53.27(a)(1), the Commission shall ensure the maintenance of a full core reserve at the site of the civilian nuclear power reactor for which the request is being made.

(c) If the person requesting the determination demonstrates, and the Commission finds, that the maintenance of a single full core reserve at the reactor site is either inadequate or not necessary, for continued orderly operation of the reactor, the Commission may make an exception to the provision of paragraph (b) of this section.

(d) In making the determination by § 53.27(a)(2), the Commission will consider whether the person submitting the request has demonstrated diligent and timely efforts to initiate activities reasonably calculated to implement alternatives to Federal interim storage of spent fuel on a schedule commensurate with the need to support the continued orderly operation of the reactor, including—

(1) Diligent and good faith efforts to prepare and file existing license application(s) for spent nuclear fuel storage alternative(s) as early as possible so as to provide sufficient time to allow for design, licensing, and implementation; and

(2) Subsequent developments beyond the control of the person submitting the request that (i) have changed the original estimate of when and how much additional storage capacity will be needed, or (ii) would prevent the timely implementation of one or more alternatives; and

(3) The timely preparation and implementation of a spent nuclear fuel storage program or plan that evaluates the feasibility of alternatives to Federal storage of spent nuclear fuel, taking into account technical, economic, regulatory, and public health and safety factors, and that includes the prompt development of feasible alternatives to Federal storage.

Dated at Washington, D.C., this 26th day of April 1983.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 83-11565 Filed 4-28-83; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Parts 3 and 4

Rules of Practice for Adjudicative Proceedings; and Miscellaneous Rules; Extension of Comment Period

AGENCY: Federal Trade Commission.

ACTION: Proposed rule; extension of period for public comment.

SUMMARY: The Commission extends the period for public comment on its proposal to amend its procedures so that non-attorney experts may participate personaly in the cross-examination of other attorneys in the same discipline.

DATE: Written comments must be received on or before May 18, 1983.

ADDRESS: Send comments to the Secretary, Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Bruce G. Freedman, Deputy Assistant General Counsel, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3521.

SUPPLEMENTARY INFORMATION: On March 4, 1983 (at 48 FR 9289) the Commission published for comment proposed amendments of Commission Rules §§ 3.43(g) and 4.1(a) to permit non-attorney experts in adjudicatory proceedings to participate personally in the cross-examination of other experts in the same discipline. The Administrative Law Section of the American Bar Association has requested an extension of the comment period, citing delays necessitated by the Association's review procedures. The Commission has determined to enlarge the comment period to permit comments to be submitted on or before May 18, 1983.

Dated: April 19, 1983.

By direction of the Commission.

Michael A. Baggage,

Acting Secretary.

[FR Doc. 83-11472 Filed 4-28-83; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[File No. 782-3081]

Christian Services International, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Stilwell, Kansas developer, marketer, and operator of life care homes throughout the country, among other things, to cease representing, unless true, that its life care homes are affiliated with any religious denomination or group who may also be morally or legally responsible for the home; that there is little or no risk involved in entering into a life care contract; that service fees will never exceed corresponding social security increases; that the mortgagor of the home ensures the economic survival of the home; and that the corporation has established reserve funding to ensure the home's financial security. Further, the corporation would be required to give prospective residents, at least five days before they execute a life care contract, specific disclosures concerning the home's financial status and other relevant information, which could influence their decision to enter a life care home. The order would also require respondents to send to all present and future personnel engaged in the sale or promotion of life care contracts a copy of the order and a form on which they can acknowledge their intention of complying with the order's provisions. Additionally, Kenneth Berg would be required to notify the Commission of any change in his present business or employment relating to the marketing, management and operation of any life care home, nursing home or foster care facility and, for a period of ten years, promptly advise the Commission of his affiliation with any new such concern.

DATE: Comments must be received on or before June 28, 1983.

ADDRESS: Comments should be directed to: FTC/S, Office of the Secretary, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Leroy C. Richie, Director, 8R, New York Regional Office, Federal Trade Commission, 2243-EB Federal Bldg., 26 Federal Plaza, New York, NY 10278; (212) 264-1207.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Life care homes, Trade practices.

In the matter of Christian Services International, Inc., a corporation; and Kenneth P. Berg, individually and as an officer of said corporation; File No. 782 3061. Agreement containing consent order to cease and desist.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Christian Services International, Inc., a corporation, and Kenneth P. Berg, individually and as an officer of said corporation, and it now appearing that Christian Services International, Inc., a corporation, and Kenneth P. Berg, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Christian Services International, Inc., by its duly authorized officer, and Kenneth P. Berg, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Christian Services International, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its offices and principal place of business located at 5809 W. 164th Street, Stilwell, Kansas 66085.

Proposed respondent Denneth P. Berg is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

2. proposed respondents admit all the jurisdictional facts set forth in the draft of complaints attached.

3. proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service, delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purposes of this order, the following definitions shall apply:

1. "Business Day" shall mean any calendar day except Saturday, Sunday and the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas Day.

2. "Entrance Fee" shall mean money or other property transferred or promised to be transferred as consideration for one or more individuals becoming a resident or residents of a life care home pursuant to a life care contract. Such fee may be paid upon the initial entrance of a resident to a life care home or may be deferred.

3. "Life Care Contract" shall mean a contract between a resident and a provider to provide the resident, for the duration of such resident's life, living accommodations and related services in a life care home together with nursing care services, medical services and/or other health-related services, conditioned upon the transfer of an entrance fee to the provider, and which may be further conditioned upon the payment of periodic service fees.

4. "Life Care Home" shall mean the facility or facilities occupied, or planned to be occupied, by residents or prospective residents where a provider undertakes to provide living accommodations and services pursuant to a life care contract.

5. "Provider" shall mean the person, corporation, partnership, association or other legal entity which undertakes to provide residents with living accommodations and services pursuant to life care contracts.

6. "Resident" shall mean a person who has entered into a life care contract with a provider.

7. "Service Fee" shall mean a periodic fee in addition to the entrance fee

charge to a resident by a provider pursuant to a life care contract.

For purposes of this order, all required disclosures shall be made in a clear and conspicuous manner.

I

It is ordered, That respondent Christian Services International, Inc. ("CSI"), a corporation, its successors and assigns, and its officers, and respondent Kenneth P. Berg, individually and as an officer of such corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, or sale of any life care contract, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or by implication, that any religious denomination, organization or group is affiliated with a provider of any life care home marketed by respondents, or is legally or morally responsible for the debts and commitments of any provider of a life care home marketed by respondents, unless such is the fact.

2. Representing, directly or by implication, that there is little or no financial risk involved in entering into a life care contract marketed by respondents.

3. Representing, directly or by implication, that any lender which holds a mortgage on a life care home marketed by respondents ensures the economic survival of the life care home covered by the mortgage, unless such is the fact.

4. Representing, directly or by implication, that service fees at life care homes marketed by respondents will never be increased, or that service fee increases will never exceed corresponding increases in Social Security benefits over equivalent periods of time, or that service fee increases will be limited by any other objective criteria, unless such is the fact.

5. Representing, directly or by implication, that any provider of a life care home marketed by respondents has established reserve funding which ensures financial ability to perform obligations to residents under its life care contract, unless such is the fact.

6. Failing to furnish each prospective resident, at least five business days prior to the execution of a life care contract, or at least five business days prior to the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever shall first occur, a disclosure statement which contains the following disclosures:

(a) A statement explaining any affiliation which the provider of the life care home marketed by respondents has with any religious denomination, organization or group, and the extent to which the affiliated religious denomination, organization or group will be responsible for the financial or contractual obligations of the provider; or, where no such affiliation exists, a statement that there is no affiliation with any religious denomination, organization or group.

(b) A statement that entering into a life care contract may involve significant financial risk, and that the prospective resident, before entering into the life care contract, should seek advice from an attorney, bankers or other financial adviser who is independent of respondents and the provider.

(c) A statement explaining that a resident's interest provided by the life care contract is subject and subordinate to any mortgages on the life care home, or the interests of other creditors occupying a preferred status, if such is the fact.

(d) A statement that service fees are subject to periodic increases, if such is the fact.

(e) A statement describing the provisions that have been made, if any, to provide reserve funding or security as an aid to the provider in the performance of its obligations under life care contracts, including, but not limited to, the establishment of escrow accounts, trusts, or reserve funds; and whether, and under what circumstances, such reserve funding or security may be waived or reduced by the provider, the mortgagee, or other parties; or, where no provision for reserve funding or security has been made, a statement that such does not exist.

(f) A statement listing all fees to which respondents or the operating divisions, subsidiaries or affiliates of the corporate respondent are or will be entitled to be paid pursuant to contract or contracts with the provider including, but not limited to, fees for consulting, architectural, construction supervisory, marketing and management services. Such statement shall describe the nature of the services rendered or to be rendered, the fee rates or percentages, and the trade names under which respondents perform such services.

(g) A statement listing the names and addresses of all professional services, firms, associations, trusts, partnerships or corporations in which respondents have, or which have in respondents, a ten percent or greater interest and which provide, or intend to provide, goods, leases or services to the provider of a value of $500 or more within any year, and a description of the goods, leases or services to the provider of a value of $500 or more within any year, and a description of the goods, leases or services and the cost or probable or anticipated cost thereof to the provider, or a statement that such cost cannot presently be estimated, if such is the fact.

(h) A statement describing any currently effective injunctive or restrictive order of a court of record, or any federal or state administrative order, to which respondents and/or the provider are subject, relating to the marketing, management or operation of, without limitation, a life care home, retirement home, home for the aged, nursing home or foster care facility. The statement shall set forth the date and nature of the order and identify the court or authority which issued it. The statement required herein need not include orders which do not materially affect the financial condition of the life care home being marketed, or affect respondents' ability to market, manage or operate said home.

(i) A statement describing briefly the material facts with respect to pending litigation to which respondents and/or the provider are a party, and any outstanding but unsatisfied judgments against respondents and/or the provider, involving the marketing, management or operation of any life care home. The statement required herein need not include disclosure of litigation or claims which, if adversely determined, would cause no material adverse change in the properties or financial condition of the life care home being marketed, or would cause no material adverse change in respondents' ability to market, manage or operate said home.

(j) A statement as to whether advance payments made by prospective residents as all or a portion of their entrance fees are set aside in escrow accounts with banks, trust companies or other escrow agents.

(k) A statement disclosing that revenues derived from entrance fees or service fees have been, or are intended to be, used in connection with ventures not directly related to the specific life care home in which the prospective purchaser may reside, if revenues are so used. The statement shall list the total amount of expenditures made or planned to be made in connection with such ventures.

7. Failing to furnish each prospective resident, at the time the disclosure

statement required by Paragraph 6 is furnished, at least the following financial information:

(a) An audited financial statement of the provider prepared by an independent certified public accountant, including a balance sheet as of the end of the most recent fiscal year and income statements for the three most recent fiscal years or such shorter period of time as the provider shall have been in existence. If the provider's fiscal year ended more than ninety (90) days prior to the contract date or date of transfer of money or other property, and audited financial statements for that fiscal year are not yet available, interim financial statements shall be included, but need not be certified.

(b) A development budget for any life care home in a planning, development or expansion stage. The budget shall consist of a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of any facility or building which is planned or under development.

(c) Pro forma financial statements which shall include pro forma annual income statements and balance sheets of the provider for a period of not less than five fiscal years. The pro forma annual income statements shall include:

(i) A beginning cash balance consistent with the certified income statement required by subsection (a) of this paragraph or, if operations at the life care home have not commenced, consistent with the statement of anticipated source and application of funds required by subsection (b).

(ii) Anticipated earnings on cash reserves, if any.

(iii) Estimates of net receipts from entrance fees, other than entrance fees included in the statement of source and application of funds required by subsection (b), less estimated entrance fee refunds, if any. A description of the actuarial basis and method of calculation for the projection of entrance fee receipts shall be included.

(iv) An estimate of gifts or bequests if any are to be relied on to meet operating expenses.

(v) A projection of estimated income from fees and charges other than entrance fees, showing individual rates presently anticipated to be charged and including a description of the assumptions used for calculating the estimated occupancy rate of the life care home and the effect on the income of the life care home of government subsidies for health care services, if any, to be provided pursuant to the life care contracts.

(vi) A projection of estimated operating expenses of the provider of the life care home, including a description of the assumptions used in calculating the expenses, and separate allowances, if any, for the replacement of equipment and furnishings and anticipated major structural repairs or additions.

(vii) An estimate of annual payments of principal and interest required by any mortgage loan or other long-term financing.

In the treatment of entrance fees which are included in any of the financial statements required by this Paragraph an accounting method must be utilized which conforms to generally accepted accounting principles and which appropriately matches revenues to expenditures.

II

It is further ordered:

(a) That respondents deliver, by certified mail or in person, a copy of this order to all of their present or future salesmen and other employees who sell or, through personal contact or telephone communication with prospective residents, promote the sale of life care contracts, and to any advertising agency utilized by respondents.

(b) That respondents provide a form to each of the persons referred to in subparagraph (a) of this paragraph, to be returned to respondents, clearly affirming the intention of that person to be bound by and to conform his practices with the requirements of this order;

(c) That respondents inform in writing each of the persons in their employ referred to in subparagraph (a) of this paragraph that respondents are required by this order not to use, and shall not use, any such person to sell or to promote the sale of life care contracts unless that person complies with the provisions of this order.

III

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment relating to the marketing, management or operation of, without limitation, a life care home, retirement home, home for the aged, nursing home or foster care facility. In addition, for a period of ten (10) years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with any new business or employment relating to the marketing, management or operation of a life care home, retirement home, home for the aged, nursing home or foster care facility. Each such notice shall include the respondent's new business address and a statement of the nature of the aforesaid business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the aforesaid business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

IV

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

V

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions and subsidiaries.

VI

It is further ordered, That the respondents herein shall within sixty (60) days after the service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Christian Services International, Inc. ("CSI") and Kenneth P. Berg, its sole stockholder and chief executive officer.

The proposed consent order and material submitted by CSI and Mr. Berg to the Commission that is reasonably related to the merits of the order and not exempt from disclosure under the Freedom of Information Act have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Proposed respondents are developers, marketers and/or contract-managers of numerous life care homes in many states of the United States. Briefly stated, "life

care" is a concept whereby a senior citizen, at a certain minimum age, may purchase a life lease in a living unit through the payment of an entrance fee and the obligation to pay monthly service fees. In addition to the life lease, the resident is entitled to various services and amenities, including guaranteed lifetime nursing care. The complaint charges proposed respondent with misrepresentation and failure to disclose material facts to prospective residents in connection with the marketing of life care contracts.

The misrepresentations alleged in the complaint include:

1. Misrepresenting that many of the life care homes marketed by proposed respondents are affiliated with some religious organization;

2. Misrepresenting that entering into a life care contract involves little or no financial risk;

3. Misrepresenting that large mortgage lenders ensure the financial stability and economic survival of the life care homes;

4. Misrepresenting that monthly service fee increases would never exceed corresponding increases in Social Security benefits;

5. Misrepresenting that life care homes have established sizable reserve funds which exist to ensure the financial protection of residents' interests in their life care contracts;

6. Misrepresenting the financial positions and net worths of providers of life care homes through use of an inappropriate accounting method.

The complaint in this matter also charges proposed respondents with failure to disclose the following facts material to the purchase of a life care contract:

1. That proposed respondents receive substantial fees through architectural, construction supervisory and various other services performed at the life care homes, and that independent contractors commonly do not have the opportunity to competitively bid to provide such services;

2. That in some instances there has been litigation pending against proposed respondents and/or the life care homes which, if adversely determined, might materially affect their ability to fulfill their obligations under life care contracts;

3. That there is a currently effective administrative order against proposed respondents relating to their marketing practices;

4. That refundable deposits made by prospective residents to ensure future residency in many instances are not set aside for them in the event they choose to request a refund;

5. That certain of the moneys derived from entrance fees and service fees are sometimes used in connection with transactions not directly related to the life care homes in which the prospective residents may reside.

The proposed consent order requires respondents to cease and desist from making the following representations:

1. That any religious denomination, organization or group is affiliated with respondents or a provider of any life care home marketed by respondents, unless such is the fact;

2. That there is little or no financial risk involved in entering into a life care contract;

3. That any lender which holds a mogtgage on the life care home ensures the economic survival of the home, unless such is the fact;

4. That service fee increases will never exceed corresponding Social Security increases, or will be limited by any other objective criteria, unless such is the fact;

5. That any provider of a life care home has established reserve funding which ensures its ability to perform its financial obligations, unless such is the fact.

The proposed consent order also requires respondents to furnish each prospective resident, at least five days prior to exection of a life care contract, a disclosure statement containing the following disclosures:

1. The affiliation which the provider of the life care home has with any religious organization, and the exent to which such organization will be responsible for any financial or contractual obligation, or, if applicable, that there is no such affiliation;

2. That entering a life care contract may involve significant financial risk, and that before assuming the obligations the advice of an attorney, banker or other financial advisor should be sought;

3. That a resident's interest provided by the life care contract is subordinate to any mortgage on the life care home, or the interests of other creditors occupying a preferred status, if such is the fact;

4. That service fees are subject to increase, if such is the fact;

5. A description of the provisions that have been made for reserve funding for the life care home, or, where applicable, a statement that no reserve funding exists;

6. A description of the fees respondents will be paid for services rendered the life care home;

7. A listing of the firms in which respondents have a ten percent or greater interest which provide goods, leases or services in excess of $500 in any one year to the life care home, and a description of such goods, leases or services and the costs thereof to the provider;

8. A description of any currently effective injuctive order against respondents and/or the providers, and any material pending litigation involving either or both of them;

9. Whether advance payments of entrance fees are set aside in separate accounts;

10. A description of the disposition or proposed disposition of fees in connection with transactions involving entities not directly related to the life care home.

The proposed consent order also requires respondents to furnish each prospective resident, at least five days prior to the execution of a life care contract, a financial disclosure statement including a balance sheet as of the end of the most recent fiscal year and income statements for the three most recent fiscal years, a development budget and pro forma financial statements for at least five fiscal years. In treating entrance fees which are included in any of such financial statements an accounting method must be used which conforms to generally accepted accounting principles and which appropriately matches revenues to expenditures.

The purpose of this analysis is to facilitate public comment on the proposed order and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6464; File No. S7-972]

Definition of Terms

AGENCY: Securities and Exchange Commission

ACTION: Proposed rulemaking.

SUMMARY: The Commission today is publishing for comment a rule which would define the terms "earning statement", "made generally available to its security holders" and "effective date of the registration statement" for purposes of the last paragraph of Section 11(a) of the Securities Act of 1933. In light of the development of the

Integrated Disclosure System, the Commission believes it is appropriate to provide clarity and certainty with respect to these terms, while ensuring the protection of investors.

DATE: Comments must be received on or before June 10, 1983.

ADDRESSES: Comment letters should refer to File No. S7-972 and be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Steven L. Molinari, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, (202) 272-2589.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing for comment proposed Rule 158, which would define certain terms used in the last paragraph of subsection (a) of Section 11 of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq. (1976 and Supp. IV 1980)]. The terms which would be defined are "earning statement", "made generally available to its security holders" and "effective date of the registration statement." The proposed rule would define such terms with reference to certain reports filed pursuant to the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq. (1976 and Supp. IV 1980)].

I. Background and Introduction

Under Section 11(a) of the Securities Act, the signers of the registration statement, the issuer's directors or partners, the underwriters, the accountants and certain other persons are made civilly liable for any untrue statement of a material fact which is contained in an effective registration statement or for any omission to state a material fact required to be stated therein or necessary to making the statements therein not misleading. [1] The purchaser need only prove reliance if the purchase was made after the issuer had made generally available an earning statement covering a period of at least twelve months after the effective date of the registration statement. This reliance standard is imposed upon the purchaser by the last paragraph of Section 11(a).[2]

This paragraph was added to Section 11(a) in 1934, when Congress enacted the Exchange Act. At that time, Congress indicated that it was amending Section 11(a) "so as to require proof that the purchaser of a security at the time he acquired the security relied upon the untrue statement in the registration statement or upon the registration statement and did not know of the omission. But this requirement is imposed only in the case of a purchase after a period of twelve months subsequent to the effective registration date and then only when the issuer shall have published an earning statement to its security holders covering a period of at least twelve months after the registration date."[3] The rationale provided for the amendment was "that in all likelihood the purchase and price of the security purchased after publication of such an earning statement will be predicated on that statement rather than upon the information disclosed upon registration."[4]

To date, there have been no clear guidelines for determining when Section 11(a) imposes the reliance requirement upon a purchaser of securities. Specifically, there have been no clear standards for the form and content of an "earning statement",[5] for the steps necessary to establish general availability to security holders, or for the impact an effective post-effective amendment to a registration statement has on the twelve-month period. Judicial attention to the last paragraph of Section 11(a) generally has been limited to recognizing its imposition of a reliance requirement without analyzing its specific terms.[6] While the courts have noted the limited applicability of the reliance burden, they have not established standards.[7]

Over the years, a variety of practices have developed as a result of the reliance provision of Section 11(a). One practice, designed to demonstrate general availability to security holders, has been to place advertisements in the financial pages of newspapers stating that earnings statements of the kind referred to in Section 11(a) have been made generally available. Such advertisements either contain the earning statement or indicate where it may be obtained. [8] In addition, some companies send copies of such earning statements to the Commission, the exchanges, their underwriters and the financial publishing houses.[9]

Neither the Securities Act nor any Commission rule thereunder prescribes the form or content of the earning statement contemplated by Section 11(a). While there is no requirement that the earning statement be certified by an independent public accountant, some companies nevertheless ask their independent accountants to review the manner of its preparation and its content.[10] And, some companies prepare the Section 11(a) earning statement in the same form as the income statement included in the prospectus.[11]

In view of the absence of clear guidelines as to when Section 11(a) imposes a reliance requirement, the differing practices which have developed over the years, and particularly the development of the Integrated Disclosure System under the Securities Act and the Exchange Act,[12] the Commission believes it is appropriate at this time propose a rule which would define the terms used in the last paragraph of Section 11(a).[13] The Integrated Disclosure System facilitates the definition of such terms because it is premised on the general equivalency of the information relevant to investment decisions made in public offerings of securities under the

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[1] 15 U.S.C § 77k(a).

[2] The last paragraph of Section 11(a) provides:

If such person acquired the security after the issuer has made generally available to its security holders an earning statement covering a period of at least twelve months beginning after the effective date of the registration statement, then the right of recovery under this subsection shall be conditioned on proof that such person acquired the security relying upon such untrue statement in the registration statement or relying upon the registration statement and not knowing of such omission, but such reliance may be established without proof of the reading of the registration statement by such person.

[3] H.R. Rep. No. 1838, 73rd Cong. 2d Sess. 41 (1934).

[4] *Id.*

[5] The term "earning statement" is not defined in Section 11 or elsewhere in the Securities Act.

[6] *See, e.g., In The Gap Stores Securities Litigation*, 79 F.R.D. 283 (N.D. Cal. 1978); *In re U.S. Financial Securities Litigation*, 64 F.R.D. 443 (S.D. Cal. 1974).

[7] *See, e.g., Rudnick* v. *Franchard Corporation*, 237 F. Supp. 871 (S.D.N.Y. 1965) in which the court notes that the purchaser must show reliance "if an intervening financial statement had been issued" and that the plaintiff had read "an annual financial statement that covered a full twelve-month period subsequent to the offering;" and *Fox* v. *Glickmen Corp.*, 253 F. Supp. 1005 (S.D.N.Y. 1966), in which the issuer had distributed to its security holders an annual financial report and the existence of such report was advertised in New York newspapers.

[8] *See*, L. Loss, Securities Regulation 1725 (2d ed. & Supp. 1969); Rappaport, SEC Accounting Practice and Procedure 27-2 (3d. 1972); and M. Poloway and D. Charles, CCH Accountants SEC Practice Manual 1655 (1978).

[9] *Id.* Rappaport identifies such financial publishing houses as Standard and Poor's Moody's and Fitch.

[10] Rappaport, *supra*, note 8.

[11] *Id.*

[12] Release No. 33-6383 (March 3, 1982) [47 FR 11380, March 16, 1982].

[13] Suggestions to this effect have been made by members of the securities industry as well.

Securities Act and to trading and voting decisions made on the basis of Exchange Act reporting. Thus, it uses uniform disclosure requirements under both Acts and places increased emphasis on the Exchange Act continuous reporting system, allowing Exchange Act reporting to be relied upon for Securities Act purposes wherever possible. Consistent with the Integrated Disclosure System, proposed Rule 158 is designed to provide certainty and clarity, to eliminate duplication, and to simplify Securities Act procedures.

There follows a brief synopsis of the provisions of proposed Rule 158. Attention is directed to the text of the proposal for a more complete understanding.

II. Synopsis

A. Earning Statement

Paragraph (a) of proposed Rule 158 defines an "earning statement" for purposes of the last paragraph of Section 11(a). It provides that an earning statement will be sufficient for such purposes if it includes the information required for statements of income in annual reports on Form 10–K [17 CFR 249.310], pursuant to Item 8 thereof, or in quarterly reports on Form 10–Q [17 CFR 249.308a], pursuant to Item 1 of Part I thereof. The Commission believes that it is appropriate to consider the income statements contained in Exchange Act reports to be sufficient for purposes of Section 11(a) because, under the Integrated Disclosure System the Commission has adopted uniform financial statement requirements under the Securities Act and the Exchange Act.[14]

Form 10–Q does not require, but provides registrants the option of including, cumulative twelve month income statements in addition to quarterly information.[15] Proposed Rule 158(a) states that "sufficient" income statements shall include the specific information for twelve months. Thus, only optional cumulative twelve month income statements in a Form 10–Q report would be deemed "sufficient."

B. General Availability

Paragraph (b) of proposed Rule 158 would relate the requirement in Section 11(a) for general availability to the issuer's security holders to the filing of Exchange Act reports containing twelve month income statement. It provides that an issuer's earning statement will be deemed to have been "made generally available to its security holders" if the issuer is (1) a reporting company under Section 13 or 15(d) of the Exchange Act and (2) files a Form 10–K, 10–Q or 8–K report containing the required statement. In order not to impair flexibility, paragraph (b) would provide that it is not the exclusive means by which the general availability condition of Section 11(a) could be satisfied. In this regard, the Commission requests specific comment as to whether paragraph (b) should be broadened to include issuers not subject to Section 13 or 15(d) of the Exchange Act.

This proposed provision also reflects the goals and premises of the Integrated Disclosure System. It recognizes the central role played by the Exchange Act continuous reporting system in assuring a steady stream of complete and accurate corporate information to the marketplace and it avoids duplication by allowing documents prepared and filed in one context to satisfy the needs of another context. Unlike the Securities Act registration forms adopted as part of the Integrated Disclosure System, proposed Rule 158 makes no distinction among reporting companies.[16] The Commission solicits specific comment, however, as to whether filing Exchange Act reports should be sufficient to establish general availability in the case of issuers not qualified to use Forms S–2 or S–3 or whether additional requirements could be imposed on such issuers. Additional requirements could include such steps as advertising in national newspapers or distributing informal annual or quarterly reports to security holders which contain the necessary twelve month information.

C. Effective Date

Paragraph (c) of proposed Rule 158 addresses the need to determine when the twelve month period specified in Section 11(a) begins to run. Section 11(a) contemplates a twelve month period after the registered offering commences during which no reliance need be shown. Thus, a reliance requirement is imposed only if there has been an earning statement covering twelve months beginning after the effective date of the registration statement. Proposed paragraph (c) would provide that, for purposes of the last paragraph of Section 11(a), the "effective date of the registration statement" is deemed to be the latest to occur of three dates. The first date would be the effective date of the initial registration statement. The second date would be the effective date of a post-effective amendment which next preceded a particular sale of securities by the issuer and which was filed (a) to include any prospectus required by Section 10(a)(3) of the Securities Act, (b) to reflect any facts or events arising after the effective date which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement, or (c) to include any new material information, or any materially changed information, with respect to the plan of distribution.[17] The third date would be the filing date of an exchange Act report incorporated by reference into the registration statement, subsequent to its effective date and next preceding a particular sale of securities by the issuer, if such report takes the place of an otherwise required post-effective amendment.[18]

III. Foreign Private Issuers

At such time as the Commission adopts Rule 158, it anticipates adopting comparable provisions, either in Rule 158 or a separate rule, for foreign private issuers that file annual reports on Form 20–F [17 CFR 249.220f]. In this regard, the Commission specifically requests comments as to (1) the extent to which earnings statements in Form 6–K [17 CFR 249.306] reports should come within the definition of the term "earning statement" for purposes of the last paragraph of Section 11(a) and (2) which reports should be deemed to have been

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[14] *See* Release Nos. 33–6231, 6233 and 6234 (September 2, 1980) [45 FR 63630, September 25, 1980] relating to annual and full-year reporting and Release No. 33–6288 (February 9, 1981) [46 FR 12460, February 17, 1981] relating to quarterly and interim reporting.

[15] *See* Rule 10–01(c)(2) of Regulation S–X [17 CFR 229.10–01(c)(2)].

[16] Briefly, Form S–3 [17 CFR 239.13] provides for maximum use of incorporation by reference by seasoned reporting companies for certain specified transactions, including primary offerings if the company meets the tests designed to reflect widespread marketplace following; Form S–2 [17 CFR 239.12] provides for limited use of incorporation by reference by companies who have been reporting for 3 years; Form S–1 [17 CFR 239.11] does not allow any incorporation by reference and may be used by all companies; and Form S–18 [17 CFR 239.28] allows specially-tailored registration of offerings not exceeding $5 million by non-reporting companies.

[17] These are the purposes enumerated in Item 512(a) of Regulation S–K [17 CFR 229.512], which sets forth the undertakings to file post-effective amendments which must be included if securities are registered pursuant to Rule 415 [17 CFR 230.415].

[18] Registration statement Forms S–3 and S–8 [17 CFR 239.16b] require the incorporation by reference of Exchange Act reports filed subsequent to the effectiveness of the registration statement. If information otherwise required to be included in a post-effective amendment pursuant to Item 512(a)(1)(i) or (ii) is contained in incorporated Exchange Act periodic reports, a post-effective amendment is not required.

made generally available to security holders for such purposes.

IV. Request for Comment

Any interested persons wishing to submit written comments on proposed Rule 158 are requested to do so. Commentators are specifically invited to make suggestions as to other provisions concerning the last paragraph of Section 11(a) which should be included in Rule 158 or as to other ways in which the proposed Rule could be improved.

V. Statutory Authority

Proposed Rule 158 is being proposed pursuant to Sections 6, 7, 10 and 19(a) of the Securities Act of 1933.

List of Subjects in 17 CFR Part 230

Reporting requirements, Securities.

VI. Text of Proposal

In accordance with the foregoing, it is proposed to amend Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

By adding § 230.158 to read as follows:

§ 230.158 Definitions of certain terms in the last paragraph of section 11(a).

(a) An "earning statement" made generally available to security holders of the issuer pursuant to the last paragraph of subsection (a) of section 11 of the Act shall be sufficient for the purposes of such paragraph if it shall include for the twelve months specified in such paragraph the information required for statements of income contained in Item 8 of Form 10–K (§ 249.310 of this chapter) under the Securities Exchange Act of 1934 or Part I, Item 1 of Form 10–Q (§ 249.308a of this chapter) under such Act.

(b) For purposes of the last paragraph of subsection (a) of section 11 only, the "earning statement" contemplated by paragraph (a) of this Rule shall be deemed to be "made generally available to its security holders" if the issuer (1) is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 and (2) has filed its report on Form 10–K, form 10–Q or Form 8–K (§ 249.308 of this chapter) containing such earning statement; provided, however, that an issuer may use other methods to make an earning statement "generally available to its security holders" for purposes of the last paragraph of subsection (a) of section 11.

(c) For purposes of the last paragraph of subsection (a) of section 11 only, the "effective date of the registration statement" is deemed to be the date of the latest to occur of (1) the effective date of the registration statement; (2) the effective date of the last post-effective amendment to the registration statement, filed for purposes of (i) including any prospectus required by section 10(a)(3) of the Act, (ii) reflecting in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement, or (iii) including any material information with respect to the plan of distribution not previously disclosed in this registaration statement or any material change to such information in the registration statement, next preceding a particular sale by the issuer of registered securities to the public; or (3) the date of filing of the last report of the issuer incorporated by reference into the prospectus, and relied upon in lieu of filing a post-effective amendment for purposes of paragraphs (c)(2) (i) and (ii) of this rule, next preceding a particular sale by the issuer of registered securities to the public.

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77f, 77g, 77j, 77s(a))

By the Commission.

George A. Fitzsimmons,

Secretary.

April 22, 1983.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that proposed Rule 158, is promulgated, will not have a significant impact on entities subject to the rule, and therefore will not have a significant impact on a substantial number of small entities. The reason for this certification is that proposed Rule 158 does not modify the statutory responsibilities imposed upon such persons by Section 11(a) of the Securities Act of 1933. Proposed rule 158 creates a specific but non-exclusive means of complying with certain voluntary provisions of Section 11(a). The proposed Rule imposes no additional burden on any entity.

Dated: April 22, 1983.

John S. R. Shad,

Chairman.

[FR Doc. 83-11404 Filed 4-28-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

[069868]

Amorphous Silica; Change of Practice Considered

AGENCY: Customs Service, Treasury.

ACTION: Proposed change of practice—request for comments.

SUMMARY: This document gives notice that Customs is reviewing its current established and uniform practice of classifying synthetically produced amorphous silica as "silica." Customs is considering classifying that merchandise as "other inorganic compounds", and seeks public comment on the proposed change of practice.

DATE: Comments (preferably in triplicate) must be received on or before June 28, 1983.

ADDRESS: Comments should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: John G. Hurley, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8181).

SUPPLEMENTARY INFORMATION: .

Background

Pursuant to an established and uniform practice, based on Treasury Decision 68–29(14) and subsequent importations, Customs has classified a highly dispersed, synthetically produced amorphous silica ("silica gel") under the provision for silica, not specially provided for, in item 523.11, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202).

However, information has been developed by Customs to indicate that the merchandise in question, being synthetically produced, has significantly different physical and chemical properties from mineral silica and does not have the same use(s) as the natural substance. In addition, it appears that synthetic amorphous silica is not known in the trade or commerce as mineral silica.

Proposed Change of Practice

On the basis of the above information, Customs has determined that the established and uniform practice of classifying synthetically produced amorphous silica as (mineral) silica, in item 523.11, TSUS, is clearly wrong. It is

Customs position that the silica gel in question, a highly dispersed silica produced by the pyrogenic method from silicon tetrachloride, which is an anhydride of silicic acid, is properly classifiable under the provision for other inorganic compounds, in item 423.00, TSUS, and dutiable.

Authority

Inasmuch as the proposed change of practice, if implemented, will result in duties being assessed on the merchandise, Customs is giving this notice and opportunity for comment as provided by section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), and §177.10(c)(1), Customs Regulations (19 CFR 177.10 (c)(1)).

Comments

Before taking any further action on this matter, consideration will be given to any written comments submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with §103.11(b), Customs Regulations (19 CFR 103.11(b)), during the hours of (9:00 a.m. to 4:30 p.m. on normal business days, at the Regulations Control Branch, Headquarters, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

List of Subjects in 19 CFR Part 177

Administrative practice and procedures, Customs duties and inspections.

Drafting Information

The principal author of this document was Todd J. Schneider, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: March 11, 1983.

William von Rabb,

Commissioner of Customs.

[FR Doc. 83-11497 Filed 4-28-83; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 158

[Docket No. 38N-0106]

Quick Frozen Whole Kernel Corn; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is offering to interested persons an opportunity to review the Codex Standard for Quick Frozen Whole Kernel Corn (Codex standard) developed by the Codex Alimentarius Commission and to comment on the desirability and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration for acceptance. If the comments received do not support the need for a U.S. standard for the food, FDA will not proposed a standard.

DATE: Comments by June 28, 1983.

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

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

SUPPLEMENTARY INFORMATION: The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) jointly sponsor the Codex Alimentarius Commission, which conducts a program for developing worldwide food standards. The program has developed a large number of Codex standards, among which is that for quick frozen whole kernel corn.

As a member of the Codex Alimentarius Commission, the United States is under treaty obligation to consider all Codex standards for acceptance. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: full acceptance, target acceptance, or acceptance with specified deviations. A commitment to accept at a designated future date constitutes target acceptance. A country's acceptance of a Codex standard signifies that, except as provided for by specified deviations, a product that complies with the Codex standard may be distributed freely within the accepting country. A participating country that concludes that it will not accept a Codex standard is requested to inform the Codex Alimentarius Commission of this fact and the reasons therefor, the manner in which similar foods marketed in the country differ from the Codex standard, and whether the country will permit products complying with the Codex standard to move freely in that country's commerce.

For the United States to accept some or all of the provisions of a Codex standard for any food to which the Federal Food, Drug, and Cosmetic Act (the act) applies, it is necessary either to establish a standard under the authority of section 401 of the act (21 U.S.C. 341) or to revise an existing standard to incorporate the provisions within the U.S. standard. At present, there is no U.S. standard for quick frozen whole kernel corn. There are only voluntary grade standards for frozen whole kernel corn, including identity and quality requirements, developed by the U.S. Department of Agriculture.

Under the procedure prescribed in § 130.6(b)(3) (21 CFR 130.6(b)(3), FDA is providing an opportunity for review and informal comment (1) on the need for, and desirability of, a standard for this food, (2) on the specific provisions of the Codex standard (Codex standard 132-1981) and any modifications that should be included in a U.S. standard, if established, and (3) on any other pertinent points.

FDA advises that if the comments received do not support the need for a U.S. standard for this food, no U.S. standard will be proposed. If this decision is reached, FDA will inform the Codex Alimentarius Commission that an imported food that complies with the requirements of the Codex standard may move freely in interstate commerce in this country providing it complies with applicable U.S. laws and regulations.

Owing to the large number of countries, often with diverse food regulations, that are associated with Codex, certain provisions found in Codex standards may not be in keeping with aspects of U.S. policy and regulations. Codex standards customarily include hygiene requirements, limits on contaminants, certain basic labeling requirements, and other factors. These factors are not considered a part of food standards under section 401 of the act. Rather, they are dealt with under other sections of the act and are not included in a proposed U.S. standard.

In addition, the Codex standard for quick frozen whole kernel corn specifies analytical methods by which compliance with certain provisions is to be determined. As stated in 21 CFR 2.19, FDA uses the methods published in the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists," when these are available, in preference to other methods. FDA will adhere to this policy

in any U.S. standard proposed under this notice.

Under § 130.6(c), all persons who wish to submit comments are encouraged and requested to consult with different interested groups (consumers, industry, the academic community, professional organizations, and others) in formulating their comments, and to include a statement of any meetings or discussions that have been held with other groups.

List of Subjects in 21 CFR Part 158

Food standards, Frozen vegetables, Vegetables.

The Codex standard under consideration is as follows:

Codex-STAN 132-1981—Codex Standard for Quick Frozen Whole Kernel Corn (World Wide Standard)

1. *Scope*

This standard shall apply to quick frozen whole kernel sweet corn of the species *Zea mays* L. convar. *saccharata* Koern as defined below and offered for direct consumption without further processing, except repacking, if required. It does not apply to the product when indicated as intended for further processing or for other industrial purposes.

2. *Description*

2.1 *Product Definition*

Quick frozen whole kernel corn is the product prepared from fresh, clean, whole sound, succulent kernels of sweet corn species *Zea mays* L. convar. *saccharata* Koern of either the white or yellow varieties by removing husk and silk; by sorting, trimming and washing; and by sufficiently blanching before or after removal from the cob to ensure adequate stability of colour and flavour during normal marketing cycles.

2.2 *Process Definition*

2.2.1 Quick frozen whole kernel corn is the product subjected to a freezing process in appropriate equipment and complying with the conditions laid down hereafter. This freezing operation shall be carried out in such a way that the range of temperature of maximum crystallization is passed quickly. The quick freezing process shall not be regarded as complete unless and until the product temperature has reached −18°C (0°F) at the thermal centre after thermal stabilization.

2.2.2 The recognized practice of repacking quick frozen products under controlled conditions is permitted.

2.3 *Handling Practice*

The product shall be handled under such conditions as will maintain the quality during transportation, storage, and distribution up to and including the time of final sale. It is recommended that during storage, transportation, distribution, and retail, the product be handled in accordance with the provisions in the *Recommended International Code of Practice for the Processing and Handling of Quick Frozen Foods* (Ref. No. CAC/RCP 8-1976).

2.4 *Presentation*

2.4.1 *Colour*

(a) Yellow

(b) White

3. *Essential Composition and Quality Factors*

3.1 *Optional Ingredients*

(a) salt (sodium chloride)

(b) condiments, such as spices and herbs

(c) garnishes, such as pieces of green peppers or red peppers, or mixture of both, either of which may be sweet or hot and may be dried. Other vegetables may be used as garnishes. A garnish may not exceed 5 per cent m/m of the finished food.

3.2 *Quality Factors*

3.2.1 *General Requirements*

Quick frozen whole kernel corn shall be:

—of similar varietal characteristics;
—of a reasonably uniform colour which may be slightly dull;
—before and after cooking, free from foreign flavour and odour, taking into consideration any added optional ingredients;
—reasonably tender;
—clean, free from sand, grit, insect contamination and other foreign material;
—reasonably free from loose skins;

and with respect to visual defects subject to tolerances shall be:

—reasonably free from ragged, crushed or broken kernels;
—reasonably free from damaged or blemished kernels;
—reasonably free from pieces of cob, husk or silk;
—practically free from harmless extraneous vegetable material; and
—reasonably free from pulled kernels.

3.2.2 *Analytical Requirements*

3.2.2.1 The Alcohol Insoluble Solids (AIS) content of the whole kernels, as determined by the method specified in sub-section 8.5 of this standard shall not exceed 30% m/m.

3.2.2.2 The soluble solids content of the juice pressed from the kernels and determined according to sub-section 8.6 of this standard by refractometer at 20°C, uncorrected for acidity and expressed as degrees Brix on the International Sucrose Scales shall be not less than 20.

3.2.3 *Definitions of Visual Defects*

(a) *Damage* or *blemish* means any kernel affected by insect injury or damaged by discolouration, pathological injury, mechanical injury, or by any other means to the extent that the appearance or eating quality is affected. This category of defect may be further classified as "minor", "major" or "serious" depending upon the extent to which the appearance is affected.

Minor—means damage or blemish that affects the kernel to only a slight degree.

Major—means damage or blemish that is quite noticeable and materially affects the kernel.

Serious—means damage or blemish that is very noticeable and of such nature that it would customarily be discarded under normal culinary preparation.

(b) *Cob* means the very firm to hard cellulose-like material to which the kernels of corn are attached and from which the kernels are removed during processing.

(c) *Husk* means the membranous outer covering and one of the constituent parts of an ear of corn that is removed during processing.

(d) *Silk* means the coarse thread-like filaments that are one of the constituent parts of an ear of corn. Such silk is found beneath the husk and in immediate contact with the corn kernels. Corn silk is normally removed during processing.

(e) *Harmless extraneous vegetable material* means vegetable matter other than cob, husk, or silk which is harmless. Such material may include, but is not limited to, grass, weeds, leaves and portions of stalk. This category of defect may be further classified as "minor", "major" or "serious", depending upon the amount of severity of the material.

Minor—only slightly noticeable and affects the product to only a slight degree.

Major—readily noticeable and affects the product to material degree.

Serious—very noticeable and objectionable and would customarily be discarded under normal culinary preparation.

(f) Pulled kernels means kernels of corn that have been so cut or removed from the ear of corn that portions of cob or hard tissue remain. This category of defect may be further classified as "minor" or "major" depending upon the amount of adhering cob that is present.

Minor— slight amount of cob material or hard tissue remains around the base of the kernel.

Major—moderate to noticeable amount of adhering cob material. (If

there is an excessive amount of cob material adhering, apply tolerance given in Table 1).

3.2.4 *Standard Sample Unit*

250 grammes

3.2.5 *Tolerances for Visual Defects*

For *tolerances* based on the standard sample unit indicated in Section 3.2.4, visual defects shall be assigned points in accordance with Table 1 in this Section. The maximum number of defects permitted in the Total Allowable Points rating indicated for the respective categories Minor, Major and Serious or the Combined Total of the foregoing categories.

TABLE I

Defects	Unit of evaluation	Defect categories			Total
		Minor	Major	Serious	
Damage or blemish	Each kernel				
Minor	do	1			
Major	do		2		
Serious	do			4	
Harmless EVM	Each piece				
Minor	do	1			
Major	do		2		
Serious	do			4	
Pulled kernels	Each kernel				
Minor	do	1			
Major	do		2		
Total allowable points		60	40	20	60

Pieces of cob—maximum tolerance, 0.6 cubic centimetres
Husk—maximum tolerance, 4.4 square centimetres
Silk—maximum tolerance, 160 cm
Ragged, crushed or broken kernels (60 pieces)

3.3 *Definition of "Defective" for Quality Factors*

Any standard sample unit taken in accordance with the *FAO–WHO Codex Alimentarius Sampling Plans for Prepackaged Foods* (AQL–6.5) (Ref. No. CAC/RM 42–1969) shall be regarded as a "defective" for the respective characteristics as follows:

(a) when it fails to meet 3.1(c)

(b) when it fails to meet the general requirements (3.2.1); or

(c) when it fails to meet the analytical requirements (3.2.2); or

(d) when it exceeds the "total allowable points" in any one or more of the defect categories, including "total" in Table I; or

(e) when it exceeds any one or more of the tolerances for cob, husk, silk, ragged, crushed or broken kernels, given in Section 3.2.5.

3.4 *Lot Acceptance for Quality Factors*

A lot will be considered acceptable when the number of "defectives" as defined in para. 3.3 does not exceed the acceptance number (c) for the appropriate sample size as specified in the *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods* (AQL—6.5) (Ref. No. CAC/RM 42–1969). In applying the acceptance procedure each defective (as defined in paragraph 3.3, sub-paragraphs (a) to (e)) is treated individually for the respective characteristics.

4. *Food Additives*

4.1 Citric or malic acid, as processing aids for use in the blanching or cooling water in accordance with GMP.

4.2 *Carry-over principle*

Section 3 of the "Principle Relating to the Carry-Over of Additives into Foods" as set forth in Volume I of Codex Alimentarius shall apply.

5. *Hygiene*

It is recommended that the product covered by the provisions of this standard be prepared in accordance with the *International Code of Practice—General Principles of Food Hygiene* (Ref. No. CAC/RCP 1–1969, Rev. 1) recommended by the Codex Alimentarius Commission.

6. *Labelling*

In addition to Sections 1, 2, 4 and 6 of the *Codex General Standard for the Labelling of Prepackaged Foods* (Ref. No. CODEX STAN 1–1981) the following provisions apply:

6.1 *The Name of the Food*

6.1.1 The name of the food as declared on the label shall include the designation "corn".

6.1.2 In addition, there shall appear on the label in conjunction with or in close proximity to the word "corn":

(a) The words "whole kernel" except that the description "whole grain", "cut", "sweet" or "kernels" may be used if this is customary in the country where the product is sold.

(b) The colour "yellow" or "white" except that the colour "golden" may be used in lieu of "yellow" if this is customary in the country where the product is sold.

6.1.3 The words "quick frozen" except that the word "frozen"[1] may be applied in countries where this term is customarily used for describing the product processed in accordance with subsection 2.2 of this standard.

6.1.4 When any ingredients other than salt have been added which imparts to the food the distinctive flavour of the ingredients or appearance of the garnish, the name of the food shall be accompanied by the term "with X" of "X flavoured", as appropriate.

6.2 *List of Ingredients*

A complete list of ingredients shall be declared in descending order of proportion: Section 3.2(c) of the *Codex General Standard for the Labelling of Prepackaged Foods* (Ref. No. CODEX STAN 1–1981) shall also apply, except that food additives present in the product in accordance with Section 4.1 and 4.2 need not be declared.

6.3 *Net Contents*

The net contents shall be declared by weight in either the metric system (Système international" units) or avoirdupois or both systems of measurement as required by the country in which the food is sold.

6.4 *Name and Address*

The name and address of the manufacturer, or packer, or distributor, or importer, or exporter, or vendor of the food shall be declared on the label.

6.5 *Country of Origin*

The country of origin of the product shall be declared if its omission would mislead or deceive the consumer.

6.6 *Lot Identification*

Each container shall be embossed or otherwise permanently marked, in code or in clear, to identify the producing factory and the lot.

6.7 *Additional Requirements*

The packages shall bear clear directions for keeping from the time they are purchased from the retailer to the time of their use, as well as directions for cooking.

6.8 *Bulk Packs*

In the case of quick frozen whole kernel corn in bulk, the information required in 6.1 through 6.6 shall either be placed on the container or be given in accompanying documents, *except* that the name of the food accompanied by the words "quick frozen" (the term "frozen" may be used in accordance with subsection 6.1.3 of this standard) and the name and address of the manufacturer or packer shall appear on the container.

7. *Packaging*

[1] "Frozen"—this term is used as an alternative to "quick frozen" in some English-speaking countries.

Packaging used for quick frozen whole kernel corn shall:

(a) protect the organoleptic and other quality characteristics of the product;

(b) protect the product from microbiological and other contamination;

(c) protect the product from dehydration and, where appropriate, leakage as far as technologically practicable; and

(d) not pass on to the product any odour, taste, colour or other foreign characteristics throughout the processing (where applicable) and distribution of the product up to the time of final sale.

8. *Methods of Sampling, Examination, and Analysis*

8.1 *Sampling*

8.1.1 *Sampling for Quality Factors:* For these provisions detailed in Sections 3.1(c), 3.2.1, 3.2.3, 3.2.5 of this standard, sampling shall be carried out in accordance with *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods* (AQL–6.5) (Ref. No. CAC/RM 42–1969).

8.1.2 *Sampling for Net Weight* shall be in accordance with FAO/WHO Codex Alimentarius Sampling Plans for Determination of Net Weight (under elaboration by the Codex Committee on Methods of Analysis and Sampling).

8.1.3 *Sampling for Analytical Requirements*

Sampling plans to be elaborated.

8.2 *Thawing Procedure*

According to the *FAO/WHO Codex Alimentarius Standard Procedure for Thawing of Quick Frozen Fruits and Vegetables* (Ref. NO. CAC/RM 32–1970).

8.3 *Cooking Procedure*

According to the *FAO/WHO Codex Alimentarius Standard Procedure for Cooking of Quick Frozen Vegetables* (Ref. No. CAC/RM 33–1970). The following figures should be considered as guidelines for the cooking time for quick frozen whole kernel corn—two to four minutes.

8.4 *Determination of Net Weight*

According to the *FAO/WHO Codex Alimentarius Method: Net Weight Determination of Frozen Fruits and Vegetables (CAC/RM 34–1970)*; also contained in *Codex Standard for Quick Frozen Peas* (Section 8.3, CODEX STAN 41–1981).

8.5 *Determination of Alcohol-Insoluble Solids (A.I.S.)* To be elaborated.

8.6 *Determination of Soluble Solids Content* (Expressed as sucrose)

Thaw the sample according to 8.2 Thawing procedure. Proceed according to FAO/WHO Codex Alimentarius method for the determination of total soluble solids content (expressed as sucrose) of Quick Frozen Fruit (Ref. No. CAC/RM 43–1971). It will be necessary to place the slurry on a square of cheese-cloth and squeeze out some liquid for evaluation of refractometry (to be endorsed).

Interested persons may, on or before June 28, 1983, submit to the Dockets Management Branch (address above), written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Each comment should identify the title of the Codex standard and 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.

Executive Order 12291 does not apply to regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption. However, any comments submitted in support of establishing a U.S. standard for this food should be supported by appropriate information and data regarding impact on small business consistent with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354).

Dated: April 21, 1983.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 83–11462 Filed 4–28–83; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 158

[Docket No. 83N–0105]

Quick Frozen Corn-on-the-Cob; Possible Establishment of a Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is offering to interested persons an opportunity to review the Codex Standard for Quick Frozen Corn-On-The-Cob (Codex standard) developed by the Codex Alimentarius Commission and to comment on the desirability and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration for acceptance. If the comments received do not support the need for a U.S. standard for the food, FDA will not propose a standard.

DATE: Comments by June 28, 1983.

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

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

SUPPLEMENTARY INFORMATION: The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) jointly sponsor the Codex Alimentarius Commission, which conducts a program for developing worldwide food standards. The program has developed a large number of Codex standards, among which is that for quick frozen corn-on-the-cob.

As a member of the Codex Alimentarius Commission, the United States is under treaty obligation to consider all Codex standards for acceptance. The rules of procedures of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: full acceptance, target acceptance, or acceptance with specified deviations. A commitment to accept constitutes target acceptance. A country's acceptance of a Codex standard signifies that, except as provided for by specified deviations, a product that complies with the Codex standard may be distributed freely within the accepting country. A participating country that concludes that it will not accept a Codex standard is requested to inform the Codex Alimentarius Commission of this fact and the reasons therefor, the manner in which similar foods marketed in the country differ from the Codex standard, and whether the country will permit products complying with the Codex standard to move freely in that country's commerce.

For the United States to accept some or all of the provisions of a Codex standard for any food to which the Federal Food, Drug, and Cosmetic Act (the act) applies, it is necessary either to establish a standard under the authority of section 401 of the act (21 U.S.C. 341) or to revise an existing standard to incorporate the provisions within the U.S. standard. At present, there is no U.S. standard for quick frozen corn-on-the-cob. There are only voluntary grade standards for frozen corn-on-the-cob, including identity and quality requirements, developed by the U.S. Department of Agriculture.

Under the procedure prescribed in § 130.6(b)(3) (21 CFR 130.6(b)(3)), FDA is providing an opportunity for review and informal comment (1) on the need for, and desirability of, a standard for this food, (2) on the specific provisions of the

Codex standard (Codex standard 133–1981) and any modifications that should be included in a U.S. standard, if established, and (3) on any other pertinent points.

FDA advises that if the comments received do not support the need for a U.S. standard for this food, no U.S. standard will be proposed. If this decision is reached, FDA will inform the Codex Alimentarius Commission that an imported food that complies with the requirements of the Codex standard may move freely in interstate commerce in this country providing it complies with applicable U.S. laws and regulations.

Owing to the large number of countries, often with diverse food regulations, that are associated with Codex, certain provisions found in Codex standards may not be in keeping with aspects of U.S. policy and regulations. Codex standards customarily include hygiene requirements, limits on contaminants, certain basic labeling requirements, and other factors. These factors are not considered a part of food standards under section 401 of the act. Rather, they are dealt with under other sections of the act and are not included in a proposed U.S. standard.

In addition, the Codex standard for quick frozen corn-on-the-cob specifies analytical methods by which compliance with certain provisions is to be determined. As stated in 21 CFR 2.19, FDA uses the methods published in the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists," when these are available, in preference to other methods. FDA will adhere to this policy in any U.S. standard proposed under this notice.

Under § 130.6(c), all persons who wish to submit comments are encouraged and requested to consult with different interested groups (consumers, industry, the academic community, professional organizations, and others) in formulating their comments and to include a statement of any meetings or discussions that have been held with other groups.

List of Subjects in 21 CFR Part 158

Food standards, Frozen vegetables, Vegetables.

The Codex standard under consideration is as follows:

Codex STAN 133–1981—Codex Standard for Quick Frozen Corn-on-the-Cob (World Wide Standard)

1. *Scope*

This standard shall apply to quick frozen Corn-on-the-Cob of the species *Zea mays* L. convar *saccharata* koern as defined below and offered for direct consumption without further processing, except for repacking, if required. It does not apply to the product when indicated as intended for further processing or for other industrial purposes.

2. *Description*

2.1 *Product Definition*

Quick frozen Corn-on-the-Cob is the product prepared from fresh, clean, sound, properly matured whole or pieces of ears conforming to the characteristics of the sweet corn variety *Zea mays* L. convar *saccharata* Koern which are trimmed (except for the style "Whole"), separated from husk and silk, sorted and washed and sufficiently blanched to ensure stability of colour and flavour during normal marketing cycles.

2.2 *Process Definition*

2.2.1 Quick frozen Corn-on-the-Cob is the product subjected to a freezing process in appropriate equipment and complying with the conditions laid down hereafter. This freezing operation shall be carried out in such a way that the range of temperature of maximum crystallization is passed quickly. The quick freezing process shall not be regarded as complete unless and until the product temperature has reached -18°C (0°F) at the thermal centre after thermal stabilization.

2.2.2 The recognized practice of repacking quick frozen products under controlled conditions is permitted.

2.3 *Handling Practice*

The product shall be handled under such conditions as will maintain the quality during transportation, storage and distribution up to and including the time of final sale. It is recommended that during storage, transportation, distribution and retail, the product be handled in accordance with the provisions in the *Recommended International Code of Practice for the Processing and Handling of Quick Frozen Foods* (Ref. No. CAC/RCP 8–1976).

2.4 *Presentation*

2.4.1 *Style*

2.4.1.1

(a) *Whole*—the whole, intact ear of corn to which a small part of the stalk may be attached. Minimum length not less than 120 mm.

(b) *Trimmed whole*—the product obtainable from one whole ear after trimming of both ends. Minimum length not less than 120 mm.

(c) *Cut Cob*—portions of the whole trimmed ear, cut transversely into pieces not shorter than 40 mm.

2.4.1.2 The diameter of the product of any style, measured perpendicularly to the axis at the maximum diameter shall be not less than 30 mm.

2.4.2 *Other Styles*

Any other presentation of the product shall be permitted provided that it:

(a) Is sufficiently distinctive from other forms of presentation laid down in this standard;

(b) Meets all other requirements of this standard;

(c) Is adequately described on the label to avoid confusing or misleading the consumer.

2.4.3 *Standard Sample Unit for Presentation*

The standard sample unit shall be 4 ears for whole and trimmed whole corn and 8 pieces of ear for the cut cob.

2.4.4 *Definition of "Defectives" for Presentation*

Any standard sample unit from a sample taken in accordance with the *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods* (AQL 6.5) (Ref. No. CAC/RM 42–1969) shall be regarded as defective if any individual whole ear, trimmed whole ear or cut cob fails to comply with the requirements in sections 2.4.1.1 and 2.4.1.2.

2.4.5 *Lot Acceptance for Presentation Factors*

A lot will be considered acceptable with respect to presentation factors when the number of defectives as defined in section 2.4.4. does not exceed the acceptance number (c) for the appropriate sample plan as specified in the *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods.* (AQL 6.5) (Ref. No. CAC/RM 42–1969).

3. *Essential Composition and Quality Factors*

3.1 *Optional Ingredients*

(a) Salt (sodium chloride)

(b) Condiments, such as spices and herbs.

3.2 *Quality Factors*

3.2.1 *General Requirements*

Quick Frozen Corn-on-the-Cob shall be:

—free frozen foreign flavour and odours, taking into consideration any added optional ingredients;
—clean, free from sand and grit and other foreign material;
—free from insect contamination;

and with respect to visual defects subject to a tolerance shall be:

—of reasonably uniform white, cream to yellow (golden) colour;
—reasonably well developed;
—reasonably uniform in size;
—reasonably free from blemished or mechanically damaged areas;
—reasonably free from poorly trimmed units (except for whole style);
—reasonably free from extraneous vegetable matter (EVM).

3.2.2 *Analytical Requirements*

3.2.2.1 The Alcohol Insoluble Solids (A.I.S.) content of the whole kernels detached from the cob, as determined by the method specified in section 8.5 of this standard shall not exceed 30% mm.

3.2.2.2 The total soluble solids content of the juice pressed from the kernels and determined according to section 8.6 of this standard by refractometer at 20°C, uncorrected for acidity and read as °Brix on the International Sucrose Scale shall be not less than 20.

3.2.3 *Definition of Visual Defects*

(a) *Uniform white, cream to yellow (golden) colour* means, that all kernels on one ear are of the same colour and that the different units in one standard sample unit are of the same colour.

Light variation —Some difference in colour exists, only slightly affecting the appearance.

Pronounced variation—difference in colour between the different kernels and/or ears are noticeable and affecting the appearance.

(b) *Uniform in size* means that the length of the longest ear in the sample unit does not exceed the length of the shortest ear by more than 50 mm for whole and trimmed whole styles or by more than 20 mm for cut style, and that the largest diameter of the largest unit does not exceed the largest diameter of the smallest unit by more than 15 mm.

Minor—outside one of the limits (length or diameter) by maximum 5 mm—1 defect;

Major—outside both limits by maximum 5 mm—2 defects;

Major—outside one or both of the limits by more than 5 mm—4 defects.

(c) *Well developed* means that the kernels shall be positioned in a symmetrical patteren in distinct lines or rows which are not seriously affected by missing or shrunken kernels. The whole style may have some shrunken or underdeveloped parts.

Minor—Appearance materially affected by irregular pattern of kernels—1 defect;

Major—More than 10 percent but less than 15 percent by count of the kernels missing or shrunken—2 defects;

Serious 15 percent or more by count of the kernels missing or shrunken—4 defect.

In "whole style" the length of the part of ear which is shrunken or underdeveloped shall be considered as follows:

Minor—more than 20 mm and up to 25 mm—1 defect;

Major—more than 25 mm and up to 30 mm—2 defects;

Serious more than 30 mm—4 defects.

(d) *Blemished or mechanically damaged areas*

Blemished: A unit affected by pathological or insect injury with associated discolouration which affects the kernels.

Mechanically damaged: A unit affected by cuts or by crushing of the kernels. Kernels at the ends of the units which are damaged by cutting shall not be considered as damaged by mechanical injury.

Minor—more than 5 percent but less than 10 percent by count of the kernels are slightly affected but not more than 0.5 percent by count of all kernels are seriously blemished or damaged = 1 defect

Major—10 percent or more but less than 15 percent by count of the kernels are slightly affected but not more than 1 percent by count of all kernels are seriously blemished or damaged = 2 defects

Serious—More than 15 percent by count of the kernels are slightly affected or more than 1 percent by count of the kernels are seriously affected = 4 defects

(e) *Poorly trimmed means* (i) ears or cut cobs where at the stem end a small part of stalk remains attached and also means (ii) that the top end of the ear or the cut cob is cut too high leaving underdeveloped kernels on the cob. For the style "whole" the top is untrimmed and a piece of the stalk of maximum 15 mm may remain attached, and not be considered a defect.

Minor—at one end of unit maximum 5 mm left = 1 defect

Major—at one end of unit 5–10 mm left = 2 defects

Serious—at one end of unit more than 10 mm left = 4 defects

(f) *EVM (Extraneous Vegetable Material)*

Husk—means the membranous outer covering and one of the constituent parts of an ear of corn that is removed during processing

Silk—means the coarse thread-like filaments that are one of the constituent parts of an ear of corn. Such silk is found beneath the husk and in immediate contact with the corn kernels (on the cob). Corn silk is normally removed during processing. Silk to the total length twice of that of the unit in question are considered normal and not a defect.

Minor—silk to a total length of 2–6 times the length of the units = 1 defect

Minor—husks not more than 2 square cm in total surface = 1 defect

Major—silk to a total length greater than 6 times the length of the units or husks larger than 2 square cm in total surface = 2 defects

3.2.4 *Standard sample Unit* [1]

The standard sample unit for the respective styles shall be:

Whole and trimmed whole, 4 ears
Cut Cob, 8 pieces of ears

3.2.5 *Tolerances for Visual Defects*

Based on the standard sample unit defined in section 3.2.4, visual defects shall be assigned points in accordance with Table 1 in this section. The maximum number of defects permitted in the Total Allowable Points rating are indicated for the respective categories Minor, Major, and Serious or the Combined Total of the foregoing categories.

[1] "Standard Sample Unit": This term should not be confused with individual units of product i.e., whole ear, trimmed whole ear or cut cob

TABLE I.—ALL STYLES

Defect	Unit of measurement	Defect categories			
		Minor	Major	Serious	Total
(a) Colour variation (Kernel)					
—Light	One ear	1			
—Pronounced			2		
Colour variation (Ears)					
—Light	Standard	1			
—Pronounced	Sample Unit		1		
(b) Difference in size outside given range (in standard sample unit).		2	2 or 4		
(c) Not well developed	Each ear	1	2	4	
(d) Blemish or damaged	Each ear	1	2	4	
(e) Poorly trimmed	Each ear	1	2	4	
(f) EVM	Standard sample unit	1	2		
Total allowable points		21	6	4	21

3.3 *Definition of "defective" for Quality Factors*

Any standard sample unit taken in accordance with the *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods* AQL-6.5 (Ref. No. CAC/RM 42-1969) and which is adjusted to a standard sample unit size

given in 3.2.4 shall be regarded as a "defective" for the respective characteristics as follows:

(a) Any standard sample unit that fails to meet the general requirements given in section 3.2.1

(b) Any standard sample unit that fails the "Total Allowable Points" in any one or more of the defect categories including the *Total* in Table 1, in section 3.2.5

(c) Any standard sample unit that fails to meet the analytical requirements in section 3.2.2

3.4 *Lot Acceptance for Quality Factors*

A lot will be considered acceptable when the number of "defectives" as defined in section 3.3 does not exceed the acceptance number (c) for the appropriate sample plan as specified in the *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods* (AQL 6.5) (Ref. No. CAC/RM 42–1969). In applying the acceptance procedure each defective (as defined in section 3.3 (a) or (b) or (c)) is treated individually for the respective characteristics.

4. *FOOD ADDITIVES*

4.1 Citric or malic acid, as processing aids for use in the blanching or cooling water in accordance with GMP.

4.2 *Carry-Over Principle*

"Section 3" of the "Principle relating to the Carry-Over of Additives into Foods" as set forth in Volume I of Codex Alimentarius shall apply.

5. *Hygiene*

It is recommended that the product covered by the provisions of this standard be prepared in accordance with the *International Code of Practice—General Principles of Food Hygiene* (Ref. No. CAC/RCP 1–1969, Rev. I) recommended by the Codex Alimentarius Commission.

6. *Labelling*

In addition to sections 1,2,4 and 6 of the *Codex General Standard for Labelling of Prepackaged Foods* (Ref. No CODEX STAN 1–1981), the following specific provisions apply subject to endorsement by the Codex Committee on Food Labelling. (To be endorsed).

6.1 *The Name of the Food*

6.1.1 The name of the food as declared on the label shall include "Corn-on-the-Cob" preceded or followed by a description of the style as indicated in section 2.4. The words "quick frozen" shall also appear on the label except that the term "frozen" may be applied in countries where this term is customarily used for describing the product processed in accordance with section 2.2 of the standard.

6.1.2 If the product is produced in accordance with Section 2.4.2 the label shall contain in close proximity to the word "Corn-on-the-Cob" such additional words or phrases that will avoid misleading or confusing the consumer.

6.1.3 In addition, there shall for the styles "whole" and "trimmed whole" appear on the label, in conjunction with, or in close proximity to the name a clear indication of the number of units included in the package.

6.2 *List of Ingredients*

A complete list of ingredients shall be declared in descending order or proportion in accordance with section 3.2 (c) of the *Codex General Standard for the Labelling of Prepackaged Foods* (Ref. No. CODEX STAN 1–1981) except that food additives present in the product in accordance with section 4.1 and 4.2 need not be declared.

6.3 *Net Contents*

The minimum net contents shall be declared by count and/or by weight. If by weight, it shall be declared in either the metric system ("systeme international" units) or avoirdupois or both systems of measurement as required by the country in which the food is sold.

6.4 *Name and Address*

The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the food shall be declared.

6.5 *Country of Origin*

The country of origin of the product shall be declared if its omission would mislead or deceive the consumer.

6.6 *Lot Identification*

Each container shall be embossed or otherwise permanently marked, in code or in clear, to identify the producing factory and the lot.

6.7 *Additional Requirements*

The packages shall bear clear directions for keeping from the time they are purchased from the retailer to the time of their use, as well as directions for cooking.

6.8 *Bulk Packs*

In the case of quick frozen Corn-on-the-Cob, in bulk, regardless of style, the information required in section 6.1 to 6.6 shall either be placed on the container or be given in accompanying documents, *except* that the name of the food accompanied by the words "quick frozen" (the term "frozen" may be used in accordance with section 6.1.1 of this standard), and the name and address of the manufacturer or packer shall appear on the container.

7. *Packaging*

Packaging used for quick frozen Corn-on-the-Cob, regardless of style, shall:

(a) protect the organoleptic and quality characteristics of the product;

(b) protect the product from microbiological and other contamination;

(c) protect the product from dehydration and, where appropriate, leakage as far as technologically practicable; and

(d) not pass onto the product any odour, taste, colour or other foreign characteristics through the processing (where applicable) and distribution of the product up to the time of final sale.

8. *Methods of Examination, Analysis and Sampling*

8.1. *Sampling*

8.1.1 *Sampling for Presentation and Visual Defects:* For those provisions detailed in sections 2.4 and 3.2 of this standard sampling shall be carried out in accordance with the *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods* (AQL 6.5) (Ref. No. CAC/RM 42–1969).

8.1.2 *Sampling for Net Weight:* shall be carried out in accordance with the *FAO/WHO Codex Alimentarius Sampling Plans for the Determination of Net Weight* (under elaboration by the Codex Committee on Methods of Analysis and Sampling).

8.1.3 *Sampling for Analytical Requirements:* Sampling Plans to be elaborated.

8.2 *Thawing Procedure*

FAO/WHO Codex Alimentarius Standard Procedure for Thawing of Quick Frozen Fruits and Vegetables (Ref. No. CAC/RM 32–1970).

8.3 *Cooking Procedure*

FAO/WHO Codex Alimentarius Standard Procedure for Cooking of Quick Frozen Vegetables (Ref. No. CAC/RM 33–1970). Cooking time for quick frozen corn, regardless of style, may vary somewhat according to variety characteristics and degree of maturity and is in the order of 10 minutes.

8.4 *Determination of Net Weight*

FAO/WHO Codex Alimentarius Standard Procedure for Determination of Net Weight of Quick Frozen Fruits and Vegetables (Ref. No. CAC/RM 34–1970); also contained in the *Codex Standard for Quick Frozen Peas* (CODEX STAN 41–1981, section 8.3).

8.5 *Determination of the Alcohol-Insoluble Solids* (A.I.S) (To be developed).

8.6 *Determination of Total Soluble Solids Content*

Thaw the sample according to 8.2 Thawing Procedure. Remove the whole grains from the cob with a suitable instrument taking care not to damage individual kernels. Proceed according to

FAO/WHO Codex Alimentarius Method for the Determination of Total Soluble Solids Content (expressed as sucrose) of Quick Frozen Fruit (Ref. No. CAC/RM 43–1971). It will be necessary to place the slurry on a square of cheese cloth and squeeze out some liquid for evaluation by refractometry. (To be endorsed).

Interested persons may, on or before June 28, 1983, submit to the Dockets Management Branch (address above), written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Each comment should identify the title of the Codex standard and the docket number 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.

Executive Order 12291 does not apply to regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption. However, any comments submitted in support of establishing a U.S. standard for this food should be supported by appropriate information and data regarding impact on small business consistent with requirements of the Regulatory Flexibility Act (Pub. L. 96–354).

Dated: April 21, 1983.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 83-11481 Filed 4-28-83; 8:45 am]

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21 CFR Part 158

[Docket No. 83N-0111]

Quick Frozen Broccoli; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is offering to interested persons an opportunity to review the Codex Standard for Quick Frozen Broccoli (Codex standard) developed by the Codex Alimentarius Commission and to comment on the desirability and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration for acceptance. If the comments received do not support the need for a U.S. standard for the food, FDA will not propose a standard.

DATE: Comments by June 28, 1983.

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

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

SUPPLEMENTARY INFORMATION: The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) jointly sponsor the Codex Alimentarius Commission, which conducts a program for developing worldwide food standards. The program has developed a large number of Codex standards, among which is that for quick frozen broccoli.

As a member of the Codex Alimentarius Commission, the United States is under treaty obligation to consider all Codex standards for acceptance. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: Full acceptance, target acceptance, or acceptance, with specified deviations. A commitment to accept at a designated future date constitutes target acceptance. A country's acceptance of a Codex standard signifies that, except as provided for by specified deviations, a product that complies with the Codex standard may be distributed freely within the accepting country. A participating country that concludes that it will not accept a Codex standard is requested to inform the Codex Alimentarius Commission of this fact and the reasons therefor, the manner in which similar foods marketed in the country differ from the Codex standard, and whether the country will permit products complying with the Codex standard to move freely in that country's commerce.

For the United States to accept some or all of the provisions of a Codex standard for any food to which the Federal Food, Drug, and Cosmetic Act (the act) applies, it is necessary either to establish a standard under the authority of section 401 of the act (21 U.S.C. 341) or to revise an existing standard to incorporate the provisions within the U.S. standard. At present, there is no U.S. standard for quick frozen broccoli. There are only voluntary grade standards for marketing frozen broccoli, including identity and quality requirements, developed by the U.S. Department of Agriculture.

Under the procedure prescribed in § 130.6(b)(3) (21 CFR 130.6(b)(3)), FDA is providing an opportunity for review and informal comment (1) on the need for, and desirability of, a standard for this food, (2) on the specific provisions of the Codex standard (Codex standard 110–1981) and any modifications that should be included in a U.S. standard, if established, and (3) on any other pertinent points.

FDA advises that if the comments received do not support the need for a U.S. standard for this food, no U.S. standard will be proposed. If this decision is reached, FDA will inform the Codex Alimentarius Commission that an imported food that complies with the requirements of the Codex standard may move freely in interstate commerce in this country providing it complies with applicable U.S. laws and regulations.

Owing to the large number of countries, often with diverse food regulations, that are associated with Codex, certain provisions found in Codex standards may not be in keeping with aspects of U.S. policy and regulations. Codex standards customarily include hygiene requirements, limits on contaminants, certain basic labeling requirements, and other factors. These factors are not considered a part of food standards under section 401 of the act. Rather, they are dealt with under other sections of the act and are not included in a proposed U.S. standard.

In addition, the Codex standard for quick frozen broccoli specifies analytical methods by which compliance with certain provisions is to be determined. As stated in 21 CFR 2.19, FDA uses the methods published in the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists," when these are available, in preference to other methods. FDA will adhere to this policy in any U.S. standard proposed under this notice.

Under § 130.6(c), all persons who wish to submit comments are encouraged and requested to consult with different interested groups (consumers, industry, the academic communtiy, professional organizations, and others) in formulating their comments, and to include a statement of any meetings or discussions that have been held with other groups.

List of Subjects in 21 CFR Part 158

Food standards, Frozen vegetables, Vegetables.

The Codex standard under consideration is as follows:

Codex STAN 110-1981—Codex Standard for Quick Frozen Broccoli (Worldwide standard)

1. *Scope*

This standard shall apply to quick frozen broccoli of the species *Brassica oleracea* L. var. *italico* Plenck (Sprouting Broccoli), as defined below and offered for direct consumption without further processing, except for re-packing, if required. It does not apply to the product when indicated as intended for further processing or for other industrial purposes.

2. *Description*

2.1 *Product Definition*

Quick frozen broccoli is the product prepared from the fresh, clean, sound stalks or shoots of the broccoli plant conforming to the characteristics of the species *Brassica oleracea* L. var. *italica* Plenck (Sprouting Broccoli) which have been sorted, trimmed, washed and sufficiently blanched to ensure adequate stability of colour and flavour during normal marketing cycles.

2.2 *Process Definition*

2.2.1 Quick frozen broccoli is the product subjected to a freezing process in appropriate equipment and complying with the conditions laid down hereafter. This freezing operation shall be carried out in such a way that the range of temperature of maximum crystallization is passed quickly. The quick freezing process shall not be regarded as complete unless and until the product temperature has reached −18° C (0° F) at the thermal centre after thermal stabilization. The product shall be maintained at a low temperature such as will maintain the quality during transportation, storage and distribution up to and including the time of final sale.

2.2.2 The recognized practice of repacking quick frozen products under controlled conditions is permitted.

2.3 *Handling Practice*

The product shall be handled under conditions such as will maintain the quality during transportation, storage and distribution up to and including the time of final sale. It is recommended that during storage, transportation, distribution and retail, the product be handled in accordance with the provisions in the Recommended International Code of Practice for the Processing and Handling of Quick Frozen Foods (Ref. No. CAC/RCP 8-1976).

2.4 *Presentation*

2.4.1 *Styles*

(a) *Spears*—the head and adjoining portion of the stem, with or without small tender attached leaves, ranging in length from more than 7 cm to 16 cm. The spears may be split longitudinally. Within each sample unit not more than 20 percent by count fall outside the designated length.

(b) *Florets*—the head and adjoining portion of the stem with or without small tender attached leaves ranging in length from 3 cm to 7 cm with sufficient attached stem to maintain a compact head. The florets may be split longitudinally. Within each sample unit not more than 20 percent by count fall outside the designated length.

(c) *Cut spears*—spears of the broccoli plant, which have been cut into portions and which may be irregular in shape. Pieces from 2 cm to 5 cm in the longest dimension. Leaf material may be present but shall not exceed 35 percent m/m and head material shall not be less than 15 percent m/m.

(d) *Chopped*—Broccoli finely cut into pieces less than 2 cm in the longest dimension. Leaf material may be present but shall not exceed 35 percent m/m and head material shall not be less than 15 percent m/m.

2.4.2 *Other Styles*

Any other presentation of the product shall be permitted provided that it:

(a) is sufficiently distinctive from other forms of presentation laid down in this standard;

(b) meets other requirements of this standard;

(c) is adequately described on the label to avoid confusing or misleading the consumer.

2.4.3 *Definition of "Defectives" for Presentation*

Any sample unit from a sample taken in accordance with the *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods* (AQL 6.5) (Ref. No. CAC/RM 42-1969) shall be regarded as "defective" for the respective characteristics where:

(a) it exceeds the leaf and head material allowance for "Cut Spears" or "Chopped Styles" in section 2.4.1; or

(b) it fails to meet the length requirements as provided in section 2.4.1.

2.4.4 *Lot Acceptance for Presentation Factors*

A lot will be considered acceptable to Presentation factors where the number of defectives as defined in section 2.4.3 does not exceed the acceptance number (c) for the appropriate sample size as specified *in the FAO/WHO Sampling Plans for Prepackaged Foods.*

2.4.5 *Standards Sample Size*

The standard sample size shall be 300 g.

3. *Essential Composition and Quality Factors*

3.1 *Optional Ingredients*

Salt (Sodium Chloride)

Condiments such as spices and herbs

3.2 *Quality factors*

3.2.1 *General Requirements*

Quick frozen broccoli shall be:

—of reasonably uniform characteristic colour, taking into consideration any added optional ingredients;

—free from foreign flavour and odour taking into consideration any added optional ingredients;

—clean, free from sand, grit, and other foreign material; and with respect to visual or other defects with a tolerance shall be:

—reasonably free from an excessive amount of leaf material, particularly large coarse leaves;

—practically free from detached fragments and loose leaves (only for spears and florets);

—practically free from extraneous vegetable material;

—reasonably free from yellow or brown coloured florets;

—reasonably free from damage due to mechanical, pathological, or insect injury;

—reasonably free from poorly trimmed units (spears and florets);

—practically free from flowered or poorly developed units;

—practically free from fibrous or woody units;

3.2.2 *Definition of Visual Defects*

(a) *Extraneous vegetable material* (EVM) means leaf, stem, or similar harmless vegetable material other than from the broccoli plant.

(b) *Detached leaves* (for spears and florets), means broccoli leaves and pieces thereof not attached to a unit

(c) *Fragments* (for spears and florets), means pieces less than 20 mm in length for spears and weighing less than 5 grammes for florets.

(d) *Blemished*—A unit of product affected by discolouration or disease or insect injury.

Minor—Slightly affecting the apearance of eating quality.

Major—Materially affecting the appearance or eating quality.

Serious—Seriously affecting the appearance or objectionably affecting the eating quality to such an extent that customarily it would be discarded under normal culinary preparation.

(e) *Mechanical Damage* (for spears and florets) means a unit bearing the general configuration of a spear or floret, but from which more than 50 percent of the buds have become detached, or otherwise mechanically damaged so as to materially affect the appearance of the product.

(f) *Poorly trimmed* (for spears and florets) means units in which the appearance is seriously affected by

attached coarse leaves or pieces thereof, or ragged removal of leaves, or small side shoots, or poor cutting of the stem.

(g) *Overmature or Poorly developed* means individual buds are in the flowered stage and with respect to spears and florets branching bud clusters which comprise the head are spread so as to seriously affect the appearance of the unit, or the bud clusters are of such advanced maturity that individual buds and supporting stems form loosely structured clusters.

(h) *Fibrous* means tough fibre that is normally developed near the outside portion of broccoli stem; such units are tough but still edible.

(i) *Woody* means tough fibre that is normally developed near the outside portion of the broccoli stem, such units are extremely tough and highly objectionable.

3.2.3 *Standard Sample size*

Spears, florets—300 grammes for detached fragments, loose leaves, and EVM; for other defects 25 units

Cut spears and other styles—300 grammes

Chopped—100 grammes

3.2.4 *Tolerance for Visual Defects*

For tolerance based on the standard sample sizes indicated in section 3.2.3, visual defects shall be assigned points in accordance with the appropriate Table in this section. The maximum number of defects permitted is the Total Allowable Points rating indicated for the respective categories Minor, Major and Serious or the Combined Total of the foregoing categories.

TABLE 1.—SPEARS AND FLORETS

	Unit of Measurement	Defect categories			Total
		Minor	Major	Serious	
(a) EVM	Each Piece		2		
(b) Detached Leaves	Each 5 g	1			
(c) Fragments					
—spears	Each 20 mm	1			
—Florets	Each 5 g	1			
(d) Blemished	Each unit				
—minor		1			
—major			2		
—serious				4	
(e) Mechanical Damage	Each unit		1		
(f) Poorly trimmed	do	1			
(g) Over-mature/Poorly developed	do		2		
(h) Fibrous	do		2		
(i) Woody	do			4	
Total allowable points		25	12	4	25

TABLE 2.—CUT AND CHOPPED STYLES

	Unit of measurement	Defect categories			Total
		Minor	Major	Serious	
(a) EVM	Each piece		2		
(b) Blemished					
—minor	do	1			
—major	do		2		
—serious	do			4	
(g) Over-mature/Poorly developed	Each 10 g for cut		2		
	Each 2 g for chopped		2		
(h) Fibrous	Each 2 g		2		
(i) Woody	Each 2 g			4	
Total allowable points		20	10	4	20

3.3 *Definition of "Defectives" for Quality Factors*

Any sample unit from a sample taken in accordance with the FAO/WHO Codex Alimentarius Sampling Plans for Pre-Packaged Foods (AQL 6.5) (Ref. No. CAC/RM 42-1969) shall be regarded as "defective" for the respective characteristics when:

(a) it fails to meet any of the general requirements of section 3.2.1;

(b) it exceeds the "maximum total points" in any one or more of the respective defect categories as appropriate for the style (3.2.4).

3.4 *Lot Acceptance for Quality Factors*

A lot is considered acceptable with respect to Quality Factors when the number of "defectives" as defined in Section 3.3 does not exceed the acceptance number (c) for the appropriate sample size as specified in the *Sampling Plans for Prepackaged Foods* (Ref. CAC/RM 42-1969). In applying the acceptance procedure each "defective" (as defined in sections 3.3 (a) and (b)) is treated individually for the respective categories.

4. *Food Additives*

4.1 None Permitted.

4.2 *Carry-Over Principle*

"Section 3" of the "Principle Relating to the Carry-over of Additives into Foods" as set forth in Volume I of the Codex Alimentarius shall apply.

5. *Hygiene*

It is recommended that the product covered by the provisions of this standard be prepared in accordance with the International Code of Practice-General Principles of Food Hygiene (Ref. No. CAC/RCP 1-1969, Rev. 1) recommended by the Codex Alimentarius Commission.

6. *Labelling*

In addition to sections 1,2,4 and 6 of the Codex General Standard for the Labelling of Prepackaged Foods (Ref. No. CODEX STAN 1-1981), the following provisions apply:

6.1 *The Name of the Food*

6.1.1 The name of the food as declared on the label should include "broccoli". The words "quick frozen" shall also appear on the label, except that the term "frozen"[1] may be applied in countries where this term is customarily used for describing the product processed in accordance with section 2.2 of the standard.

6.1.2 The name of the food shall also include the style as appropriate: "spears", "florets". "Cut spears", "chopped" as described in section 2.4.1.

6.1.3 If the product is presented in accordance with section 2.4.2 the label shall contain in close proximity to the word "Broccoli" such additional words or phrases that will avoid misleading or confusing the consumer.

6.1.4 When any ingredient other than salt, has been added, which imparts to the food the distinctive flavour of the ingredient, the name of the food shall be accompanied by the term "with x" "x or flavoured"as appropriate.

6.2 *List of Ingredients*

A complete list of ingredients shall be declared in descending order of proportion in accordance wtih section 3.2(c) of the General Standard for the Labelling of Prepackaged Foods (CODEX STAN 1-1981), except that the food additives present in the product in accordance with section 4.2 need not be declared.

6.3 *Net Contents*

The net contents shall be declared by weight in either the metric system ("Système International" units) or avoirdupois or both systems of measurement as required by the country in which the food is sold.

6.4 *Name and Address*

[1] "Frozen": This term is used as an alternative to "quick frozen" in some English speaking countries.

The name and address of the manufacturer, packer, distributor, importer, exporter, or vendor of the food shall be declared.

6.5 *Country of Origin*

The country of origin of the product shall be declared if its omission would mislead or deceive the consumer.

6.6 *Lot Identification*

Each container shall be embossed or otherwise permanently marked, in code or in clear, to identify the producing factory and the lot.

6.7 *Additional Requirements*

The packages shall bear clear directions for keeping from the time they are purchased from the retailer to the time of their use, as well as directions for cooking.

6.8 *Bulk Packs*

In the case of quick frozen broccoli in bulk the information required in sections 6.1 to 6.5 must either be placed on the container or be given in accompanying documents, *except* that the name of the food accompanied by the words "quick frozen" (the term "frozen" may be used in accordance with sub-section 6.1.1 of this standard) and the name and address of the manufacturer or packer must appear on the container.

7. *Packaging*

Packaging used for quick frozen broccoli shall:

(a) protect the organoleptic and quality characteristics of the product;

(b) protect the product from microbiological and other contamination;

(c) protect the product from dehydration and, where appropriate, leakage as far as technologically practicable; and

(d) not pass on to the product any odour, taste, colour, or other foreign characteristics, through the processing (where applicable) and distribution of the product up to the time of final sale.

8. *Methods of Examination, Analysis and Sampling*

8.1 *Sampling*

8.1.1 *Sampling for Presentation and Visual Defects.* For those provisions detailed in sections 2.4 and 3.2 of this standard sampling shall be carried out in accordance with the FAO/WHO Codex Alimentarius Sampling Plans for Prepackaging Foods (AQL 5.5) (Ref. No. CAC/RM 42–1969).

8.1.2 *Sampling for Net Weight:* shall be carried out in accordance with the FAO/WHO sampling plans for the Determination of Net Weight (under elaboration by the Codex Committee on Methods of Analysis and Sampling).

8.1.3 *Sampling for Analytical Requirements:* Sampling Plans to be elaborated.

8.2 *Thawing Procedure*

FAO/WHO Codex Alimentarius Standard Procedure for Thawing of Quick Frozen Fruits and Vegetables (Ref. No. CAC/RM 32–1970).

8.3 *Cooking Procedure*

FAO/WHO Codex Alimentarius Standard Procedure for Cooking of Quick Frozen Vegetables (Ref. No. CAC/RM 33–1970).

The cooking time for quick frozen broccoli varies according to the style and variety characteristics. The following figures should be considered as a guideline:

Spears, 8–11 minutes
Florets and Cut spears, 5–8 minutes
Chopped, 3–5 minutes

8.4 *Determination of Net Weight*

FAO/WHO Codex Alimentarius Standard Procedure for Determination of Net Weight of Frozen Fruits and Vegetables, (Ref. No. CAC/RM 34–1970); also contained in *Codex Standard for Quick Frozen Peas* (CODEX STAN 41–1981, Section 8.3).

Interested persons may, on or before June 28, 1983 submit to the Dockets Management Branch (address above), written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Each comment should identify the title of the Codex standard and 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.

Executive Order 12291 does not apply to regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption. However, any comments submitted in support of establishing a U.S. standard for this food should be supported by appropriate information and data regarding impact on small business consistent with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354).

Dated: April 21, 1983.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 83-11428 Filed 4-28-83 8:45]

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21 CFR Part 158

[Docket No. 83N-0107]

Quick Frozen French Fried Potatoes; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

AGENCY: Food and Drug Adminstration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is offering to interested persons an opportunity to review the Codex Standard for Quick Frozen French Fried Potatoes (Codex standard) developed by the Codex Alimentarius Commission and to comment on the desirability and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration for acceptance. If the comments received do not support the need for a U.S. standard for the food, FDA will not propose a standard.

DATE: Comments by June 28, 1983.

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

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

SUPPLEMENTARY INFORMATION: The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) jointly sponsor the Codex Alimentarius Commission, which conducts a program for developing worldwide food standards. The program has developed a large number of Codex standards, among which is that for quick frozen french fried potatoes.

As a member of the Codex Alimentarius Commission, the United States is under treaty obligation to consider all Codex standards for acceptance. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: full acceptance, target acceptance, or acceptance with specified deviations. A commitment to accept at a designated future date constitutes target acceptance. A country's acceptance of a Codex standard signifies that, except as provided for by specified deviations, a product that complies with the Codex standard may be distributed freely within the accepting country. A participating country that concludes that it will not accept a Codex standard is requested to inform the Codex Alimentarius Commission of this fact and the reasons therefor, the manner in which similar foods marketed in the country differ from the Codex standard, and whether the country will permit products complying with the Codex

standard to move freely in that country's commerce.

For the United States to accept some or all of the provisions of a Codex standard for any food to which the Federal Food, Drug, and Cosmetic Act (the act) applies, it is necessary either to establish a standard under the authority of section 401 of the act (21 U.S.C. 341) or to revise an existing standard to incorporate the provisions within the U.S. standard. At present, there is no U.S standard for quick frozen french fried potatoes. There are only voluntary grade standards for frozen french fried potatoes, including identity and quality requirements, developed by the U.S. Department of Agriculture.

Under the procedure prescribed in § 130.6(b)(3) (21 CFR 130.6(b)(3)), FDA is providing an opportunity for review and informal comment (1) on the need for, and desirability of, a standard for this food, (2) on the specific provisions of the Codex standard (Codex standard 114–1981) and any modifications that should be included in a U.S. standard, if established, and (3) on any other pertinent points.

FDA advises that if the comments received do not support the need for a U.S. standard for this food, no U.S. standard will be proposed. If this decision is reached, FDA will inform the Codex Alimentarius Commission that an imported food that complies with the requirements of the Codex standard may move freely in interstate commerce in this country providing it complies with applicable U.S. laws and regulations.

Owing to the large number of countries, often with diverse food regulations, that are associated with Codex, certain provisions found in Codex standards may not be in keeping with aspects of U.S. policy and regulations. Codex standards customarily include hygiene requirements, limits on contaminants, certain basic labeling requirements, and other factors. These factors are not considered a part of food standards under section 401 of the act. Rather, they are dealt with under other sections of the act and are not included in a proposed U.S. standard.

In addition, the Codex standard for quick frozen french fried potatoes specifies analytical methods by which compliance with certain provisions is to be determined. As stated in 21 CFR 2.19, FDA uses the methods published in the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists," when these are available, in preference to other methods. FDA will adhere to this policy in any U.S. standard proposed under this notice.

Under § 130.6(c), all persons who wish to submit comments are encouraged and requested to consult with different interested groups (consumers, industry, the academic community, professional organizations, and others) in formulating their comments, and to include a statement of any meetings or discussions that have been held with other groups.

List of Subjects in 21 CFR Part 158

Food standards, Frozen vegetables, Vegetables.

The Codex standard under consideration is as follows:

Codex STAN 114–1981—Codex Standard for Quick Frozen French Fried Potatoes (Worldwide Standard)

1. *Scope*

This standard shall apply to quick frozen French fried potatoes which have been prepared from tubers of the species *Solanum tuberosum* L. and offered for direct consumption without further processing except for repacking if required.

2. *Description*

2.1 *Product Definition*

Quick frozen French fried potatoes is the product prepared from clean, mature, sound tubers of the potato plant conforming to the characteristics of the species *Solanum tuberosum* L. Such tubers shall have been sorted, washed, peeled, cut into strips, and treated as necessary to achieve satisfactory colour and fried in edible oil or fat. The treatment and frying operations shall be sufficient to ensure adequate stability of colour and flavour during normal marketing cycles.

2.2 *Process Definition*

2.2.1 Quick frozen French fried potatoes is the product subjected to a freezing process in appropriate equipment and complying with the conditions laid down hereafter. The freezing operation shall be carried out in such a way that the range of temperature of maximum crystallization is passed quickly. The quick freezing process shall not be regarded as complete unless and until the product temperature has reached −18°C (0°F) at the thermal centre after thermal stabilization.

2.2.2 The recognized practice of repacking quick frozen foods under controlled conditions is permitted.

2.3 *Handling Practice*

The product shall be handled under such conditions as will maintain the quality during transportation, storage and distribution up to and including the time of final sale. It is recommended that the product be handled in accordance with the provisions in the *Recommended International Code of Practice for the Processing and Handling of Quick Frozen Foods* (Ref. No. CAC/RCP 8–1976).

2.4 *Presentation*

2.4.1 *Styles*

The styles of the product shall be determined by the nature of the surface and the nature of the cross section.

2.4.1.1 *Nature of the Surface*

The product shall be presented in one of the following styles:

(a) *Straight cut*—strips of potato with practically parallel sides and with smooth surfaces.

(b) *Crinkle cut*—stips of potatto with practically parallel sides and in which two or more sides have a corrugated surface.

2.4.1.2 *Dimensions of the Cross Section*

The cross sectional dimensions of strips of quick frozen French fried potatoes which have been cut on all four sides shall not be less than 5 mm when measured in the frozen condition. The quick frozen French fried potatoes within each pack shall be of similar cross sections.

The product may be identified by the approximate dimensions of the cross sections or by reference to the following system for designations:

Designation	Dimension in mm across the largest cut surface
Shoestring	5 to 8.
Medium	8 to 12.
Thick cut	12 to 16.
Extra large	Greater than 16.

2.4.2 *Other Styles*

Any other presentation of the product, based on differing cross sections shall be permitted provided that it:

(a) is sufficiently distinctive from other forms of presentation laid down in this standard;

(b) meets all other requirements of this standard;

(c) is adequately described on the label to avoid confusing or misleading the consumer.

3. *Essential Composition and Quality Factors*

3.1 *Composition*

3.1.1 *Basic Ingredients*

(a) Potatoes as defined in Section 2.1

(b) Edible fats and oils as defined by the Codex Alimentarius Commission.

3.1.2 *Optional Ingredients*

(a) Sugars, (sucrose, invert sugar, dextrose, fructose, glucose syrup, dried glucose syrup) as defined by the Codex Alimentarius Commission;

(b) Salt (sodium chloride);
(c) Condiments, such as herbs and spices

3.2 *Quality Factors*

3.2.1 *General Requirements*

Quick frozen French fried potatoes shall:

—be free from any foreign flavours and odours;
—be clean, sound and practically free from foreign matter;
—have a reasonably uniform colour;

and with respect to visual defects subject to a tolerance shall be:

—without excessive external defects, such as blemishes, eyes and discolouration;
—without excessive sorting effects, such as slivers, small pieces and scrap;
—reasonably free from frying defects, such as burnt parts.

When prepared in accordance with the manufacturer's instructions quick frozen French fried potatoes shall:

—have a reasonably uniform colour;
—have a texture characteristic of the product and be neither excessively hard nor excessively soft or soggy.

3.2.2 *Analytical Requirements.*

3.2.2.1 Moisture—the maximum moisture content of the whole product in the styles shoestring, medium and thick cut shall be 76% m/m; and in extra large and other styles 78% m/m.

3.2.2.2 The fat or oil extracted from the product shall have a free fatty acid content of not more than 1.5% m/m measured as oleic acid or an equivalent fatty acid value based on the predominant fatty acid in the fat or oil.

3.2.3 *Definition of Visual Defects.*

3.2.3.1 *External defects* are blemishes or discolouration (either internally or on the surface) due to exposure to light, mechanical, pathological or pest agents, eye material or peeling remnants.

(a) Minor defect—A unit affected by disease, dark or intense discolouration, eye material, or dark peel covering an area or a circle greater than 3 mm but less than 7 mm in diameter; pale brown peel or light discolouration of any area greater than 3 mm in diameter.

(b) Major defect—A unit affected by disease, dark or intense discolouration, eye material, or dark peeling covering an area or a circle greater than 7 mm but less than 12 mm in diameter.

(c) Serious defect—A unit affected by disease, dark or intense discolouration, eye material, or dark peel covering an area or a circle of 12 mm in diameter or more.

Note.—("slight" external defects which in either area or intensity fall below the definition shown for minor defects shall be ignored).

3.2.3.2 *Sorting Defects*

(a) Sliver—A very thin unit (generally an edge piece) which will pass through a slot the width of which is 50% of the minimum dimension of the nominal or normal size.

(b) Small piece—Any unit less than 25 mm in length.

(c) Scrap—Potato material of irregular form not conforming to the general conformation of French fried potatoes.

3.2.3.3 *Frying Defects*

Burnt pieces—Any unit which is dark brown and hard due to gross overfrying.

3.2.4 *Standard Sample Size*

The standard sample size shall be 1 kilogramme.

3.2.5 *Tolerances for Visual Defects*

For tolerances based on the standard sample size as specified in Section 3.2.4 the visual *external defects* are classified as "minor" or "Major" or "serious". The tolerances in respect of external defects are dependent on the cross section of the French fried potatoes.

To be acceptable, the standard samples shall not contain units in excess of the numbers shown for the respective categories, including *total*, in Table 1.

TABLE I.—TOLERANCES FOR EXTERNAL DEFECTS

Defect category	Number of units affected, cross section of strips	
	5–16 mm	over 16 mm
Serious	7	3
Serious + major	21	9
Total (serious + major + minor)	60	27

The tolerances for the other defects (*not*) depending on cross section are:

Sorting Defects

Slivers, max. 12% m/m
Small Pieces and Scraps, max. 6% m/m
Total Sorting Defects, max. 12% m/m
Frying defects, max. 0.5% m/m

3.3 *Definition of "defective" for Composition and Quality Factors*

Any sample unit taken in accordance with the *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods* (AQL 6.5) (Ref. No. CAC/RM 42–1969) shall be regarded as a "defective" for the respective characteristics when:

(a) it fails to meet any of the requirements given in Section 3.1;
(b) it fails to meet any of the general requirements given in Section 3.2.1;
(c) when it exceeds the tolerances for visual defects in any one or more respective defect categories in Section 3.2.5.

3.4 *Lot Acceptance for Composition and Quality Factors*

A lot will be considered acceptable with respect to Composition and Quality Factors when the number of "defectives" as defined in Section 3.5 does not exceed the acceptance number (c) for the appropriate sample size as specified in the *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods*. In applying the acceptance procedure each "defective" (as defined in section 3.3(a) to (c)) is treated individually for the respective characteristics.

3.5 *Definition of "defective" for Analytical Requirements* [1]—To be elaborated.

3.6 *Lot Acceptance for Analytical Requirements* [1]—to be elaborated.

4. *Food Additives*

4.1 *Sequestrants, Maximum Level in Final Product*

4.1.1 Disodium dihydrogen pyrophosphate, 100 mg/kg singly or in combination (phosphates expressed as P_2O_5

4.1.2 Testrasodium pyrophosphate, 100 mg/kg singly or in combination (phosphates expressed as P_2O_5

4.1.3 Ethylene diamine tetra-acetic acid (Ca-diNa salt), 100 mg/kg singly or in combination (phosphates expressed as P_2O_5

4.1.4 Ascorbic acid, 100 mg/kg singly or in combination (phosphates expressed as P_2O_5

4.1.5 Citric acid, Limited by GMP

4.1.6 Malic acid, Limited by GMP

4.2 *Processing Aids*

4.2.1 Sulphite, bisulphite, metabisulphite (sodium or potassium salt), 50 mg/kg, singly or in combination, expressed as SO_2

Maximum Level in Final Product

4.2.2 Sodium hydroxide, Limited by GMP

4.2.3 Potassium hydroxide, Limited by GMP

4.2.4 Citric acid, Limited by GMP

4.2.5 Dimethylpolysiloxane, 10 mg/kg on a fat basis

4.3 *Carry-Over Principle*

"Section 3" of the "Principle Relating to the Carry-Over of additives into foods" as set forth in Volume I of Codex Alimentarius shall apply.

5. *Hygiene*

It is recommended that the product be prepared in accordance with the *International Code of Practice—General Principles of Food Hygiene* (Ref. No. CAC/RCP 1–1969, Rev. 1) recommended by the Codex Alimentarius Commission.

6. *Labelling*

In addition to Sections 1, 2, 4 and 6 of the *Codex General Standard for the Labelling of Prepackaged Foods* (Ref.

[1] See para 104, ALINORM 79/25.

No. CODEX STAN 1–1981) the following specific provisions shall apply:

6.1 *The Name of the Food*

6.1.1 The name of the food as declared on the label shall include the designation "French Fried Potatoes" or the equivalent designation used in the country in which the product is intended to be sold.

6.1.2 In addition, there shall appear on the label a designation of the style as appropriate, i.e. "straight cut" or "crinkle cut" and there may also appear an indication of the approximate dimensions of the cross section or the appropriate designation, i.e. "shoestring", "medium", "thick cut" or "extra large".

6.1.3 If the product is produced in accordance with Section 2.4.2, the label shall contain in close proximity to the words "French Fried Potatoes" such additional words or phrases that will avoid misleading or confusing the consumer.

6.1.4 The words "Quick Frozen" shall also appear on the label, except that the term "Frozen"[1] may be applied in countries where this term is customarily used for describing the product processed in accordance with Section 2.2 of this standard.

6.2 *List of Ingredients*

A complete list of ingredients shall appear on the label, in descending order of proportion in accordance with section 3.2(c) of the *Codex General Standard for the Labelling of Prepackaged Foods* (Ref. No. CODEX STAN 1–1981), except that food additives present in the product in accordance with Sections 4.2 and 4.3 need not be declared.

6.3 *Net Contents*

The net contents shall be declared by weight in either the metric system ("Système international" units) or avoirdupois or both systems of measurement as required by the country in which the food is sold.

6.4 *Name and Address*

The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the product shall be declared.

6.5 *Country of Origin*

The Country of origin of the product shall be declared if its omission would mislead or deceive the consumer.

6.6 *Lot Identification*

Each container shall be embossed or otherwise permanently marked, in code or in clear, to identify the producing factory and the lot.

6.7 *Additional Requirements*

The packages shall bear clear directions for keeping from the time they are purchased from the retailer to the time of their use, as well as directions for cooking.

6.8 *Bulk Pack*

In the case of quick frozen French fried potatoes in bulk, the information required in Sections 6.1 to 6.5 shall either be placed on the container or be given accompanying documents, except that the name of the food accompanied by the words "quick frozen" (the term "frozen" may be used in accordance with Section 6.1.4 of this standard) and the name and address of the manufacturer or packer shall appear on the container.

7. *Packaging*

Packaging used for quick frozen French fried potatoes shall:

(a) protect the organoleptic and other quality characteristics of the product;

(b) protect the product against microbiological and other contamination;

(c) protect the product from dehydration and, where appropriate, leakage as far as technologically practicable; and

(d) not pass on to the product any odour, taste, colour or other foreign characteristics, throughout the processing (where applicable) and distribution of the product up to the time of final sale.

8. *Methods of Examination, Analysis and Sampling*

8.1 *Sampling*

8.1.1 *Sampling for Presentation and Visual Defects:* For those provisions detailed in Sections 2.4 and 3.2 of this standard sampling shall be carried out in accordance with the FAO/WHO Codex Alimentarius Sampling Plans for Per-packaged Foods (AQL 6.5) (Ref. No. CAC/RM 42–1969).

8.1.2 *Sampling for Net Weight:* Shall be carried out in accordance with the FAO/WHO Sampling Plans for the Determination of Net Weight (under Elaboration by the Codex Committee on Methods of Analysis and Sampling).

8.1.3 *Sampling for Analytical Requirements:* Sampling Plans to be elaborated.

8.2 *Thawing Procedure*

FAO/WHO Codex Alimentarius Standard Procedure for Thawing of Quick Frozen Fruits and Vegetables (Ref. No. CAC/RN 32–1970).

8.3 *Cooking Procedure*

Samples for examination shall be cooked in accordance with the manufacturer's instructions.

8.4 *Determination of Net Weight*

FAO/WHO Codex Alimentarius Standard Procedure for Determination of Net Weight of Quick Frozen Fruits and Vegetables (Ref. No CAC/RM 34–1970) also contained in the Codex Standard for Quick Frozen Peas (Ref. No. CODEX STAN 41–1981 Section 8.3).

8.5 *Determination of moisture content* (to be developed).

8.6 *Determination of free fatty acid content in the fat or oil* (to be developed).

Interested persons may, on or before June 28, 1983, submit to the Dockets Management Branch (address above), written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Each comment should identify the title of the Codex standard and 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.

Executive Order 12291 does not apply to regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption. However, any comments submitted in support of establishing a U.S. standard for this food should be supported by appropriate information and data regarding impact on small business consistent with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354).

Dated: April 21, 1983.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 83-11425 Filed 4-28-83; 8:45 am]

BILLING CODE 4160-01-M

[1] "Frozen": This term is used as an alternative to "quick frozen" in some English speaking countries.

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21 CFR Part 158

[Docket No. 83N-0109]

Quick Frozen Green Beans and Quick Frozen Wax Beans; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is offering to interested persons an opportunity to review the Codex standard for Quick Frozen Green Beans and Quick Frozen Wax Beans (Codex standard) developed by the Codex Alimentarius Commission and to comment on the desirability and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration for acceptance. If the comments received do not support the need for a U.S. standard for the food, FDA will not propose a standard.

DATE: Comments by June 28, 1983.

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

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

SUPPLEMENTARY INFORMATION: The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) jointly sponsor the Codex Alimentarius Commission, which conducts a program for developing worldwide food standards. The program has developed a large number of Codex standards, among which is that for quick frozen green beans and quick frozen wax beans.

As a member of the Codex Alimentarius Commission, the United States is under treaty obligation to consider all Codex standards for acceptance. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: full acceptance, target acceptance, or acceptance with specified deviations. A commitment to accept at a designated future date consitutes target acceptance. A country's acceptance of a Codex standard signifies that, except as provided for by specified deviations, a product that complies with the Codex standard may be distributed freely within the accepting country. A participating country that concludes that it will not accept a Codex standard is requested to inform the Codex Alimentarius Commission of this fact and the reasons therefor, the manner in which similar foods marketed in the country differ from the Codex standard, and whether the country will permit products complying with the Codex standard to move freely in that country's commerce.

For the United States to accept some or all of the provisions of a Codex standard for any food to which the Federal Food, Drug, and Cosmetic Act (the act) applies, it is necessary either to establish a standard under the authority of section 401 of the act (21 U.S.C. 341) or to revise an existing standard to incorporate the provisions within the U.S. standard. At present, there is no U.S. standard for quick frozen green beans and quick frozen wax beans. There are only voluntary grade standards for marketing frozen green and frozen wax beans, including identity and quality requirements, developed by the U.S. Department of Agriculture.

Under the procedure prescribed in § 130.6(b)(3) (21 CFR 130.6(b)(3)), FDA is providing an opportunity for review and informal comment (1) on the need for, and desirability of, a standard for this food, (2) on the specific provisions of the Codex standard (Codex standard 113–1981) and any modifications that should be included in a U.S. standard, if established, and (3) on any other pertinent points.

FDA advises that if the comments received do not support the need for a U.S. standard for this food, no U.S. standard will be proposed. If this decision is reached, FDA will inform the Codex Alimentarius Commission that an imported food that complies with the requirements of the Codex standard may move freely in interstate commerce in this country providing it complies with applicable U.S. laws and regulations.

Owing to the large number of countries, often with diverse food regulations, that are associated with Codex, certain provisions found in Codex standards may not be in keeping with aspects of U.S. policy and regulations. Codex standards customarily include hygiene requirements, limits on contaminants, certain basic labeling requirements, and other factors. These factors are not considered a part of food standards under section 401 of the act. Rather, they are dealt with under other sections of the act and are not included in a proposed U.S. standard.

In addition, the Codex standard for quick frozen green beans and quick frozen wax beans specifies analytical methods by which compliance with certain provisions is to be determined. As stated in 21 CFR 2.19, FDA uses the methods published in the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists," when these are available, in preference to other methods. FDA will adhere to this policy in any U.S. standard proposed under this notice.

Under § 130.6(c), all persons who wish to submit comments are encouraged and requested to consult with different interested groups (consumers, industry, the academic community, professional organizations, and other) in formulating their comments, and to include a statement of any meetings or discussions that have been held with other groups.

List of Subjects in 21 CFR Part 158

Food standards, Frozen vegetables, Vegetables.

The Codex standard under consideration is as follows:

Codex STAN 113–1981—Codex Standard for Quick Frozen Green Beans and Quick Frozen Wax Beans (Worldwide Standard)

1. *Scope*

This standard shall apply to quick frozen green beans and quick frozen wax beans from suitable varieties of the species *Phaseolus vulgaris* L. and quick frozen green beans from suitable varieties of the species *Phaseolus coccineus* L. as defined below and offered for direct consumption without further processing, except for size-grading or repacking, if required. It does not apply to the product when indicated as intended for further processing or for other industrial purposes.

2. *Description*

2.1 *Product Definitions*

Quick frozen Green Beans is the product prepared from fresh, clean, sound, succulent pods of the plants conforming to the characteristics of suitable varieties of the species *Phaseolus vulgaris* L. or *Phaseolus coccineus* L. Quick Frozen Wax Beans is the product prepared from fresh, clean, sound, succulent pods of the plants conforming to the characteristics of suitable varieties of the species *Phaseolus vulgaris* L. Strings (if any), stems, and stem ends are removed, and the pods washed and sufficiently blanched to ensure adequate stability of colour and flavour during normal marketing cycles.

2.2 *Process Definition*

2.2.1 Quick frozen green and quick frozen wax beans are the products subjected to a freezing process in appropriate equipment and complying with the conditions laid down hereafter. This freezing operation shall be carried out in such a way that the range of temperature of maximum crystallization is passed quickly. The quick freezing process shall not be regarded as complete unless and until the product temperature has reached −18°C (0°E) at the thermal centre after thermal stabilization.

2.2.2 The recognized practice of repacking quick frozen products under controlled conditions is permitted.

2.3 *Handling Practice*

The product shall be handled under such conditions as will maintain the quality during transportation, storage and distribution up to and including the time of final sale. It is recommended that during storage, transportation, distribution and retail, the product be handled in accordance with the provisions in the *Recommended*

International Code of Practice for the Processing and Handling of Quick Frozen Foods (Ref. No. CAC/RCP 8–1976).

2.4 *Presentation*

2.4.1 *Type*

Green Beans or Wax Beans having distinct varietal differences with regard to shape may be designated as:

(a) Round—pods having a width not greater than 1½ times the thickness.

(b) Flat—pods having a width greater than 1½ times the thickness.

2.4.2 *Style*

2.4.2.1 Quick frozen green beans and quick frozen wax beans shall be presented in the following styles:

(a) *Whole:* whole pods of any length

(b) *Cut:* transversely cut pods in which 70 percent or more by count of the units are at least 20mm long but not longer than 65mm.

(c) *Short cut:* transversely cut pods in which 70 percent or more by count of the units are more than 10mm but less than 20mm long.

(d) *Diagonal Cut:* pods cut approximately 45° to the longitudinal axis in which 70 percent by count of the units are more than 6mm long.

(e) *Sliced:* pods sliced lengthwise or at an angle up to approximately 45° to the longitudinal axis, with a maximum thickness of 7mm.

2.4.2.2 *Other Styles*

Any other style of presentation shall be permitted provided that it:

(a) is sufficiently distinctive from other forms of presentation laid down in this standard;

(b) meets all other requirements of this standard;

(c) is adequately described on the label to avoid confusing or misleading the consumer.

2.4.3 *Colour*

The predominant colour of the pods of wax beans excluding the seeds and the immediate surrounding tissue shall be yellow, or yellow with a green tinge.

2.4.4 *Form*

2.4.4.1 Quick frozen green beans and quick frozen wax beans may be presented as free-flowing (i.e. in which the individual units are not adhering to one another) or non-free flowing (i.e. as a solid block).

2.4.4.2 *Tolerances for "free flowing":* When the product is presented as "free flowing", a tolerance of 10 percent (m/m) shall be allowed for pieces which are stuck together to such an extent that they cannot easily be separated in the frozen state. When assessing this factor, the sample unit shall be the entire contents of the pack of 1 kg.

2.4.5 *Sizing*

2.4.5.1 Quick frozen whole and cut green beans and wax beans may be presented sized or unsized.

2.4.5.2 If round type beans are presented as size graded on diameter, they shall conform when measured in the frozen condition, to the following system of specifications for the size names:

Size designations	Bean pod diameter in mm measured by passing through parallel bars
Extra small	Up to 6.5.
Very small	Up to 8.
Small	Up to 9.5.
Medium	Up to 11.
Large	Over 11.

2.4.5.3 *Tolerance for Sizes*

If presented as size graded, the product shall contain not less than 80 percent by number of bean pods of the declared size or smaller sizes. Of the 20 percent by number which may be of larger sizes, not more than a quarter may be of the second size larger and none may be larger than the second size larger.

2.4.6 *Standard Sample Size (for presentation)*

2.4.6.1 The standard sample size for "free flowing" shall be the entire contents of the pack or as large a quantity as is practicable.

2.4.6.2 The standard sample size for sizing shall be one kilogramme.

2.4.7 *Definition of "Defective" for Presentation*

Any sample unit from a sample taken in accordance with the *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods* (AQL 6.5) (Ref. No. CAC/RM 42–1969) shall be regarded as "defective" for the respective characteristics when:

(a) the requirement for free-flowing in section 2.4.4 is not complied with;

(b) the sizing requirements in section 2.4.5 are not complied with.

2.4.8 *Lot Acceptance for Presentation Factors*

A lot is considered as acceptable with respect to free flowing and sizing when the number of "defectives" as defined in sections 2.4.4 and 2.4.5 does not exceed the acceptance number (c) for the appropriate sample size as specified in the *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods.*

3. *Essential Composition and Quality Factors*

3.1 *Optional Ingredients*

(a) Sugars (sucrose, invert sugar, dextrose, fructose, glucose syrup, dried glucose syrup)

(b) Salt (sodium chloride)

(c) Condiments, such as spices and herbs

3.2 *Quality Factors*

3.2.1 *General Requirements*

Quick frozen beans shall be:

—of a reasonably uniform colour
—free from foreign flavour and odour taking into account any added optional ingredients
—clean and free from foreign material

and with regard to visual defects subject to a tolerance shall be

—reasonably free from extraneous vegetable material (EVM)
—reasonably free from stem ends
—reasonably free from damage by insects or disease
—reasonably free from mechanically damaged units
—for whole beans normally developed
—reasonably free from tough strings and fibrous units
—without excessive small pieces

3.2.2 *Definition of Visual Defects*

(a) *Extraneous Vegetable Material:* vegetable material from the bean plant, other than pod, such as leaf or vine, but excluding stem ends; other harmless vegetable material, not purposely included as an ingredient. For the purpose of assessment, EVM comprising bean leaf material will be differentiated from other EVM.

(b) *Stem End:* a piece of the immediate stem which attaches the pod to the vine stem whether still attached to the unit or loose in the product.

(c) *Major Blemish:* each piece blemished due to insect or pathological damage affecting an area greater than a 6 mm diameter circle, or blemished by other means to a degree which seriously detracts from its appearance.

(d) *Minor Blemish:* each piece blemished due to insect or pathological damage affecting an area greater than a 3 mm diameter circle but less than a 6 mm diameter circle, or blemished by other means to a degree which noticeably detracts from its appearance.

(e) *Mechanical Damage:* (Whole and Cut Styles): a unit that is broken or split into two parts, crushed, or has very ragged edges to an extent that the appearance is seriously affected.

(f) *Undeveloped:* (Whole Style only): each unit which measures less than 3 mm at its widest point.

(g) *Tough Strings:* tough fibre which will support a weight of 250 g for 5 seconds or more when tested in accordance with the procedure in 8.5.

(h) *Fibrous Unit:* each piece having parchment-like material formed during the ripening of the pod, to the extent that the eating quality is seriously affected.

(i) *Small Pieces:* (Cut and Sliced Styles): bean pieces less than 10 mm in

length including loose seeds and pieces of seeds;

—(Whole Style): bean pieces less than 20 mm in length including loose seeds and pieces of seeds.

3.2.3 *Standard Sample Size*

Standard sample size is 1 kilogramme for EVN and stem ends, and 300 grammes for other defect categories.

3.2.4 *Tolerances for Visual Defects*

For tolerance based on the standard sample size indicated in section 3.2.3, visual defects shall be assigned points in accordance with the table in this section. The maximum number of defects permitted is the Total Allowable Points rating indicated for the respective categories 1, 2 and 3 or the Combined Total of the foregoing categories.

Defect	Category 1	Category 2	Category 3	Total
(a) EVM (i) Bean Leaf (each piece)	1			
(ii) Other EVM (each piece)	2			
(b) Stem end	1			
(c) Major blemish		3		
(d) Minor blemish		1		
(e) Mechanical damage (Whole and cut sizes)		1		
(f) Undeveloped (Whole style)		2		
(g) Tough strings			3	
(h) Fibrous unit			1	
Total Allowable Points				
(A) All but whole style	15	50	10	60
(B) Whole style only	15	30	6	40

(i) Small pieces (Whole, Cut and Sliced Styles)—maximum 20 percent m/m

3.3 *Definition of "Defective" for Quality Factors*

Any sample unit from a sample taken in accordance with the *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods* (AQL 6.5) (CAC/RM 42–1969) shall be regarded as "defective" for the respective characteristics when:

(a) any one of the general requirements in section 3.2.1 is not complied with;

(b) the total in section 3.2.4 (a) to (h) exceeds the Total Allowable Points in any of the respective defect categories;

(c) the tolerance for small pieces is exceeded.

3.4 *Lot Acceptance for Quality Factors*

A lot is considered acceptable when the number of "defectives" as defined in section 3.3 does not exceed the acceptance number (c) for the appropriate sample size as specified in the *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods* (AQL 6.5) (Ref. No. CAC/RM 42–1969). In applying the acceptance procedure each "defective" (subparagraph (a) to (c) of 3.3) is treated individually for the respective characteristics.

4. *Food Additives*

None permitted

4.1 *Carry-Over Principle*

"Section 3" of the "Principle Relating to the Carryover of Additives into Foods" as set forth in Volume I of the Codex Alimentarius shall apply.

5. *Hygiene*

It is recommended that the product covered by the provisions of this standard be prepared in accordance with the *Recommended International Code of Practice—General Principles of Food Hygiene* (Ref. No. CAC/RCP 1–1969, Rev. 1) recommended by the Codex Alimentarius Commission.

6. *Labelling*

6.1 In addition to sections 1, 2, 4 and 6 of the *Codex General Standard for the Labelling of Prepackaged Foods* (Ref. No. CODEX STAN 1–1981), the following specific provisions apply:

6.1.1 The name of the product, as declared on the label, shall include "green beans" or "wax beans" as applicable. The words "quick frozen" shall also appear on the label, except that the term "frozen"[1] may be applied in countries where this term is customarily used for describing the product processed in accordance with section 2.2 of this standard.

6.1.2 In addition, there shall appear in the label on conjunction with, or in close proximity to, the words "green beans" or "wax beans": the style, as appropriate, "whole", "cut", "short cut", "diagonal cut", or "sliced".

6.1.3 If the product is produced in a style other than shown in 2.4.2.1 the label shall contain in close proximity to the words "green beans" or "wax beans", such additional words or phrases that will avoid misleading or confusing the consumer.

6.1.4 Where a characterising ingredient has been added, this shall be stated as "with x", as appropriate.

6.1.5 A statement regarding type ("round" or "flat") may be made if cuistomary in countries in which the product is sold.

6.2 *Size Designation*

If a term designating the size of the beans is used:

(a) it shall be supported by the size in mm as shown in section 2.4.5.2 and/or

(b) the words "extra small", "very small", "small", "medium", or "large" as appropriate; and/or

(c) by a correct graphic representation on the label of the size range to which the beans predominantly conform; and/or

(d) the customary method of declaring size in the country in which the product is sold.

6.3 *List of Ingredients*

A complete list of ingredients shall be declared in descending order of proportion in accordance with section 3.2(c) of the Codex General Standard for the Labelling of Prepackaged Foods (Ref. No. CODEX STAN 1–1981), except that food additives present in the product in accordance with section 4.1 need not be declared.

6.4 *Net Contents*

The net contents shall be declared by weight in either the metric system ("Systeme International" units) or avoirdupois or both systems of measurement, as required by the country in which the food is sold.

6.5 *Name and Address*

The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the food shall be declared.

6.6 *Country of Origin*

The country of origin of the product shall be declared if its omission would mislead or deceive the consumer.

6.7 *Lot Identification*

Each container shall be embossed or otherwise permanently marked in code or in clear to identify the producing factory and the lot.

6.8 *Additional Requirements*

The packages shall bear clear directions for keeping from the time they are purchased from the retailer to the time of their use, as well as directions for cooking.

6.9 *Bulk Packs*

In the case of quick frozen green beans or wax beans in bulk, the information required in sections 6.1 to 6.6 shall either be placed on the container or be given in accompanying documents, *except* that the name of the food accompanied by the words "quick frozen" (the term "frozen" may be used in accordance with section 6.1.1 of this standard) the name and address of the manufacturer or packer shall appear on the container.

7. *Packaging*

7.1 Packaging used for quick frozen beans or wax beans must:

(a) protect the organoleptic and other quality characteristics of the product;

(b) protect the product against microbiological and other contamination;

[1] "Frozen": this term is used as an alternative to "quick frozen" in some English speaking countries.

(c) protect the product from dehydration and, where appropriate, leakage as far as technologically practical; and

(d) not pass on to the product any odour, taste, colour or other foreign characteristics throughout the processing (where applicable— and distribution of the product up to the time of final sale.

8. *Methods of Examination, Analysis and Sampling*

8.1 *Sampling*

8.1.1 *Sampling for Presentation and Visual Defects:* For those provisions detailed in sections 2.4 and 3.2 of this standard sampling shall be carried out in accordance with the *FAO/HOW Codex Alimentariüs Sampling Plans for Prepackaged Foods* (AQL 6.5) (Ref. No. CAC/RM 42–1969).

8.1.2 *Sampling for Net Weight:* shall be carried out in accordance with the FAO/WHO sampling plans for the Determination of Net Weight (under elaboration by the Codex Committee on Methods of Analysis and Sampling).

8.1.3 *Sampling for Analytical Requirements:* Sampling Plans to be elaborated.

8.2 *Thawing Procedure*

FAO/WHO Codex Alimentarius Standard Procedure for Thawing of Quick Frozen Fruits and Vegetables (Ref. No. CAC/RM 32–1970).

8.3 *Cooking Procedure*

8.3.1 FAO/WHO Codex Alimentarius Standard Procedure for Cooking of Quick Frozen Vegetables (Ref. No. CAC/RM 33–1970).

8.3.2 The cooking time for quick frozen green beans and wax beans may vary within the range of 5 to 20 minutes, depending upon style, variety, maturity and size.

8.4 *Determination of Net Weight*

FAO/WHO Codex Alimentarius Standard Procedure for Determination of Net Weight of Frozen Fruits and Vegetables (Ref. No. CAC/RM 34–1970); also contained in the Codex Standard for Quick Frozen Peas (Ref. CODEX STAN 41–1981 Section 8.3).

8.5 *Determination of Tough Strings*

FAO/WHO Codex Alimentarius Method of Analysis for Processed Fruits and Vegetables, CAC/RM 39–1970, *Tough String Test* after the product has been cooked according to 8.3.

Interested persons may, on or before June 28, 1983, submit to the Dockets Management Branch (address above), written comments regarding this notice. Two copies of any coments are to be submitted, except that individuals may submit one copy. Each comment should identify the title of the Codex standard and 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.

Executive Order 12291 does not apply to regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption. However, any comments submitted in support of establishing a U.S. standard for this food should be supported by appropriate information and data regarding impact on small business consistent with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354).

Dated: April 21, 1983.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 83-11429 Filed 4-28-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

[Docket Nos. 77N-0230 and 77N-0316]

New Animal Drugs for Use in Animal Feeds; Penicillin- and Tetracycline (Chlortetracycline and Oxytetracycline)-Containing Premixes; Reopening of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period on the proposed rule to revise the regulations governing subtherapeutic use of antibiotic, nitrofuran, and sulfonamide drugs in animal feeds to permit approval of new animal drug applications (NADA's) and supplements for use of penicillin- and tetracycline (chlortetracycline and oxytetracycline)-containing premixes. FDA is reopening the comment period in response to a request from the Natural Resources Defense Council, Inc.

DATE: Comments by May 31, 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: Philip J. Frappaolo, Bureau of Veterinary Medicine (HFV–232), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4940.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 1, 1983 (48 FR 4490), FDA proposed to amend its regulation concerning approval of subtherapeutic use of penicillin- and tetracycline-containing premixes in animal feeds. The proposal provided for the submission of comments by April 4, 1983.

The Natural Resources Defense Council, Inc. (NRDC), in its letter of February 23, 1983, requested information pursuant to the Freedom of Information Act (FOI Act, 5 U.S.C. 552)—specifically, all documents produced or relied on by FDA in reaching its conclusions that: (1) The proposed rule would not significantly increase risks of human exposure to resistant organisms, and (2) the proposed rule could be supported by equity considerations. The agency has responded with a written discussion of the issues that were the subject to the NRDC letter.

In a second letter dated March 24, 1983, NRDC requested that FDA extend the comment period in order to obtain time to file meaningful comments on the proposal NRDC claimed that it could not file such comments until after FDA provided it with documents it has requested supporting the proposed rule. FDA concludes that additional time for submitting comments is warranted. The NRDC letter requesting documentation and FDA's responses, dated April 18 and April 19, 1983, are available for public inspection in the Dockets Management Branch.

Accordingly, the period for submission of comments by interested persons is reopened until May 31, 1983. Interested persons may submit written comments to the Dockets Management Branch (HFA–305) (address above). Respondents should submit two copies (except that individuals may submit single copies) identified with Docket Nos. 77N–0230 and 77N–0316. Received comments may be seen in the Dockets Management Branch from 9 a.m. to 4 p.m., Monday through Friday.

Dated: April 22, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-11434 Filed 4-28-83 8:45]

BILLING CODE 4160-01-M

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21 CFR Part 158

[Docket No. 83N-0108]

Quick Frozen Brussels Sprouts; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is offering to

interested persons an opportunity to review the Codex standard for Quick Frozen Brussels Sprouts (Codex standard) developed by the Codex Alimentarius Commission and to comment on the desirability and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration for acceptance. If the comments received do not support the need for a U.S. standard for the food, FDA will not propose a standard.

DATE: Comments by June 28, 1983.

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

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

SUPPLEMENTARY INFORMATION: The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) jointly sponsor the Codex Alimentarius Commission, which conducts a program for developing worldwide food standards. The program has developed a large number of Codex standards, among which is that for quick frozen brussels sprouts.

As a member of the Codex Alimentarius Commission, the United States is under treaty obligation to consider all Codex standards for acceptance. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: full acceptance, target acceptance, or acceptance with specified deviations. A commitment to accept at a designated future date constitutes target acceptance. A country's acceptance of a Codex standard signifies that, except as provided for by special deviations, a product that complies with the Codex standard may be distributed freely within the accepting country. A participating country that concludes that it will not accept a Codex standard is requested to inform the Codex Alimentarius Commission of this fact and the reasons therefor, the manner in which similar foods marketed in the country differ from the Codex standard, and whether the country will permit products complying with the Codex standard to move freely in that country's commerce.

For the United States to accept some or all of the provisions of a Codex standard for any food to which the Federal Food, Drug, and Cosmetic Act (the act) applies, it is necessary either to establish a standard under the authority of section 401 of the act (21 U.S.C. 341) or to revise an existing standard to incorporate the provisions within the U.S. standard. At present, there is no U.S. standard for quick frozen brussels sprouts. There are only voluntary grade standards for marketing frozen brussels sprouts, including identity and quality requirements, developed by the U.S. Department of Agriculture.

Under the procedure prescribed in § 130.6(b)(3) (21 CFR 130.6(b)(3)), FDA is providing an opportunity for review and informal comment (1) on the need for, and desirability of, a standard for this food, (2) on the specific provisions of the Codex standard (Codex standard 112-1981) and any modifications that should be included in a U.S. standard, if established, and (3) on any other pertinent points.

FDA advises that if the comments received do not support the need for a U.S. standard for this food, no U.S. standard will be proposed. If this decision is reached, FDA will inform the Codex Alimentarius Commission that an imported food that complies with the requirements of the Codex standard may move freely in interstate commerce in this country providing it complies with applicable U.S. laws and regulations.

Owing to the large number of countries, often with diverse food regulations, that are associated with Codex, certain provisions found in Codex standards may not be in keeping with aspects of U.S. policy and regulations. Codex standards customarily include hygiene requirements, limits on contaminants, certain basic labeling requirements, and other factors. These factors are not considered a part of food standards under section 401 of the act. Rather, they are dealt with under other sections of the act and are included in a proposed U.S. standard.

In addition, the Codex standard for quick frozen brussels sprouts specifies analytical methods by which compliance with certain provisions is to be determined. As stated in 21 CFR 2.19, FDA uses the methods published in the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists," when these are available, in preference to other methods. FDA will adhere to this policy in any U.S. standard proposed under this notice.

Under § 130.6(c), all persons who wish to submit comments are encouraged and requested to consult with different interested groups (consumers, industry, the academic community, professional organizations, and others) in formulating their comments, and to include a statement of any meetings or discussions that have been held with other groups.

List of Subjects in 21 CFR Part 158

Food standards, Frozen vegetables, Vegetables.

The Codex standard under consideration is as follows:

Codex STAN 112-1981—Codex Standard for Quick Frozen Brussels Sprouts (Worldwide Standard)

1. *Scope*

This standard shall apply to quick frozen Brussels Sprouts of the species *Brassica oleracea* L. var. *gemmifera* (DC) Schulz, as defined below and offered for direct consumption, without further processing except for size grading or repacking, if required. It does not apply to the product when indicated as intended for further processing or for other industrial purposes.

2. *Description*

2.1 *Product Definition*

Quick frozen Brussels Sprouts are the product prepared from fresh, clean, sound, whole axillary buds of the plant conforming to the characteristics of *Brassica oleracea* L. var. *gemmifera* (DC) Schulz—which buds are trimmed, sorted, washed and sufficiently blanched to ensure adequate stability of colour and flavour during normal marketing cycles.

2.2 *Process Definition*

2.2.1 Quick frozen Brussels Sprouts are the product subjected to a freezing process in appropriate equipment and complying with the conditions laid down hereafter. This freezing operation shall be carried out in such a way that the range of temperature of maximum crystallization is passed quickly. The quick freezing process shall not be regarded as complete unless and until the product temperature has reached −18°C (0°F) at the thermal centre after thermal stabilization.

2.2.2 The recognized practice of repacking quick frozen products under controlled conditions is permitted.

2.3 *Handling Practice*

The product shall be handled under such conditions as will maintain the quality during transportation, storage and distribution up to and including the time of final sale. It is recommended that during storage, transportation, distribution and retail, the product be handled in accordance with the provisions in the *Recommended International Code of Practice for the Processing and Handling of Quick*

Frozen Foods (Ref. No. CAC/RCP 8–1976).

2.4 *Presentation*

2.4.1 *Form*

Quick frozen Brussels Sprouts may be presented as free flowing (i.e. in which the individual sprouts are not adhering to one another) or non-free flowing (i.e. as a solid block).

2.4.2 *Tolerance for "Free Flowing"*

When the product is presented as "free flowing" a tolerance of 10% m/m shall be allowed for pieces which are stuck together to such an extent that they cannot easily be separated in the frozen state.

2.4.3 *Sizing*

2.3.1 Quick frozen Brussels Sprouts may be presented sized or unsized.

2.4.3.2 Whether sized or unsized, the amount of frozen sprouts passing a square hold sieve of 12 mm, shall not exceed 5 percent by number.

2.4.3.3 If quick frozen Brussels Sprouts are presented as size graded, they shall conform when measured in the frozen condition to the following system of specifications of the size names:

Size designation	Diameter of sprouts in mm using a square hole sieve
"Very small"	12–22 mm.
"Small"	22–26 mm.
"Medium"	26–36 mm.
"Large"	Over 36 mm.

2.4.4 *Tolerances for sizes*

If represented as size graded, of the sprouts 12 mm or larger, a minimum of 80 percent by number shall be of the declared size and a maximum of the following percentages by number of other sizes:

Size designation—	"Very small"	"Small"	"Medium"	"Large"
Max % 12–22 mm			20	5
Max % 22–26 mm	20			
Max % 26–36 mm	5	20		20
Max % over 36 mm		5	20	
Total max. %	20	20	20	20

2.4.5 *Standard Sample Size*—The standard sample shall be 1 kg.

2.4.6 *Definition of "Defective" for Presentation*

Any sample unit from a sample taken in accordance with the *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods* (AQL 6.5) (Ref. No. CAC/RM 42–1969) shall be regarded as "defective" for the respective characteristics where:

(a) the requirement for free-flowing in section 2.4.1 is not complied with;

(b) the sizing requirements, in section 2.4.2 are not complied with.

2.4.7 *Lot Acceptance for Presentation Factors*

A lot will be considered as acceptable with respect to free-flowing and sizing when the number of "defectives" as defined in section 2.4.1 and section 2.4.2 does not exceed the acceptance number (c) of the appropriate sample size as specified in the *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods.*

3. *Essential Composition and Quality Factors*

3.1 *Optional Ingredients*

(a) Sugars (sucrose, invert sugar, dextrose, fructose, glucose syrup, dried glucose syrup)

(b) Salt (sodium chloride)

(c) Condiments, such as spices and herbs

3.2 *Quality Factors*

3.2.1 *General Requirements*

Quick frozen Brussels Sprouts shall be:

—free from foreign flavour and odour, taking into account any added optional ingredients;
—clean, free from sand and grit and free from other foreign material;
—of a normal colour for the variety used;

and with respect to visual defects or other defects subject to a tolerance shall be:

—reasonably free from extraneous vegetable material (EVM)
—reasonably free from loosely structured buds
—reasonably free from poorly trimmed or mechanic damaged units
—reasonably free from damage by insect or disease
—reasonably free from loose leaves

3.2.2. Definition of Visual Defects

(a) *Extraneous Vegetable Material (EVM):* Extraneous material from the Brussels Sprouts plant including stem and leaf, but excluding bud leaves and fragments thereof; harmless vegetable material from other plants.

(b) *Yellow Colour:* More than 50% of the outer surface of a sprout yellow in colour due to loss of outer leaves resulting either from overtrimming or mechanical damage.

(c) *Loosely structured:* Sprout not compact, having loosely packed or open leaves. A sprout in which the leaves form a rosette appearance.

(d) *Perforated leaves* (by insects): A sprout with one or more surface perforations (due to insect, etc.), larger than 6 mm in diameter, showing scar tissue at the edge of the perforation(s).

(e) *Decayed:* A sprout which shows significant internal or external decay.

(f) *Seriously Blemished:* A sprout which is stained, spotted, discoloured or otherwise blemished, covering an aggregate area greater than that of a circle 15 mm in diameter, in such a way as to detract seriously from its appearance/eating quality, and to such an extent that it would be discarded under normal culinary preparation.

(g) *Blemished:* A sprout which is stained, spotted, discoloured, or otherwise blemished to the extent that the aggregate area affected is greater than the area of a circle 6 mm in diameter, or in such a way as to detract materially but not seriously from its appearance. Sprouts which slight blemishes may be ignored.

(h) *Poorly Trimmed or Mechanically Damaged Unit* A unit in which:

(i) the butt end is very ragged leaving a heel extending more than 10 mm beyond the point of attachment of the lowest outer leaves;

(ii) 4 or more outer leaves have been damaged such that only the petioles remain attached to the butt;

(iii) the butt extends more than 10 mm below the point of attachment of the lowest outer leaves;

(iv) the appearance is damaged to an extent that the sprout is lacerated, can be separated easily into two pieces, or more than 25% of its volume has been removed;

(i) *Loose Leaf:* Leaf or leaf fragments detached from the bud.

3.2.3 *Standard Sample Size*

The standard sample size shall be 1 kilogramme for the assessment of EVM and loose leaf, and 100 sprouts for the assessment of other visual defects.

3.2.4 *Tolerances for Visual Defects*

For *tolerances* based on the standard sample size indicated in Section 3.2.3 visual defects shall be assigned points in accordance with the Table in this section. The maximum number of defects permitted is the Total Allowable Points rating indicated for the respective categories 1, 2 and 3 or the Combined Total of the foregoing categories.

Defect	Unit of measurement	Category			Total
		1	2	3	
(a) EVM	Each piece	2			
(c) Loosely structured	Each sprout		2		
(d) Perforated leaves	Each sprout		1		
(e) Decayed	Each sprout			4	
(f) Seriously blemished	Each sprout			2	
(g) Blemished	Each sprout		2		

Defect	Unit of measurement	Category			Total
		1	2	3	
(h) Poorly trimmed or mechanically damaged	Each sprout		1		
(i) Loose leaf	Each 1% m/m	1			
Maximum Total Allowable Points		10	45	10	55

Maximum percentage of (b) Yellow Sprouts: 25.

3.3 *Definition of "Defective" for Quality Factors*

Any sample unit a from a sample taken in accordance with the FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods (AQL 6.5) (Ref. No. CAC/RM 42–1969) shall be regarded as "defective" when:

(a) any one of the general requirements in Section 3.2.1 is not complied with; or

(b) the total in section 3.2.4 (a) to (i) exceeds the Total Allowable Points in any of the respective defect categories.

3.4 *Lot Acceptance for Quality Factors*

A lot is considered acceptable when the number of "defectives" as defined in paragraph 3.3 does not exceed the acceptance number (c) for the appropriate sample size as specified in the *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods.* In applying the acceptance procedure each "defective" (sub-paragraphs (a) and (b) of 3.3) is treated individually for the respective characteristics.

4. *Food Additives*

None permitted

4.1 *Carry-Over Principle*

"Section 3" of the "Principle relating to the Carry-Over of Additives into Foods" as set forth in Vol. I of the Codex Alimentarius shall apply.

5. *Hygiene*

It is recommended that the product covered by the provisions of this standard be prepared in accordance with the *International Code of Practice—General Principles of Food Hygiene* (Ref. No. CAC/RCP 1–1969, Rev. 1), recommended by the Codex Alimentarius Commission.

6. *Labelling*

In addition to sections 1, 2, 4 and 6 of the *Codex General Standard for the Labelling of Prepackaged Foods* (Ref. No. CODEX STAN 1–1981) the following specific provisions apply:

6.1 *The Name of the Food*

6.1.1 The name of the product as declared on the label shall include "Brussels Sprouts". The words "quick frozen" shall also appear on the label, except that the term "frozen" [1] may be applied in countries where this term is customarily used for describing the product processed in accordance with section 2.2 of this standard.

6.1.2 Where a characterizing ingredient has been added, this shall be stated as "with X" or "X flavoured" as appropriate.

6.2 *Size Designation*

If a term designating the size of the Bussels Sprouts is used:

(a) it shall be supported by the sieve size in mm; and/or

(b) the words "very small" "small" "medium" or "large" as appropriate; and/or

(c) by a correct representation on the label of the size range to which the Brussels Sprouts predominantly conform; and/or

(d) the customary method of declaring size in the country in which the product is sold.

6.3 *List of Ingredients*

A complete list of ingredients shall be declared in descending order of proportion in accordance with section 3.2(o) of the *Codex General Standard for the Labelling of Prepackaged Foods* (Ref. No. CODEX STAN 1–1981) except that the food additives present in the product in accordance with Section 4.1 need not be declared.

6.4 *Net Contents*

The net contents shall be declared by weight in either the metric system ("System international" units) or avoirdupois or both systems of measurement as required by the country in which the food is sold.

6.5 *Name and Address*

The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the product shall be declared.

6.6 *Country of Origin*

The country of origin of the product shall be declared if its omission would mislead or deceive the consumer.

6.7 *Lot Identification*

Each container shall be embossed or otherwise permanently marked, in code or in clear, to identify the producing factory and the lot.

6.8 *Additional Requirements*

The packages shall bear clear directions for keeping from the time they are purchased from the retailer to the time of their use, as well as directions for cooking.

6.9 *Bulk Packs*

In the case of quick frozen Brussels Sprouts in bulk, the information required in Sections 6.1 to 6.6 shall either be placed on the container or be given in accompanying documents, *except* that the name of the food accompanied by the words "quick frozen" (the term "frozen" may be used in accordance with Section 6.1.1 of this standard) and the name and address of the manufacturer or packer shall appear on the container.

7. *Packaging*

7.1 Packaging used for quick frozen Brussels Sprouts must:

(a) protect the organoleptic and other quality characteristics of the product;

(b) protect the product against microbiological and other contamination;

(c) protect the product from dehydration and, where appropriate, leakage as far as technologically practicable; and

(d) not pass on to the product any odour, taste, colour or other foreign characteristics, throughout the processing (where applicable) and distribution of the product up to the time of final sale.

8. *Methods of Examination, Analysis and Sampling*

8.1 *Sampling*

8.1.1. *Sampling for Presentation and Visual Defects:* For those provisions detailed in sections 2.4 and 3.2 of this standard sampling shall be carried out in accordance with FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods (AQL 6.5) (Ref. No. CAC/RM 42–1969).

8.1.2 *Sampling for Net Weight:* Shall be carried out in accordance with the FAO/WHO Sampling Plans for the Determination of Net Weight (under elaboration by the Codex Committee on Methods of Analysis and Sampling).

8.1.3 *Sampling for Analytical Requirements:* Sampling Plans to be elaborated.

8.2 *Thawing Procedure*

FAO/WHO Codex Alimentarius Procedure for the Thawing of Quik Frozen Fruits and Vegetables (Ref. No. CAC/RM 32–1970).

8.3 *Cooking Procedure*

8.3.1 *FAO/WHO Codex Alimentarius Procedure for Cooking of Quick Frozen Vegetables* (Ref. No. CAC/RM 33–1970).

8.3.2 The cooking time for quick frozen Brussels Sprouts may vary between 6 and 20 minutes according to size.

8.4 *Determination of Net Weight*

FAO/WHO Codex Alimentarius Standard Procedure for the

[1] "Frozen": This term is used as an alternative to "quick frozen" in some English-speaking countries.

Determination of Net Weight of Frozen Fruits and Vegetables also contained in the *Codex Standard for Quick Frozen Peas*, Section 8.3 (CODEX STAN 41–1981 and CAC/RM 34–1970).

Interested persons may, on or before June 28, 1983 submit to the Dockets Management Branch (address above), written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Each comment should identify the title of the Codex standard and 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.

Executive Order 12291 does not apply to regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 577). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption. However, any comments submitted in support of establishing a U.S. standard for this food should be supported by appropriate information and data regarding impact on small business consistent with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354).

Dated: April 21, 1983.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 83–11423 Filed 4–28–83; 8:45 am]

BILLING CODE 4160–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–I–FRL 2340–1]

Approval and Promulgation of Implementation Plans New Hampshire; VOC Regulations Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan revisions submitted by the State of New Hampshire. These revisions will reduce emissions from major sources of volatile organic compounds (VOC). The intended effect of this action is to satisfy Part D plan requirements for nonattainment areas as required under Section 172(b)(2) of the Clean Air Act.

DATES: Comments must be received on or before May 31, 1983. Public comments on this document are requested and will be considered before taking final action on these SIP revisions.

ADDRESSES: Comments may be mailed to Harley F. Laing, Director, Air Management Division, Room 2311, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2111, JFK Federal Building, Boston, MA 02203 and the New Hampshire Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, NH 03301.

FOR FURTHER INFORMATION CONTACT: Alan E. Dion, (617) 223–5130.

SUPPLEMENTARY INFORMATION: On January 26, 1983 the State of New Hampshire submitted proposed revisions to its 1979 Ozone State Implementation Plan (SIP). These revisions consist of the following changes to the State's VOC regulations:

1. Air 1204.02(c), which defines "Equivalent", is amended by adding the phrase "on a solids applied basis." This change means that the State will use an approved method of determining what level of control is required by a source electing to use add-on control equipment in order to be equivalent to RACT emission limits of the VOC control regulations. This change is consistent with EPA guidance and is approvable.

2. Air 1204.21(j), which establishes deadlines for compliance schedule extensions, has been changed from "December 31, 1987" to "July 1, 1985." EPA believes this is a reasonable extension period for sources which were to be in compliance with the SIP by December 31, 1982, but which required more time to overcome problems or use advanced technology. EPA has approved this date for other states within the region. This revision is acceptable.

In the December 30, 1982 **Federal Register** (47 FR 58251), EPA took no action on some VOC regulations submitted by the State of New Hampshire on August 17, 1981, which failed to conform to EPA policy. The regulatory revisions proposed by the State remedy some of these deficiencies.

1. EPA took no action in 47 FR 58251 on Air 1204.17, controlling emissions from miscellaneous metal parts coaters. While this regulation represented RACT as written, we understood that New Hampshire did not determine the equivalency of a control system with the RACT emission limit based on the amount of solids applied to the material being coated. At that time the State used a less stringent method of calculating equivalence. The pending revision of Air 1204.02(c) concerning "Equivalent" will make Air 1204.17 fully approvable.

2. We approved Air 1204.21 on compliance schedules in 47 FR 58251, but required the State to submit each compliance schedule which extended beyond December 31, 1982 to us as a SIP revision. This requirement was based upon EPA's belief that the December 31, 1987 date in Air 1204.21(j) allowed the State too long a period to grant a source an extension. Normally, EPA allows a source only about a 2 year extension in its compliance schedule. In conformance with this policy, the July 1, 1985 date New Hampshire has proposed as an amendment to 1204.21(j) is reasonable, and will make this regulation fully approvable without the State having to submit any further compliance extensions as SIP revisions. These revisions do not affect compliance schedules already approved by EPA, or presently under review by us.

For a more detailed discussion of EPA's evaluation of these revisions please see the Technical Support Document available at the locations listed in the ADDRESSES section.

EPA is proposing to approve the Ozone State Implementation Plan revisions for New Hampshire, which were submitted on January 26, 1983, and is soliciting public comments on issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

These revisions are being proposed under a new procedure called "parallel processing" (47 CFR 27073). If the proposed revisions are substantially changed, in areas other than those identified in this notice, EPA will evaluate those changes and may publish a revised NPR. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by New Hampshire and submitted to EPA for incorporation into the SIP. "Parallel processing", it is estimated, will reduce the time necessary for final approval of these SIP revisions by 3 to 4 months.

Proposed Action: EPA is proposing to approve Air 1204.02(c) on "Equivalent", Air 1204.17 on miscellaneous metal parts coaters, and Air 1204.21(j) on compliance schedule extensions.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial

number of small entities (see 46 FR 8709).

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

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of Sections 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. This revision is being proposed pursuant to Sections 110(a) and 301(a) of the Clean Air Act, as amended (42 USC 7410(a) and 7601(a)).

List of Subjects in 40 CFR Part 52

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

Dated: March 24, 1983.

Paul G. Keough,

Acting Regional Administrator, Region I.

[FR Doc. 83-11404 Filed 4-28-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 86

[AMS-FRL-2355-3]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Emission Standards for 1985 and Later Model Year Light-Duty Vehicles

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period and request for comments.

SUMMARY: On February 18, 1983, EPA published a Notice of Proposed Rulemaking (NPRM) that would establish the all-altitude emission control requirements of Section 206(f)(1) of the Clean Air Act (the Act) for 1985 and later model year light-duty vehicles (LDVs) (48 FR 7399, February 18, 1983).

Two issues have been brought to EPA's attention concerning the LDV 1985 and later NPRM. These issues are: (a) The designation of high-altitude locations for 1984 and later LDVs, and (2) the elimination of special vehicles designed for the high-altitude market.

To allow additional specific comment on the issues mentioned above, EPA is extending the comment period on the 1985 and later NPRM.

DATE: Comments on the rulemaking action should be submitted to the Agency at the address given below on or before May 31, 1983.

ADDRESS: Copies of the material relevant to this rulemaking are contained in Public Docket No. A–80–1 at the U.S. Environmental Protection Agency, Central Docket Section. The docket is located in West Tower Lobby, Gallery 1, 401 M Street SW., Washington, D.C. 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Wilcox, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105; (313) 668–4390.

SUPPLEMENTARY INFORMATION: Section 206(f)(1) of the Act requires that, beginning in the 1984 model year, all LDVs must meet the applicable Federal emission standards regardless of the altitude at which they are sold. (LDVs that are only certified to meet separate California emission requiremetns are not bound by this requirement. *See e.g.* S. Rep. No. 95–127, 95th Cong., 1st Sess. 87 (1977).) On February 18, 1983, EPA published in the **Federal Register**: (1) An IFRM which implemented this "all-altitude" LDV requirement for 1984, and (2) an NPRM which solicited comments on adopting the same requirements for 1985 and later LDVs.

Although the comment period on the NPRM for 1985 and later was scheduled to close on April 21, 1983, EPA is extending the comment period to allow additional comment on two issues. These issues were identified at the March 22, 1983 public hearing on the 1985 and later NPRM.

The two issues upon which EPA is seeking specific comments are: (1) The designation of high-altitude locations where exempt vehicles (i.e., those certified only at low altitude) could not be sold, and (2) the elimination of special vehicles designed specifically for the high-altitude market.

I. Designation of High-Altitude Locations

On November 10, 1983, the Agency proposed to reduce the number of high-altitude locations where only vehicles certified in compliance with high-altitude standards could be sold (47 FR 50929). The proposed "redesignation" of high-altitude locations would affect 1983 LDVs and 1983 and later light-duty trucks (LDTs). It is based on Section 202(f)(3) of the Act, which contains guidelines for establishing high-altitude regulations for these motor vehicles. That section specifically requires a consideration of air quality effects when designating areas to which the high-altitude standards would apply.

As indicated in the preamble of the redesignation NPRM and reiterated at the associated public hearing on January 12, 1983, the redesignation did not apply to 1984 and later LDVs because these vehicles were subject to the all-altitude requirements of Section 206(f)(1) of the Act.

In developing the regulations to implement Section 206(f)(1), EPA found that certain exemptions were necessary for very low-power vehicles. Such exempted vehicles would only meet standards at low altitude and could not be sold for principal use in high-altitude areas. The Agency interpreted the Act as requiring that, in this instance, high-altitude locations must be designated solely on the basis of altitude, and not on other factors. Therefore, because the revised designation criteria are based not only on altitude, but also on air quality needs, EPA concluded that the original list of high-altitude locations should be retained for 1984 and later LDVs.

At the March 22, 1983 public hearing on the proposed all-altitude requirements for 1985 and later LDVs, commenters suggested that EPA's interpretation of Section 206(f)(1) may be overly restrictive. They argued that the redesignation should be adopted for 1984 and later LDVs because the Act does not appear to specifically prohibit the consideration of air quality needs in designating high-altitude locations for these vehicles. Furthermore, they stated that failure to adopt the revised designation criteria would result in a separate list of high-altitude counties for LDVs and LDTs. Such a system, they concluded, would be more costly than necessary and needlessly confusing to consumers and dealerships.

The Agency specifically requests comments on the desirability and the legal rationale for adopting the revised list of designated high-altitude locations for 1985 and later LDVs, rather than retaining the original list of designated high-altitude locations.

II. Elimination of Special High-Altitude Axles

The 1982–83 high-altitude LDV regulations allow the sale of vehicles equipped with special axle ratios that are only certified in compliance with high-altitude standards (45 FR 66984). These axles have higher numerical gear ratios which are designed to counteract the deleterious effects of higher elevations on vehicle performance.[1]

[1] When a vehicle is driven at higher elevations, the air it consumes is less dense due to its lower

Commenters of the March 22, 1983 public hearing stated that the regulations which implement the all-altitude requirement of Section 206(f)(1) of the Act would not allow such special high-altitude axles.

Indeed, under the regulations, vehicles using these higher numerical axle ratios could only be sold if they were certified in compliance with the standards at both low and high altitude. General Motors stated that the need to specifically certify vehicles with such axle ratios at low altitude would be too costly relative to the sales volume at low altitude, and may also adversely affect its Corporate Average Fuel Economy (CAFE) rating. For these reasons, GM continued, higher numerical axle ratios, which are currently available for sale at high altitude, would be dropped from its LDV product line beginning in the 1984 model year.

The availability of higher numerical axle ratios does appear important to high-altitude consumers. According to Ford Motor Company, when the same basic vehicle was available with two axles ratios, the higher numerical ratio generally accounted for 70 percent of the vehicle sales at high altitude.

Two important points were made at the public hearing regarding the future of these special axle ratios. First, the loss of these special axles in 1984 would adversely affect model availability in high-altitude locations and could be contrary to Congress' desire to protect model availability in these areas. Second, if vehicles with these special axles were somehow allowed at high altitude, such vehicles would still meet emission standards where they were sold (i.e., at high altitude). When these two points are taken together, allowing the continued sale of these vehicles in high-altitude areas does not appear to be at odds with the statute.

Because of this, commenters at the hearing suggested that an exemption be incorporated into the regulations for 1984 and later LDVs to allow special axle ratios to be certified for sale at high altitude only. This exemption would be similar to the provision already present in the regulations which allow the sale of certain vehicle configurations only at low altitude to protect model availability in these areas.

If such a special axle ratio exemption is found to be permissible under the Act, another issue is whether the sale of such vehicles could be allowed for principal use in any area above 4,000 feet, and not just in areas that EPA has designated as high-altitude locations (i.e., any county with 75 percent of its land mass and population above 4,000 feet). It can be argued that the issue of limiting model availability in this instance is strictly altitude dependent and is not limited simply to areas that meet EPA's high-altitude designation criteria, which were adopted for other regulatory purposes.[2] Allowing the sale of vehicles with high-altitude axle ratios for principal use in any area above 4,000 feet; however, would require that a special provision be added to the 1984 and later LDV regulations.

In a related matter, it should be noted that if the revised list of counties for 1983 LDVs is adopted for 1984 and later LDVs, as discussed previously, there will be many more "non-designated" areas above 4,000 feet than if the current list of counties is retained.

The Agency specifically requests additional comments on the legal justification and need for special axle ratio exemptions in high-altitude locations. Comments are also requested on whether it would be inconsistent to allow the sale of both exempted and special axle ratio vehicles in non-designated areas above 4,000 feet.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: April 12, 1983.

Charles L. Elkins,

Acting Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 83-11035 Filed 4-28-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 704

[OPTS-82007; FRL 23067]

Chlorinated Terphenyl; Submission of Notice of Manufacture or Importation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to require that it be notified of any manufacture or importation of chlorinated terphenyl, a chemical recommended for testing by the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act. The purpose of the notice requirement is to alert the Agency that the chemical will be manufactured or imported into the United States and to ensure that EPA has the opportunity to investigate the circumstances of any such resumption.

DATES: Comments on this proposal must be submitted on or before June 28, 1983.

ADDRESS: Written comments should bear the document control number OPTS-82007 and should be submitted to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

All written comments filed under this notice will be available for public inspection in Rm. E-107 at the address given above from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator 202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

The Agency is proposing a rule under section 8(a) of the Toxic Substances Control Act (TSCA) requiring notice of any current manufacture or import of chlorinated terphenyl and notice of any proposed manufacture or importation. TSCA section 8(a) authorizes the Administrator to promulgate rules under which each person (other than a small manufacturer or processor), who manufacturers or processes or who proposes to manufacture or process a chemical substance or mixture, shall submit such reports as the Administrator may reasonably require.

Under this rule, the reporting requirement would consist of a notice to EPA stating that a person is manufacturing or proposing to manufacture chlorinated terphenyl, or is importing or proposing to import chlorinated terphenyl as a chemical substance in bulk or as part of a mixture. The notice would also include information on uses, production quantities and chemical composition. If EPA is notified of chlorinated terphenyl manufacture or import, the Agency will reconsider the need for action to require testing under section 4 of TSCA or for control of the reported activity.

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atmospheric pressure. As air becomes less dense, less oxygen is available in a given volume of air to combine with fuel and produce power. Consequently, vehicle performance at high altitude is degraded.

[2] High-altitude locations were originally designed to provide EPA, state governments, and manufacturers with a reasonable way to enforce the prohibition against selling low-altitude vehicles in high-altitude areas.

II. Reasons For This Rule

A. ITC Concerns

The Interagency Testing Committee (ITC) designated the category of polychlorinated terphenyls for testing consideration in April 1978 (43 FR 16684). Chlorinated terphenyl is a member of this category and is the only member of the category on the TSCA Chemical Substance Inventory. Other members of the category are subject to Premanufacture Notification under section 5 of TSCA.

Chlorinated terphenyl is produced by chlorination of commercial terphenyl, which is a mixture of ortho-, meta-, and para-terphenyl. As a commercial product, chlorinated terphenyl is a mixture of chloroterphenyls having varying numbers and arrangements of chlorine atoms. Commercial-grade chlorinated terphenyl is a light yellow crystalline solid. Chlorinated terphenyl is identified by Chemical Abstract Service number 61788-33-8, and National Institute for Occupational Safety and Health number TQ13800.

Chlorinated terphenyl has been used during this century for various commercial purposes. Before 1973, chlorinated terphenyl was used primarily as a plasticizer in adhesives, inks, sealants, caulking compounds, and waxes. Peak domestic production occurred in 1971 when about 20 million pounds were produced. However, Monsanto, the sole domestic producer, discontinued chlorinated terphenyl production in 1972 because of concern over the environmental effects of the chemically similar polychlorinated biphenyls (PCBs). After that time, chlorinated terphenyl was imported and used mainly in waxes for investment casting. According to information supplied by the United States Customs Service under Customs Information Exchange 36/72, chlorinated terphenyl was last imported into the United States in November 1979. A 1976 European Economic Community (EEC) law banned its use except under certain conditions of use such as closed-system electrical equipment. Currently, chlorinated terphenyl is not known to be manufactured anywhere.

Chlorinated terphenyl is very similar in chemical structure to PCBs and could have toxicological properties similar to PCBs. PCBs also have a very stable chemical structure, so they persist in the environment. Chlorinated terphenyl, likewise, is known to persist in the environment, and potentially has similar adverse effects as PCBs. However, inadequate data are available on the health and ecological effects of chlorinated terphenyl. PCBs and chlorinated terphenyl were widely used and dispersed into the environment before their potential and real adverse effects were recognized, they are now ubiquitous in the environment, resulting in wide-range human exposure.

In addition, the commercial chlorinated terphenyl previously manufactured and imported was normally contaminated by PCBs (.05–5 percent). Thus, the manufacture of chlorinated terphenyl is indirectly controlled by section 6(e) of TSCA and the regulations thereunder. That section severely restricts the manufacture, processing, distribution in commerce, or use of PCBs. The history and specific requirements of the rules implementing section 6(e) are explained in the following editions of the **Federal Register**: 44 FR 31514 (May 31, 1979), 47 FR 17426 (April 22, 1982), 47 FR 24976 (June 8, 1982), 47 FR 37342 (August 25, 1982), and 47 FR 46980 (October 21, 1982) (requirements are listed in 40 CFR Part 761).

The ITC recommended that chlorinated terphenyl be tested for carcinogenicity, mutagenicity, teratogenicity, other chronic health effects, and for environmental effects. The recommendations were based on: (1) A chemical structure similar to PCBs, (2) increasing quantities imported after domestic production stopped in 1972, (3) wide environmental dispersion from chlorinated terphenyl's use in waxes for investment casting, (4) chlorinated terphenyl residues found in human blood, fat and milk, and in samples of water and sludge, (5) an indication from available data of a potential for bioaccumulation, and (6) no data on suspected carcinogenic, mutagenic, and teratogenic effects, with incomplete characterization of chronic health and environmental effects.

B. EPA Considerations

Because domestic production and importation of chlorinated terphenyl apparently has ceased, EPA has concluded that the section 4 testing recommended by the ITC is not presently warranted (see EPA's response to the ITC 46 FR 54482).

In EPA's response to the ITC, several alternatives to testing were discussed and comments were requested on the alternatives. Five alternatives were outlined: (1) Develop a significant new use rule (SNUR) under section 5(a); (2) list chlorinated terphenyl under section 5(b)(4) in combination with a SNUR (triggering notification requirements under section 5); (3) develop a section 8(a) reporting rule; (4) list chlorinated terphenyl under section 5(b)(4) in combination with a section 8(a) rule and thus require small businesses to report also; and (5) take no further action on chlorinated terphenyl since it appears to be adequately controlled by the PCB regulations.

EPA received comments on these alternatives from the Natural Resources Defense Council (NRDC) and the Chemical Manufacturers Association (CMA). NRDC sugested that the chemical be subject to all these regulatory alternatives, although they preferred that EPA list chlorinated terphenyl under section 5(b)(4) and require reporting only of those persons manufacturing or importing more than a certain amount of chlorinated terphenyl. CMA stated that chlorinated terphenyl should be subject only to a section 8(a) reporting rule to monitor future chlorinated terphenyl activity.

The Agency has considered comments on the above alternatives to testing and has decided that a section 8(a) rule (alternative 3) can effectively monitor future chlorinated terphenyl activity. First, a section 8(a) rule will enable EPA to learn of any current or proposed manufacture or import of chlorinated terphenyl. Thus, under this proposal EPA will be notified when a person has made a firm management decision to commit financial resources for the manufacture or import of chlorinated terphenyl, i.e., proposes to manufacture or import.

Second, the section 8(a) rule will require reporting of the data necessary to track and characterize the reported chlorinated terphenyl activity. Despite the rule exemption for small manufacturers, EPA will still be aware of any significant manufacture or import of chlorinated terphenyl because of the regulations banning PCBs. EPA believes that any future production will come from firms large enough to afford the manufacture of uncontaminated chlorinated terphenyl, which is very expensive and which may not be commercially viable.

Current substitutes for chlorinated terphenyl displace the use of approximately 400,000 pounds of chlorinated terphenyl in waxes for investment casting. It is likely that attempts to replace these substitutes would require significant production or importation of chlorinated terphenyl. In any event, production of chlorinated terphenyl over 45,400 kilograms (100,000 pounds) at a site, or any import over that amount by a company with annual sales over $3 million will be reportable.

One section 8(a) alternative EPA rejected was to set the reporting requirement at manufacture or import over 100,000 pounds, regardless of sales

volume. This trigger would have the effect of applying the same reporting requirement to small and large firms. Although appealing in its simplicity, there appears to be no justification for excusing large companies from reporting given EPA's need for reporting on manufacture or import of chlorinated terphenyl. In addition, EPA believes that small firms will not have the financial ability to produce relatively pure chlorinated terphenyl and thus the Agency does not expect production of chlorinated terphenyl by these firms.

Although EPA has serious concerns about the potential toxicity of chlorinated terphenyl, EPA has decided that section 8(a) reporting is more appropriate than SNUR reporting. EPA decided not to propose a SNUR because the evidence supports the conclusion that new uses are unlikely; as noted previously chlorinated terphenyl is neither manufactured nor imported into the United States today and has not been since 1979; the use of chlorinated terphenyl is prohibited by the EEC (with one limited exception); EPA is not aware of any chlorinated terphenyl manufacture in other parts of the world; and because contamination of chlorinated terphenyl with PCBs makes its manufacture or use difficult consistent with EPA's PCB rules.

A section 8(a) rule is probably most cost-effective when a chemical which poses some health concern is unlikely to be used in new applications or in volumes that could be considered "new" for purposes of a SNUR. EPA could promulgate a rule which requires reporting on production, importation, and use of a chemical with little fear that these uses would actually begin before the Agency had time to act. The smaller the likelihood of new use, the more prudent it is to conserve EPA resources by issuing a section 8(a) rule instead of a SNUR. Therefore, EPA believes that a section 8(a) rule will better serve our purposes. Since chlorinated terphenyl is on the TSCA Inventory, it can be produced without notification to EPA. This section 8(a) rule will ensure that in the event that chlorinated terphenyl manufacture is proposed, EPA can move to consider actions that will ensure protection of public health and the environment.

EPA has decided not to place chlorinated terphenyl on the section 5(b)(4) list at this time because designating it for the section 5(b)(4) list would have the effect of nullifying the small business exclusion. The small likelihood that chlorinated terphenyl will be manufactured by small manufacturers, justifies the use of section 8(a) rule in this instance; however, if we acquire sufficient risk data, EPA may consider placing chlorinated terphenyl on the section 5(b)(4) list.

III. Proposed Rule

With the exemptions noted below, this rule would require notice of any current or proposed manufacture or import of chlorinated terphenyl. The notice would include company name and address, principal technical contact, and, to the extent that it is known to or reasonably ascertainable by the company, a description of the use or intended use of the chlorinated terphenyl; chemical composition information (including PCB impurity level); estimated production volume; and, as appropriate, the proposed date for resuming manufacture or import. This information will help the Agency to estimate the potential exposure to humans and the environment of any reported chlorinated terphenyl activity, not only from the chlorinated terphenyl itself, but also from PCB contamination.

After receiving notice, EPA would carry out a follow-up investigation to determine whether the activity may present a risk to health or the environment. If we find that a significant risk may result, EPA will consider additional regulatory action to investigate or control the proposed chlorinated terphenyl activity.

Under the rule, persons who decide to manufacture or import chlorinated terphenyl must notify EPA within 15 days of the date they make this decision. The Agency believes that 15 days is enough time to gather the data for submission. In addition, EPA expects that it will receive a notice well in advance of import. The Agency requests comments on this feature of the proposed rule and any alternatives.

In addition, the Agency solicits comments on the alternative of requiring follow-up notice after a specified time period if volume increases, or uses change. The time period could be from one to two years after submitting the initial notice or after manufacture or import of chlorinated terphenyl begins. Such follow-up reporting will keep the Agency aware of any significant changes in production or use as stated in the first notice. Persons would be required to update the information in the first notice. For minor changes, copies of the original notice could simply indicate which items have been changed. Alternatively, the Agency could require submission of all data that could be required under section 8(a)(2) so that EPA is better able to characterize the exposures that are occurring and to gather any test data that are developed.

A. Exempt Persons

Small manufacturers or importers, as defined in proposed § 704.85(c)(12), would not be subject to this rule. The rule also exempts persons who manufacture or import chlorinated terphenyl solely for research and dvelopment, as part of an article, or as a byproduct or impurity.

EPA is proposing to exempt importers of articles from this rule for several reasons. Past imports of chlorinated terphenyl were only in bulk form, and importing of the chemical in articles is unlikely. In addition, EEC countries forbid production of chlorinated terphenyl for use in articles, and known imports of chlorinated terphenyl originated in an EEC country. Moreover, EPA believes that is would be a significant and needless burden on importers of articles to try to ascertain if they contain chlorinated terphenyl. If any person has knowledge that chlorinated terphenyl is being imported or was ever imported as a component of an article, that information should be submitted as a comment on this proposed rulemaking and the Agency will reconsider its decision to exempt importers of articles. The exemption also is consistent with previous Agency reporting provisions for the Inventory (42 FR 64572 *et seq.*) and the proposed Premanufacture Notification Regulations (44 FR 2242 *et seq.*).

EPA decided to exempt manufacture and import of chlorinated terphenyl as a byproduct because it was the intentional use of chlorinated terphenyl in products which caused the wide environmental dispersion of chlorinated terphenyl. EPA is to aware of any chemical manufacture that would lead to the production of chlorinated terphenyl as a byproduct. Chlorinated terphenyl may have been manufactured as a byproduct during the production of PCBs, but since the manufacture of PCBs has been banned, any manufacture of chlorinated terpheny as a byproduct from this source has ceased. If persons know of chemical processes that produce chlorinated terphenyl as a byproduct, that information should be submitted as a comment on this proposed rulemaking.

B. Definitions

"Chlorinated terphenyl" means a chemical substance, CAS No. 61788-33-6, composed of chlorinated ortho-, meta-, and paraterphenyl. Chlorinated terphenyl is classified for the purposes of the TSCA Inventory of Chemical Substances as a class 2 substance,

which means in this case that it has a variable compostion. Chlorinated terphenyl is produced by the chlorination of terphenyl, which is composed of varying proportions of the ortho, para, and meta isomers of terphenyl. Consequently, the reaction product of the chlorination process (which under TSCA is a chemical substance) is composed of the mixed chlorinated isomers of terphenyl.

"Small manufacturer." A manufacturer (importers are defined as manufacturers under TSCA) must meet either of the following standards to qualify as a small manufacturer under TSCA section 8(a):

(1) *First standard.* A manufacturer is small if its total annual sales, when combined with those of its parent company (if any), are less than $30 million. However, if the annual production volume of a particular chemical substance at any individual site owned or controlled by the manufacturer is greater than 45,400 kilograms (100,000 pounds), the manufacturer shall not qualify as small for purposes of reporting on the production of that chemical substance at that site, unless the manufacturer qualifies as small under paragraph (2), below.

(2) *Second standard.* A manufacturer is small if its total annual sales, when combined with those of its parent company (if any), are less than $3 million, regardless of the quantity of chemicals produced by that manufacturer.

The above definition was proposed by EPA in the **Federal Register** of June 23, 1982 (47 FR 27206) as a general definition for most section 8(a) rules. The proposed exemption standards have been designed to reduce the paperwork burden on small chemical manufacturers, while ensuring that EPA will receive a sufficient amount of chemical use, production, and exposure information to support assessment of chemical risks. EPA believes that these standards serve the purpose of this proposed rule. Questions concerning the development of the small business definition *per se* can be answered by examing the preamble and supporting documents of the small business standard rulemaking.

Since the proposed rule requires reporting from importers of mixtures containing chlorinated terphenyl, the Agency believes that some clarifying statements are in order so that importers of mixtures understand how this rule might affect them. EPA considers these persons importers of the chemical substances contained in the mixture. Under TSCA, importers are manufacturers of the chemical substance. For instance, a person intending to import a mixture containing a chemical substance not on the TSCA Inventory of Chemical Substances would be required to submit a Premanufacture Notice under section 5 of TSCA.

Under the first small business standard, a manufacturer is not small if the annual production volume of a particular chemical substance at any individual site owned or controlled by the manufacturer is greater than 45,400 kilograms (100,000 pounds). Since an importer of a mixture is considered a manufacturer of each component, persons should be aware that 45,400 kilograms exclusion refers to each component of the mixture. Thus, if a person with annual sales of less that $30 million but more than $3 million is importing a mixture containing chemicals A and B, and chemical A is subject to a section 8(a) rule, then the exclusion would be triggered when more than 45,400 kilograms of A were imported, not 45,400 kilograms of mixture AB.

C. Confidentiality

Any person submitting a notice may claim any part or all of the notice as confidential. Information which is claimed confidential will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 CFR Part 2.

IV. Economic Impact

EPA estimates that compliance costs will range from $225–$716 for each notice. The cost estimate for Data Acquisition below assumes that the data is knows to or reasonably ascertainable to the person submitting the notice. It does not include the laboratory cost of determining isomeric ratios for example. Costs include:

Data Acquisition	$107–$430
Notice Preparation (Typing)	$17– $51
Managerial Review	$101–$235
Total	$225–$716

Since historically there was only one manufacturer and one importer of chlorinated terphenyl, EPA expects to receive few notices under this rule.

This rule will benefit the public. Its cost is low and it will alert the Agency to commercial activity involving a potentially hazardous chemical, allowing EPA to take appropriate action to require testing or control risks.

Upon receipt of a notice under this rule, EPA will decide what, if any, further information gathering, testing, or control actions are needed. Estimates of the costs of some possible actions are included in the economic support document that is contained in the public record for this proposal. The actual costs of such actions will be assessed by EPA in the development of the appropriate follow-up rulemaking.

V. Public Record

EPA has established a public record (docket number OPTS–82007) for this proposed rulemaking document which, along with a complete index, is available for inspection in Rm. E–107, 401 M St., SW., Washington, D.C., 20460, from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays. This record includes basic information considered by the Agency in developing this proposed rule. The Agency will supplement the record with additional information as it is received. The record includes the following categories of information.

(1) Polychlorinated terphenyls; Response to the Interagency Testing Committee (46 FR 54482) and all comments received thereon.

(2) 2nd Report of the Interagency Testing Committee (ITC) (43 FR 16684).

(3) Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions Rule (44 FR 31514).

(4) Polychlorinated Biphenyls (PCBs); Use in Electrical Equipment; Proposed Rules (47 FR 17426).

(5) Polychlorinated Biphenyls (PCBs); Manufacture, Processing, Distribution, and use in Closed and Controlled Waste Manufacturing Processes; Proposed Rule (47 FR 24976).

(6) Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Equipment (47 FR 37342).

(7) Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes (47 FR 46980).

(8) Economic Analysis of Proposed Section 8(a) Rule on Cholorinated Terphenyl.

EPA anticipates adding to the rulemaking record the following types of information:

(1) All comments on this proposed rule.

(2) All relevant support documents and studies.

(3) Records of all communications between EPA personnel and persons outside the Agency pertaining to the

development of this rule. (This does not include any inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)

(4) Minutes, summaries, or transcripts of any public meetings held to develop this rule.

(5) Any factual information considered by the Agency in developing the rule.

(6) Comments received from OMB under Executive Order 12291.

EPA will identify the complete rulemaking record on or before the date of promulgation of the regulation, as prescribed by section 19(a)(3) of TSCA, and will accept additional material for inclusion in the record at any time between this notice and such designation. The final rule will also permit persons to point out any errors or omissions in the record.

VI. Regulatory Assessment Requirements

A. Paperwork Reduction Act

The reporting provisions of the rule are not subject to the Paperwork Reduction Act (PRA) of 1980 44 U.S.C. 3501 *et seq.* because this rule is not expected to impose reporting requirements on ten or more persons as defined under section 3502(4) of the PRA.

B. Regulatory Flexibility Act

This rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Only two companies manufactured or imported chlorinated terphenyl since 1971. Currently, no company is known to manufacture or import chlorinated terphenyl. This rule also contains a small manufacturer exemption (see definitions "Small Manufacturer"). Therefore, in accordance with the Regulatory Flexibility Act (P.L. 95–354), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it does not have an effect of $100 million or more on the economy. It is expected to have an annual cost of less than $2000. It does not have a significant effect on competition, costs, or prices.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the record for this rulemaking.

List of Subjects in 40 CFR Part 704

Hazardous materials, Imports, Recordkeeping and reporting requirements.

Dated: April 21, 1983.

Lee L. Verstandig,

Acting Administrator.

PART 704—[AMENDED]

Therefore it is proposed that 40 CFR Part 704 be amended by adding § 704.85 to read as follows:

§ 704.85 Chlorinated Terphenyl; submission of notice of manufacture or import.

(a) *Scope.* This rule establishes procedures governing reporting by persons who manufacture or import or who propose to manufacture or import chlorinated terphenyl.

(b) *Compliance.* Violation of the requirements of this rule may result in civil penalty or criminal prosecution, as provided in sections 15 and 16 of TSCA. In addition, under section 17, the Government may seek judicial relief to compel submission of required information.

(c) *Definitions.* All definitions as set forth in the Toxic Substances Control Act (TSCA) section 3 apply for this rule. In addition, the following definitions are provided for the purposes of this rule.

(1) "Article" means a manufactured item: (i) Which is formed to a specific shape or design during manufacture, (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (iii) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article, and that result from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles; except that fluids and particles are not considered articles regardless of shape or design.

(2) "Byproduct" means a chemical substance produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance(s) or mixture(s).

(3) "EPA" means the United States Environmental Protection Agency.

(4) "Importer" means any person who imports any chemical substance or any chemical substance as part of a mixture or article into the customs territory of the United States, and includes either:

(i) The person primarily liable for the payment of any duties on the merchandise.

(ii) An authorized agent acting on his behalf (as defined in 19 CFR 1.11). Importer also includes, as appropriate:

(A) The consignee.

(B) The importer of record.

(C) The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20.

(D) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred in accordance with Subpart C of 19 CFR Part 144. For the purpose of this definition, the customs territory of the United States consists of the 50 States, Puerto Rico and the District of Columbia.

(5) "Import in bulk form" means to import a chemical substance (other than as part of a mixture or article) in any quantity, in cans, bottles, drums, barrels, packages, tanks, bags, or other containers, if the chemical substance is intended to be removed from the container and the substance has an end-use or commercial purpose separate from the container.

(6) "Impurity" means a chemical substance which is unintentionally present with another chemical substance.

(7) "Manufacture" means to manufacture for commercial purposes.

(8) (i) "Manufacture for commercial purposes" means to import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer, and includes, among other things, such "manufacture" of any amount of a chemical substance or mixture.

(A) For commercial distribution, including for test marketing.

(B) For use by the manufacturer, including use for product research and development, or as an intermediate.

(ii) Manufacture for commercial purposes also applies to substances that are produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture, including both byproducts that are separated from that other substance or mixture and impurities that remain in that substance or mixture. Such byproducts and impurities may, or may not, in themselves have commercial value. They are nonetheless produced for the purpose of obtaining a commercial advantage since they are part of the manufacture of a chemical product for a commercial purpose.

(9) "Person" includes any individual, firm, company, corporation, joint-venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal Government.

(10) "Chlorinated terphenyl" means a chemical substance, CAS No. 61788-33-6, composed of chlorinated ortho-, meta-, and para-terphenyl.

(11) "Proposed to manufacture or import" means that a person has made a firm management decision to commit financial resources for the manufacture or import of a chemical substance or mixture.

(12) "Small manufacturer." A manufacturer must meet either of the following standards to qualify as a small manufacturer under TSCA section 8(a):

(i) *First standard.* A manufacturer or importer is small if its total annual sales, when combined with those of its parent company (if any), are less than $30 million. However, if the annual production volume of a particular chemical substance at any individual site owned or controlled by the manufacturer or the total annual volume of the substance imported by the importer is greater than 45,400 kilograms (100,000 pounds), the manufacturer or importer shall not qualify as small for purposes of reporting on the production of that chemical substance at that site, unless the manufacturer qualifies as small under paragraph (c)(12)(ii) of this section.

(ii) *Second standard.* A manufacturer or importer is small if its total annual sales, when combined with those of its parent company (if any), are less than $3 million, regardless of the quantity of chemicals produced by that manufacturer.

(13) "TSCA" means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

(d) *Persons who must report.* Except as provided in paragraph (e) of this section, the following persons are subject to the rule:

(1) Persons who manufacture or propose to manufacture chlorinated terphenyl.

(2) Persons who import (importers) or propose to import chlorinated terphenyl as a chemical substance in bulk or as part of a mixture.

(e) *Persons not subject to this rule.* The following persons are not subject to this rule:

(1) Persons who are small manufacturers or importers, as defined in paragraph (c)(12) of this section.

(2) Persons who manufacture or import and persons who propose to manufacture or import chlorinated terphenyl solely for research and development.

(3) Persons who manufacture or import and persons who propose to manufacture or import chlorinated terphenyl as a byproduct or impurity.

(4) Persons who import or propose to import chlorinated terphenyl as part of an article.

(f) *Reporting requirements.* (1) Persons subject to this rule as described in paragraph (d) of this section must notify EPA of current or proposed manufacture or import of chlorinated terphenyl. Persons who are manufacturing or importing chlorinated terphenyl on the effective date of the rule must notify EPA within 30 days of the effective date of the rule. Persons who propose to manufacture or import chlorinated terphenyl must notify EPA within 15 days after making the management decision described in paragraph (c)(11) of this section.

(2) The notice must include, to the extent that it is known to the person making the report or is reasonably ascertainable, the following information:

(i) Company name and address.

(ii) Name, address, and telephone number of principal technical contact.

(iii) A description of the use(s) or intended use(s) for chlorinated terphenyl.

(iv) A description of the isomeric ratio and extent of chlorination of the chlorinated terphenyl and the impurity level of polychlorinated biphenyls.

(v) The quantity (by weight) manufactured or imported within 12 months prior to the effective date of the rule, if any, and the estimated quantity (by weight) to be manufactured or imported for the first three years following the date of the report or the date of the intended start of production, whichever occurs later.

(vi) The proposed date for the initiation of manufacturing or importation of chlorinated terphenyl, if appropriate.

(3) Notices must be submitted by certified mail to the Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, D.C. 20460. ATTN: Chlorinated terphenyl notification.

(g) *Confidentiality claims.* (1) Any person submitting a notice under this rule may assert a business confidentiality claim covering all or any part of the notice. Any information covered by a claim will be disclosed by EPA only to the extent and by means of the procedures set forth in Part 2 of this chapter.

(2) If no claim accompanies the notice at the time it is submitted to EPA, the notice will be placed in an open file available to the public without further notice to the respondent.

(3) To assert a claim of confidentiality for data contained in a notice, the respondent must submit two copies of the notice.

(i) One copy of the notice must be complete. In that copy the respondent must indicate what data, if any, are claimed as confidential by marking the specific information on each page with a label such as "confidential", "proprietary", or "trade secret".

(ii) If some data in the notice are claimed as confidential, the respondent must submit a second copy. The second copy must be complete except that all information claimed as confidential in the first copy must be deleted.

(iii) The first copy of the notice will be for internal use by EPA. The second copy will be placed in an open file to be available to the public.

(4) In submitting a claim of confidentiality, a person attests to the truth of the following four statements concerning all information which is claimed confidential:

(i) My company has taken measures to protect the confidentiality of the information, and it intends to continue to take such measures.

(ii) The information is not, and has not been, reasonably obtainable without our consent by other persons (other than government bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding).

(iii) The information is not publicly available elsewhere.

(iv) Disclosure of the information would cause substantial harm to our competitive position.

[FR Doc. 83-11483 Filed 4-28-83; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 303

Procedures for Case Assessment and Prioritization

AGENCY: Office of Child Suport Enforcement (OCSE), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation permits State child support enforcement

agencies to implement case assessment and prioritization procedures to achieve greater program efficiency. Limited resources and other operating contraints have made it difficult for IV–D agencies to process all cases in a timely manner. Although many States have implemented such procedures, they are concerned that current Federal regulations require IV–D agencies to locate absent parents, establish paternity and establish and enforce support obligations for *all* cases, on a first come, first serve basis. This proposed regulation will alleviate States' concerns and will allow States to focus available resources on cases which have high probability for success.

DATE: Consideration will be given to written comments and suggestions received by June 28, 1983.

ADDRESS: Address comments to: Director, Office of Child Support Enforcement, Department of Health and Human Services, Room 1010, 6110 Executive Blvd., Rockville, Maryland 20852, ATTN: Policy Branch. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m. in Room 1010 of the Department's offices at the above address.

FOR FURTHER INFORMATION CONTACT: Marianne Rufty, (301) 443–5350.

SUPPLEMENTARY INFORMATION:

Statutory Provisions

This proposed regulation is implemented under the authority of section 1102 of the Social Security Act (the Act) which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act. We believe this proposed regulation is necessary for the efficient operation of the Child Support Enforcement program under title IV–D of the Act.

Section 454(4)(B) of the Act requires each State plan for child support to provide that the State "will *undertake* * * * in the case of any child with respect to whom * * * [an] assignment is effective, to secure support for such child * * *" (emphasis added). The statute requires that States *attempt* to secure support; however, there is no provision in title IV–D of the Act or its legislative history that specifies what a State must do to carry out this responsibility. In addition, section 452(a)(1) of the Act requires OCSE to establish standards for program operations. We believe, therefore, that ample statutory authority exists to prescribe standards which would allow States to meet their responsibilities under the State plan by systematically reviewing all cases against established criteria to identify those cases with the highest potential for success in each of the major program areas of locating the absent parent, establishing paternity and securing child support, and thereby selecting cases for assignment to staff on a priority basis.

Background

One basic purpose of the Child Support Enforcement (CSE) Program is to reduce or forestall welfare costs by increasing the collection of child support from absent parents. Locating absent parents and establishing paternity and support obligations are obvious prerequisites to the collection of support. Since the program's inception, child support enforcement efforts have increased dramatically nationwide, with a corresponding increase in the number of absent parents fulfilling their child support obligations. However, State and Federal welfare costs continue to rise. To offset these costs, States must be encouraged to implement sound management practices that will concentrate available resources on cases with the greatest potential for success in each of the required program service areas, such as location, paternity establishment and collection of support. This proposed regulation permits States to implement case assessment and prioritization procedures that can be used in concert with other management techniques such as resource balancing and process simplification to improve program efficiency and effectiveness.

Few States have the resources to process all their cases on a timely basis. Most States simply assign cases randomly, either alphabetically or by geographic areas of staff assignment. This often results in the use of limited staff resources to process cases in which the potential for success is low or nonexistent. Cases with high success potential may be overlooked under this type of system.

Case prioritization is a procedure which provides for the review of cases handled by a State or local IV–D agency against an objective set of criteria to determine the order in which cases should be pursed, based on the likelihood of being able to successfully provide the needed service, whether it be paternity establishment or collection of support. It may be likened to a hospital emergency room situation where medical cases are evaluated to determine the order in which they should be seen. And, as hospital emergency room procedures must remain flexible to accommodate the impact of new patients on the treatment order, case prioritization procedures must be dynamic enough to respond to shifts in caseload, new evaluation criteria and/or fluctuating resources. Such procedures, like effective emergency room procedures, should ensure that every case receives at least the minimal level of examination necessary to accurately determine required action, and that intake information, which could be incomplete or inaccurate, is not the sole basis for determining the necessary course of action.

While OCSE has encouraged the use of case prioritization as a management tool, we have not promulgated regulations which would either require or explicitly permit States to prioritize their caseloads. We have, however, interpreted the statutory and regulatory provisions governing the operation of the program to be sufficiently broad and flexible to allow States some discretion in determining which cases should be pursued to the point of obtaining a legal determination of paternity, securing a support obligation and collecting what is owed under an obligation. Some States have been reluctant, however, to adopt formal case prioritization techniques in the absence of Federal regulations.

In an effort to induce States to adopt case prioritization procedures and to provide guidelines for their prioritization efforts, we published OCSE–AT–80–5 entitled "Case Assessment and Prioritization" in March of 1980. This publication offers an operating model for evaluating and prioritizing cases. Many States have begun to establish procedures in accordance with this model or similar variations, but they are nonetheless concerned that current regulations require IV–D agencies to locate absent parents, establish paternity and secure support in cases in the order in which they are received by the IV–D agency. Although we believe that IV–D agencies should make every reasonable attempt to establish paternity and obtain support for all the cases they handle, it is unrealistic to assume that IV–D agencies have the resources required to pursue every case immediately upon receipt. Program experience has demonstrated that some cases have very little potential for success despite extensive use of agency resources while others have potential for establishing paternity and securing support with minimal effort. Therefore, the success potential of a case depends not only on the likelihood of providing the needed service but also in the amount of effort or resources expended in the process.

We believe this regulation will alleviate States' concerns with regard to

implementing case assessment and prioritization procedures by providing specific authorization for these procedures in regulations. In addition, it will support our ongoing efforts to encourage States to implement procedures that provide for the review and management of cases in relation to their potential for achieving the program goals of locating absent parents, establishing paternity and support obligations, and collecting support.

New Regulatory Provisions

This proposed regulation adds a new § 303.10 to 45 CFR Part 303, Standards for Program Operations. Section 303.10(a) allows a IV–D agency to implement case assessment and prioritization procedures for the management of its cases, including cases referred from the title IV–A agency under 45 CFR 235.70, non-AFDC cases in which applications for services are received under 45 CFR 302.33, and cases referred from other States for assistance under 45 CFR 302.36. Paragraph (a) is designed to give States not only the option to prioritize cases but also the flexibility to develop procedures that address States' varying needs. States may implement a statewide prioritization system or multiple local systems, as long as the basic program services are provided throughout the State. For example, a State may implement a complex prioritization system in a metropolitan area with a large, diverse caseload and a simplified version or none at all in a rural area with a small, manageable caseload.

Section 303.10(b) establishes basic requirements that a case prioritization system must meet. We will address each of the requirements in paragraph (b) separately.

Under the proposed § 303.10(b)(1), if a IV–D agency implements case assessment and prioritization procedures, it must develop written procedures, including success indicators, that will be used to evaluate and prioritize all cases upon receipt. Success indicators are those case characteristics that enable a IV–D agency to determine the case's potential for achieving the goal of a particular program service. For example, if the necessary service is establishment of a support order, a success indicator could be the fact that the absent parent is currently employed. For a detailed description of success indicators, see the discussion of the proposed § 303.10(b)(3) below.

In keeping with the Administration's policy to reduce requirements imposed on States, we are providing States the flexibility to develop procedures that address their varying needs. However, such procedures must be written and included in formal agency policy to ensure that the selection and processing of cases in a jurisdiction will be uniform and equitable according to prescribed State or local standards.

We want to stress the importance of the initial evaluation of cases and urge States to gather as much information as is easily obtainable before applying prioritization criteria. Whenever possible, States should not rely solely on information forwarded by the IV–A agency but should attempt, through interview with the custodial parent or otherwise, to ensure that placement of the case within the State's prioritization scheme is based on the best available data. In addition to gathering sufficient information necessary to appropriately classify each case for prioritization, we believe that States should devote some minimal level of resources in all cases. This may mean simple verification of information obtained from the custodial parent in some cases, but generally would require some additional effort to locate and contract the absent parent to attempt to secure a support payment even in low priority cases.

We do not intend to limit States to the selection of any particular case prioritization model. However, States may find the the model presented in OCSE–AT–80–5 of some use when developing their success indicators, although it does not meet the requirements of § 303.10. The model is designed to ensure that each case referred to the IV–D agency is evaluated at intake. Based on certain characteristics of the absent parent, the case is assigned an "active," "inactive" or "closed" status. The model focuses on cases in which the absent parent's address is known rather than on cases in which a support order has been established. A prioritization scheme for cases with established support obligations which require enforcement action is, however, included in the model. In addition, although the Case Handling and Statistical Evaluation (CHASE) system, developed under contract to the Child Support Enforcement program in August of 1980, does not meet all the requirements of § 303.10, States may find it useful as an informational tool. A description of the CHASE system may be obtained from the National Child Support Enforcement Reference Center, 6110 Executive Blvd., Rockville, Maryland 20852.

Under the proposed § 303.10(b)(2), if a State implements case assessment and prioritization procedures, it may not as a result of these procedures exclude either AFDC or non-AFDC cases.

We want to ensure that the paternity establishment and support enforcement services provided in AFDC cases remain available in non-AFDC cases in accordance with section 454(6) of the Act. Therefore, non-AFDC cases must also be reviewed under any case assessment and prioritization procedures adopted by a State. Since one of our basic program objectives is to reduce or forestall welfare costs, States must provide IV–D services to non-AFDC families to help them remain self-sufficient. In addition, States must ensure that no basic program services are excluded in any area of the State because of the implementation of a prioritization plan. For example, a State may not elect to provide non-AFDC or paternity establishment services in rural areas and neglect these services in the cities, or vice versa.

Under the proposed § 303.10(b)(3), if a State implements case assessment and prioritization procedures it must prioritize cases within each of the basic service categories of: locating the absent parent, establishing paternity, and establishing and enforcing support obligations, taking into account the success indicators for each category. In addition, we have included in the proposed paragraph (b)(4) a requirement that all cases receive a mimimum level of effort.

Although each of the program services is distinct with regard to its function, the overall purpose of the program is to meet our statutory obligation of securing support for all children. Caseworkers must keep this overall goal in mind when processing cases. In addition, caseworkers must view cases with respect to securing support in the short-term and in the long-term. For example, dependent on certain case characteristics such as accurate and up-to-date locate information and an existing, enforceable support order, securing support may be accomplished rather quickly with minimal use of agency resources. On the other hand, some cases, such as paternity actions, may require extensive use of agency resources to obtain a support order which may appear low in relation to other cases. Certain cases, and particularly paternity cases, must be viewed from a long-term perspective. Whereas the initial outlay of agency resources may outweigh the immediate return, circumstances may be expected to change and the case may pay for itself over time. Paternity defendants generally are young men who may have

little or no work history. As they mature and acquire work experience they may be expected to pay increasingly more child support. In addition, since paternity establishes the child's right to inheritance and other benefits, there is the potential for securing support from a variety of sources.

To meet our objective of securing support for all children and to view cases with respect to short-term and long-term attainment of this objective. States that opt to implement case assessment and prioritization procedures must develop success indicators for each program service category. In effect, IV–D agencies should define the distinguishing success indicators that are applicable to each type of IV–D service and examine and prioritize cases based on their suucess characteristics. For example:

Locate Services: The key to an effective locate process is to establish contact with the absent parent as soon as possible after referral and case activation. However, some case information is more reliable or helpful than other information in locating the absent parent. If the custodial parent knows the absent parent's current address, this could be considered a success indicator. More than one success indicator is likely to be appropriate in determining locate potential. In setting priorities for cases requiring location of the absent parent, the cases with the most recent and accurate information should be processed before those cases that require extensive locate services.

Paternity Establishment: The best example of the program's long-term perspective is its emphasis on the establishment of paternity. This service, in conjunction with locate and support order establishment, is an essential step toward successful enforcing child support obligations and, thus, fostering parental responsibility. The key to prioritizing paternity establishment cases is to determine which cases offer the greatest likelihood of successful resolution. For example, a success indicator for this activity could be the age of the child. It is generally easier to prove paternity when the child is younger because less time has passed since events occurred that may be used as evidence to support a claim of paternity. Caseworkers should not ignore paternity cases that are likely to be contested; instead, they should distinguish case circumstances that can quickly lead to case resolution and process those cases which are likely to be successful before cases which are less likely to result in the establishment of paternity.

Support Order Establishment: The establishment of a legal obligation is a prerequisite to the collection of support. Without an enforceable order, the support collection process often comes to a standstill. However, to rank cases within this service category, IV–D agencies should assess success characteristics of cases requiring support order establishment. An absent parent who has a history of prior, voluntary support payments may agree more readily to a support obligation than a parent who has no history of making support payments. A success characteristic for this service could be a record showing proof of the absent parent's prior support payments. However, a case should not necessarily be prioritized as having low potential merely because there is no past payment history. There may simply have been no effort previously devoted toward establishing a support order. Another success characteristic for this service could be the absent parent's employment history. If such history indicates that the individual is currently employed and has maintained steady employment over a period of years, the chances are most likely high for successfully resolving the case. Again, the emphasis is on processing those cases that should easily result in establishing an obligation before those cases that require extensive use of IV–D agency resources.

Support Order Enforcement: Although necessary enforcement action varies from case to case, success indicators can be easily ascribed to this service as well. For example, a case where the absent parent is employed in a company where wage assignments are easily obtainable should probably be processed before a case in which no wage assignment is likely to be obtained. In addition, a case where a parent is employed or has resources that can be applied toward the support obligation should generally be enforced before a case in which the absent parent is disabled or incarcerated.

Under the proposed § 303.10(b)(5), if a State implements case assessment and prioritization procedures, it must establish case status categories including priority I, priority II and closed.

We believe that such categories are basic to any case prioritization process. Although States must develop their own success indicators to determine how cases are assigned to these categories, we believe that following these general guidelines will help ensure that the system meets the intent of the proposed § 303.10. They are:

a. The priority I category should include cases in which the probability of successfully providing the necessary program service is high at the time of the initial IV–D case evaluation. This decision could easily be based on the success characteristics of the case in relation to the particular IV–D service the case requires. For example, a IV–D agency should pursue those in cases in which a support order exists and the absent parent's address and employer are known. In addition, paternity cases where the available evidence indicates that paternity establishment appears easily obtainable should also be included in the priority I category. And finally, cases where paternity has been established and support orders obtained should probably be assigned to the priority I category since only locate and enforcement services are needed to successfully resolve the cases.

b. The priority II category should include cases in which the probability of successfully providing the necessary program service may be low at the time of referral but in which case circumstances have potential for change. For example, those cases where initial parent locator efforts have been unsuccessful may be temporarily assigned to the priority II category. In addition, cases where a support order exists but the absent parent is unemployed or incarcerated with no ability to pay support at the time the evaluation is made may be assigned to this category. However, if such cases require paternity establishment with a reasonable expectation of success, it may be cost effective to initiate the appropriate proceedings at intake so that support enforcement can follow a change in case circumstance, i.e., if the absent parent becomes employed or is released from prison. Even for this category of cases, some attention should be devoted to the IV–D agency's continuing statutory obligation to establish paternity and secure support on behalf of all IV–D cases.

All cases assigned to this category would be subject to further evaluation under the State's periodic review mechanism required in § 303.10(b)(6), as discussed below.

c. The closed category should include cases in which the probability of successfully providing the needed program service is almost nil. For example, those cases in which the absent parent is deceased may be assigned a closed status. This category might also include paternity cases in which the putative father has been

legally excluded or determined to be unknown and good cause cases in which the State opts not to proceed because it would not be in the best interest of the child.

Under the proposed § 303.10(b)(6), if a State implements case assessment and prioritization procedures, it must establish a mechanism for the periodic review of cases in the priority II category.

We believe that a periodic review is necessary to ensure that information pertaining to the absent parent is accurate and that case records are up-to-date. If case circumstances change as a result of the review, the case should be reevaluated in terms of the new information and reassigned, if necessary, to another category. For example, a mechanism such as a tickler system or a suspense file would enable the IV–D agency to reevaluate cases at prescribed time intervals. This would result in early recognition of any changes that occur in case circumstances and ensure a dynamic and viable case assessment and prioritization system.

Under the proposed § 303.10(b)(7), if a State implements case assessment and prioritization procedures, it must review and reassign cases, if appropriate, when it becomes aware of circumstances which may change the success potential of the case.

We want to ensure that cases will not be overlooked if new absent parent information is received. If case circumstances change upon receipt of new information, the case should be reevaluated in terms of its success potential and reassigned to another category, if warranted. For example, a change in case status would be appropriate if an absent parent who owes support pursuant to a court order and who previously was unemployed with no ability to pay support becomes employed, thereby increasing the likelihood of successfully working the case.

OMB Clearance

The proposed regulation contains no reporting or recordkeeping requirements needing Office Management and Budget clearance under section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Regulatory Impact Analysis

The Secretary has determined that this document is not a major rule as described in section 1 of Executive Order 12291. Although no hard data exists, the annual effect on the economy is expected to be minimal, far less than the $100 million limit that triggers the need for a regulatory impact analysis. The Secretary certifies that because these regulations apply to States and will not have a significant economic impact on a substantial number of small entities, they do not require a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act of 1980.

List of Subjects in 45 CFR Part 303

Child welfare, Grant programs/social programs.

PART 303—[AMENDED]

45 CFR Part 303 is amended by adding a new § 303.10 to read as follows:

§ 303.10 Procedures for case assessment and prioritization.

(a) For all cases referred to the IV–D agency, including cases referred from the title IV–A agency under § 235.70 of this title, cases in which applications for services are received under § 302.33 of this chapter, and cases referred from other States for assistance under § 302.36 of this chapter, the IV–D agency may implement case assessment and prioritization procedures to manage its cases.

(b) In implementing case assessment and prioritization procedures, the IV–D agency must:

(1) Develop written procedures and success indicators for the evaluation and prioritization of all cases upon receipt;

(2) Include both AFDC and non-AFDC cases in implementing procedures;

(3) Prioritize cases within each of the basic service categories of: locating the absent parent, establishing paternity and establishing and enforcing support obligations, taking into account the success indicators for each category;

(4) Ensure that each case receives a minimum level of effort;

(5) Establish case status categories including priority I, priority II and closed;

(6) Establish a mechanism for the periodic review of cases in the priority II category;

(7) Review and reassign a case, if appropriate, when it becomes aware of circumstances which may change the success potential of the case.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302), section 452(a) of the Social Security Act (42 U.S.C. 652(a)), and section 454(4) of the Social Security Act (42 U.S.C. 654(4)))

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Dated: December 27, 1982.

John A. Svahn,

Director, Office of Child Support Enforcement.

Approved: January 28, 1983.

Richard S. Schweiker,

Secretary.

[FR Doc. 83-11545 Filed 4-28-83; 8:45 am]

BILLING CODE 4190-11-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-403; FCC 83-160]

The Commission's Policy, Pursuant to Section 307(b) of the Communications Act, of Granting Comparative Preferences Within Metropolitan Areas.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action concerns a proposal to redefine the term community for purposes of implementing section 307(b) of the Communications Act to include a metropolitan area. The proposal is designed to eliminate the comparative preference obtained in specifying a suburban community as the city of license. Comments are sought on the public interest benefits of the proposal and on the standards for determining the geographic boundaries for the metropolitan area.

DATES: Comments must be filed on or before June 3, 1983, and reply comments on or before June 20, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Radio, TV broadcasting.

Notice of Proposed Rule Making

In the matter of The Commission's policy pursuant to section 307(b) of the Communications Act of granting comparative preferences within metropolitan areas (MM Docket No. 83–403; FCC 83–160).

Adopted: April 15, 1983.

Released: April 27, 1983.

By the Commission: Commissioner Fogarty concurring in the result.

1. This proceeding arises out of the recent action by the Commission on February 17, 1983, BC Docket No. 82–320, *In the Matter of The Suburban Community Policy, the Berwick*

Doctrine and the De Facto Reallocation Policy (herein referred to as the "Berwick" proceeding), 48 FR 12094, published March 23, 1983. That proceeding examined several Commission policies that had evolved under Section 307(b) of the Communications Act of 1934, as amended.

2. The Berwick proceeding raised the question of whether an applicant specifying a suburban community should receive a preference pursuant to Section 307(b) when its proposed signal would cover a metropolitan area. The idea of redefining the term "community" for purposes of implementing Section 307(b) was suggested in the *Notice of Proposed Rule Making* as a means to remove the comparative preference for a suburban community. The Commission determined in its *Report and Order* that it did not believe it had an adequate record to support the redefinition proposal. However the Commission decided that a separate proceeding should be initiated to elicit comments as to the public interest benefits of the new definition, the costs involved, and the appropriate geographic standard to be used. We have set forth our policy concerns and objectives in order to elicit comments thereon.

3. Initially we shall provide some historical perspective for a better understanding of the direction we wish to pursue in fulfilling the mandate of Section 307(b). Prior to the enactment of the Radio Act of 1927, licensees demonstrated a tendency to locate their facilities in the larger cities. In response to this situation, Section 9 of the Radio Act of 1927 provided *inter alia*, that "the licensing authority shall make such a distribution of licenses, * * * among the different States and communities as to give fair, efficient and equitable radio service to each of the same." Public Law No. 69–632, ch. 169, section 9, 44 Stat. 1166. Congressional debate expressed a concern that local communities, as well as states, should not be deprived of information and programming serving local needs, 68 Cong. Rec. 2568, 2569. *See also* 68 Cong. Rec. 2570, 2576. The Radio Act was amended the next year by the "Davis Amendment," Public Law No. 70–195, 45 Stat. 373 (1928), dividing the country into five zones and requiring the Commission to allocate service equally among them. The floor debate made little reference to the need for local stations. See H.R. Rep. No. 800, 70th Congress, 1st Session 4 (1928). The Communications Act of 1934 contained basically the same wording as its predecessor. However, the five-zone scheme was eliminated in 1936. The committee and conference reports on the 1936 amendments contain virtually no discussion regarding the need for local service.

4. As a result, the Commission was left with broad discretion to enforce the statutory requirement of "fair, efficient, and equitable distribution of radio service." *See FCC* v. *Allentown Broadcasting Co.*, 349 U.S. 358 (1955); *see also Huntington Broadcasting Co.* v. *FCC*, 192 F. 2d 33 (D.C. Cir. 1951). We have exercised this discretion so as to favor communities which would receive a first or second local service. In so doing, applicants have been provided an incentive to gain a preference in the comparative analysis by specifying an unserved or underserved community. For example, the FM Table of Assignments was adopted with a set of priorities including the provision of a first local service. *See Further Notice of Proposed Rule Making* in Docket 14185, FCC 62–867 (1962), *Anamosa and Iowa City, Iowa, et al.*, 46 F.C.C. 2d 520, 524 (1974). The same basic standards are used in the AM and TV services.

5. However, the Section 307(b) comparison has presented special problems in cases involving applications for facilities in suburban communities. In *Huntington Broadcasting Co.* v. *FCC, supra*, three mutually exclusive applications for a Class II AM station (1540 kHz, 5 kW, daytime only) proposed to locate in the Los Angeles metropolitan area (Huntington Park, Los Angeles and Monrovia). The Commission characterized the proposals as regional in nature and viewed the proposed service as intended for one large "community." [1] Consequently the Commission could find no basis for selecting among the applicants on Section 307(b) grounds. The Commission's exercise of discretion in this manner was upheld by the appellate court. Similarly, in *St. Louis Telecast Inc., et al.*, 22 F.C.C. 625 (1957), five applicants for VHF–TV Channel 11 specified localities in the St. Louis metropolitan area. One applicant urged that its specification of East St. Louis, Illinois, for a first VHF–TV facility gave it a preference over those proposing a fourth VHF service to St. Louis.[2] The Commission concluded that the applicants proposed area wide coverage to be transmitted from the same general location and service to "a single economically and culturally integrated community whose center is the city of St. Louis." *St. Louis Telecast, Inc., supra*, at 713. Thus, the grant was not based on Section 307(b) considerations. This same approach was taken in *Massillon Broadcasting Co., Inc.*, 2 RR 2d 409 (1964); *Seven Locks Broadcasting, Co.*, 3 RR 2d 177 (1964); *Charles Vanda*, 8 RR 2d 427 (Rev. Bd. 1966); and *Cleveland Television Corp.*, 52 RR 2d 581 (Rev. Bd. 1982).

6. However, in other instances the Commission treated applicants for stations in suburban communities differently. See *Miners Broadcasting Service, Inc.* v. *FCC*, 349 F. 2d 199 (D.C. Cir. 1965). In the *Miners* case, one applicant proposed a 250 watt station for Monroeville, Pa., a city of 22,446 population, 3.5 miles east of Pittsburgh and with no local radio service. The competing applicant sought to change its existing Class III (500 watt) AM station from Ambridge, Pa. to a Class II 10,000 watt station specifying Ambridge-Aliquippa, Pa. Aliquippa (pop. 26,369), located 12 miles northwest of Pittsburgh, would receive a first local broadcast service. The Commission characterized the Aliquippa proposal as a Pittsburgh station for Section 307(b) purposes but viewed the Monroeville application as a local service.[3] On the basis of a first local service to Monroeville compared to a ninth such service to Pittsburgh, the Commission favored the former community. The appellate court remanded the case on the finding that the Commission's application of the *Huntington* rule (*see* paragraph 5, *supra*.) was inconsistent and without adequate support. It was suggested that Monroeville could have been compared to Aliquippa based on the differences in proposed coverage or that both communities could be viewed as suburban to Pittsburgh and compared on that basis without regard to Section 307(b) principles. That case should be contrasted with *Pasadena Broadcasting* v. *FCC*, 555 F. 2d 1046 (D.C. Cir. 1977), where seven applicants for a Class II AM station specified four different communities within a forty mile area of Los Angeles. One of the applicants for Newport, California, was disqualified because its proposed station would have provided daytime service to fewer

[1] For example, the proposed Huntington Park station would serve 83% of the metropolitan area of Los Angeles.

[2] The channel was assigned to St. Louis but available for application at East St. Louis under the Commission's 15 mile rule for TV stations (Section 73.607(b)), that rule along with its companion for FM stations (Section 73.203(b)) has been deleted by the action taken in the Berwick proceeding.

[3] The Commission cited the proposed Aliquippa station's coverage of 98% of Pittsburgh with a 2 mV/m signal compared to a one third coverage of Pittsburgh from the Monroeville proposal as the reason for the disparate treatment.

people than the other proposals, the other applications also were treated as proposals for the Los angeles area and compared without regard to Section 307(b) criteria. The court held that the Commission should have compared the needs of Los Angeles for a thirteenth AM station to that of Newport for a first local transmission service because of the importance placed on first local service.

7. The cases reveal situations in which applicants for suburban communities have been treated as metropolitan area proposals for Section 307(b) purposes. There are also contrasting situations in which the Commission has determined that a particular suburban applicant should be considered as a proposal for the smaller community and preferred to center city applicants. In this rule making we ask whether there are circumstances in which competing applicants for communities in a metropolitan area should be considered as area wide and therefore not subject to the Section 307(b) distinctions, as opposed to local community applicants for purposes of Section 307(b) comparisons.

8. This inquiry follows as a logical next step after our action in the Berwick proceeding. We therein terminated our suburban community and Berwick policies.[4] The Berwick proceeding also eliminated the 10/15 mile rule for FM and TV channels.[5] That rule permitted the use of an assigned channel within 10 miles (Class A FM channels) or 15 miles (Class C FM or TV channels) of the community of assignment. Applications seeking to use a channel under the 10 or 15 mile rule in competition with applications for the listed community gave rise to a Section 307(b) comparison. The primary reason for removing the rule is the development of FM radio service over the past 20 years. The need for flexibility in predicting demand no longer seemed valid. The inefficiency of resolving the 307(b) issues in a hearing rather than in rule making also led to the rule elimination. Henceforth, the channel will be available only in the community of assignment, and any proposal seeking a conflicting use will have to be weighed and decided in a rule making to reassign the channel.

9. After our decision in the Berwick proceeding, the question of whether to use a broader definition of "community" for Section 307(b) purposes will arise in two contexts: (1) Rule making proceedings to assign and reassign FM and TV channels to communities in the Commission's Tables of Channel Assignments §§ 73.202 for FM and 73.606 for TV); and (2) application proceedings for AM stations. Applications for new AM facilities continue to be accepted on a demand basis, and conflicts between communities do not come up until applications are filed. Those conflicts will continue to be resolved in the hearing process. In either situation, we do not intend to affect any technical rules or service obligations by our proposal here.

10. In FM and TV rule making proceedings where two or more petitions for channel assignments specifying different communities conflict with the mileage separation requirements, we generally compare the needs of the two communities for the proposed station. The incentive to specify a community with no local service or with fewer local services than another community is often overriding in view of the high priority given to proposals to serve less well served areas under traditional Section 307(b) criteria. *See* para 4, *supra*. Currently, where the two proposals are for different localities within the same metropolitan area we do not consider whether either proposal should be characterized as a metropolitan area station or as one that will serve a specific community within the metropolitan area.[6] Rather we make a comparison of the two communities based on the traditional criteria of number of local services, reception services, population and location. However under our proposal herein we would make the determination that proposals to serve specific localities within a general metropolitan area should be considered metropolitan area proposals based on criteria to be developed in this proceeding. Pursuant to that finding, there would be no need for a Section 307(b) comparison among proposals for the same metropolitan area. Rather the assignment would be made to the metropolitan area, and any interested parties could apply for any community within the metropolitan area.[7] Those applicants interested in a smaller community would be free to apply there, but there would be no Section 307(b) preference for a first service to a smaller community in contrast to offer proposals in the same metropolitan area. We would not make a Section 307(b) comparison primarily because we believe that the use of a regional channel in a metropolitan area is equally in the public interest regardless of the specific city of license. Accordingly, the choice of applicants would be based entirely on the standard comparative qualifications developed through the years. The applicant chosen would be licensed to the community specified in the application and would have to comply with all existing rules concerning its community of license. We believe this procedure would result in greater flexibility in providing service where it is needed, and fewer administrative burdens in making Section 307(b) comparisons.

11. In AM application proceedings the allocation process is built into the acceptance criteria of § 73.37. Applications that specify communities within a metropolitan area must choose places with two or fewer aural services. Only minority applicants can specify larger communities that are not underserved.[8] Thus, where an application is filed by a minority, mutually exclusive non-minority applicants must specify a small community within the urbanized area in order to be considered. In cases where a minority applicant has specified a well served community, traditional Section 307(b) preferences direct the Commission to grant the conflicting proposal to provide a first or second local service. However if both applicants propose to serve the same greater metropolitan area, there is no need to make a Section 307(b) comparison. This proposal takes cognizance of that situation, and its adoption could encourage the filing of more applications by minorities seeking to serve metropolitan areas.

12. In proposing to utilize a metropolitan area concept, we seek comments on the appropriate geographic area within which we would consider conflicting petitions or applications to

[4] A complete discussion on the history, purpose and application of the suburban community and Berwick policies can be found in the *Report and Order* in the Berwick proceeding. We determined therein that those policies discouraged applications for suburban communities. Their elimination could well increase the occurrence of such applications. Thus, some consideration of when we would make Section 307(b) comparisons between communities in the same metropolitan area would facilitate the authorization of a new service.

[5] *See* footnote 2, *supra*.

[6] The need for this inquiry at the rule making stage was removed by the Commission's action in *Revision of FM Policies and Procedure*, 90 F.C.C. 2d 88 (1982).

[7] We are not herein proposing any changes in the Commission's technical rules that could affect the location of a station within a metropolitan area by virtue of minimum mileage separation and principal city coverage requirements.

[8] Section 73.37 provides for other exceptions to the acceptance restrictions that are not relevant here. The rule itself is currently under review by the Commission in response to a petition filed by the National Radio Broadcasters Association (RM-3683).

be proposals for the same "community" for Section 307(b) purposes. Some previous Commission cases have utilized the U.S. Census Bureau's concept of Urbanized Area as the appropriate delineation of the metropolitan area.[9] The U.S. Census Bureau describes that term as a "separation of urban and rural population in the vicinity of the larger cities." The criteria used are: (1) A central city of 50,000 or more inhabitants; or (2) twin cities, *i.e.*, cities with contiguous boundaries with a combined population of 50,000 and the smaller community having at least 15,000 population; or (3) surrounding incorporated communities of 2,500 or more or areas of an urban nature based on the population density and land utilization.

13. Another concept devised by the Census Bureau is the Metropolitan Statistical Area (MSA),[10] which is made up of a county or a group of contiguous counties surrounding a city of 50,000 or more population. Because MSAs are defined by county borders, there are some cases where the boundaries may be too broad for our purpose (for example: San Bernardino-Riverside-Ontario). As a possible alternative, the Rand McNally Commercial Atlas and Marketing Guide uses "Ranally Metro. Areas," or RMAs. Unlike MSAs, RMA boundaries do not necessarily follow jurisdictional county lines. This is said to allow for a more precise location of the actual extent of urban and suburban development. The criteria used to define each area include: (1) A central city or cities; (2) any adjacent continuously built-up areas; and (3) other communities not connected to the city by continuous built-up territory if the bulk of their population is supported by commuters to the central city and its adjacent built-up areas, and provided their population density is fairly high.[11] We seek comments on whether these concepts or some other physical delineation of metropolitan area would be an appropriate "community" for Section 307(b) purposes. We also wish to have comments on what size city should be included in our inquiry. The Census Bureau includes cities of at least 50,000 population.

14. Moreover, commenters should address themselves to the potential service areas of proposed stations and whether the broader definition of "community" should be limited to certain classes of stations. For example, in the AM service, Class I channels are intended for extended coverage, Class II and Class III channels are considered regional in nature, and Class IV channels are allocated for local coverage.[12] In the FM service, Class B and Class C channels are defined as wide area coverage frequencies while Class A channels are used for smaller communities.[13] The TV service is generally considered capable of providing coverage to a large region on all channels. Under these circumstances, it may be appropriation to shrink the expanded definition of community for Class IV AM and Class A FM facilities. Such stations are not capable of providing service to an urbanized area. One alternative would be to limit the expanded "community" to an area coextensive with the predicted service contours of an imaginary station licensed to the center city coordinates, assuming maximum facilities. Another would be to exempt such local stations from the expanded definition.

15. Another area of inquiry on which we wish to receive comments is what effect such a redefinition would have on existing stations or on proposals pending for new allocations. For example, if an existing station wishes to move to a new community within the same metropolitan area, must a competing application be accepted for filing or should we treat the move as one within the same "community?" Finally, commenters are encouraged to raise any other issues related to the redefinition of community proposal.

16. In conclusion, we wish to propose and elicit comments on the idea of redefining the term "community" for purposes of implementing Section 307(b) of the Communications Act. Where conflicting applications (AM) or requests for a new assignment (FM or TV) specify communities within the same metropolitan area, the Section 307(b) comparison that is typically made may not in all circumstances be realistic. The proposed coverage contours, for example, may reveal insubstantial differences in service areas and thus provide no real basis for a Section 307(b) preference. The criteria for determining the appropriate geographic standard would be developed as a guide to implement the policy objectives.

17. *Regulatory Flexibility Act Initial Analysis.*

I. Reason for Action

This proposal derives from a similar one considered in the aforementioned Berwick proceeding. In this proceeding, we seek to develop a more complete record and to elicit comments on aspects of the proposal not previously discussed. The policy proposed is part of the Commission's ongoing review and evaluation of its rules and policies.

II. (a) Objective

To elicit comments on the public interest benefits and costs of the proposal in accordance with fulfilling the mandate of Section 307(b) of the Communications Act of 1934, as amended.

(b) *Legal Basis.* The legal basis for eliciting comment on this policy is found in Sections 4(i) and 303(r) of the Communications Act.

III. Description, Potential Impact and Number of Small Entities Affected

The time and costs involved in the proceedings to allocate AM, FM and TV frequencies and in the hearings to choose among applicants would be reduced. Small entities could benefit from not having to expend the time and costs involved in contesting these issues.

IV. Recording, Record Keeping and Other Compliance Requirements

No additional impact.

V. Federal Rules Which Overlap, Duplicate or Conflict With These Policies

None.

VI. Any Significant Alternative Minimizing Impact on Small Entities and Consistent With Stated Objectives

None.

Filing Responses to This Notice

18. Authority for this proposed rule making is contained in Sections 1, 3, 4 (i) and (j), 303, 307(b), 309 and 403 of the Communications Act of 1934, as amended. 47 U.S.C. 151–609.

19. Pursuant to §§ 1.410 and 1.415 of the Commission's Rules, interested parties may file comments on or before June 3, 1983, and reply comments on or before June 20, 1983. All relevant and timely comments will be considered. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's

[9] *See, e.g., Miners Broadcasting Service v. FCC, supra.*

[10] The current usage of MSA derives from the earlier Standard Metropolitan Statistical Areas (SMSA) used in previous Census reports.

[11] Rand McNally Atlas and Marketing Guide, 113th Ed., Rand McNally & Co., 1982, page 2.

[12] *See* § 73.21 of the Commission's Rules.

[13] *See* § 73.206 of the Commission's Rules.

reliance on such information is noted in the Report and Order.

20. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who makes an *ex parte* presentation must serve a copy of that presentation on the Commission's Secrtary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy of the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See* 47 C.F.R. Section 1.1231.

21. As required by Section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. The comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this *Notice*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.* (1981).

22. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus eleven copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. For further information on this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 83-11513 Filed 4-28-83; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 48, No. 84
Friday, April 29, 1983

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Wool and Mohair Payment Programs; Determination of the Support Prices for Wool and Mohair for the 1983 Marketing Year

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination.

SUMMARY: This notice of determination sets forth the prices at which wool and mohair will be supported under Commodity Credit Corporation's Wool and Mohair Payment Programs for the 1983 marketing year. The payment programs are intended to encourage the continued domestic production of wool and mohair at prices fair to both producers and consumers.

EFFECTIVE DATE: December 21, 1982.

ADDRESS: Emergency Operations and Livestock Programs Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Room 4095 South Building, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Gerald Schiermeyer at (202) 447-7674 A Final Impact Statement has been prepared and is available from the Emergency Operations and Livestock Programs Division, ASCS, USDA, P.O. Box 2415, Room 4095 South Building, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: This notice of determination has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as "not major." This notice has been classified as "not major" since it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of determination since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The title and number of the Federal assistance program that this notice of determination applies to are: Title—National Wool Act Payments; Number—10.059 as found in the Catalog of Federal Domestic Assistance Programs.

The National Wool Act of 1954, as amended ("Wool Act"), provides that the Secretary of Agriculture shall support the prices of wool and mohair to producers by means of loans, purchases, payments or other operations.

In providing for price support, the Wool Act establishes the level of support for shorn wool for each of the marketing years 1982 through 1985 at 77.5 percent of an amount determined by multiplying 62 cents (the support price in 1965) by the ratio of: (1) The average parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the year in which such support price is being determined and announced to (2) the average parity index for the three calendar years 1958, 1959, and 1960, and rounding the resulting amount to nearest full cent.

The Wool Act also provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, as the Secretary of Agriculture determines will maintain normal marketing practices for pulled wool and as the Secretary determines is necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Further, the support price for mohair must be within a range of 15 percent above or below the comparable percent of parity at which shorn wool is supported.

The Wool Act provides that the Secretary shall establish and announce, to the extent practicable, support price levels for wool and mohair sufficiently in advance of each marketing year as will permit producers to plan their production for such marketing year. On December 21, 1982, the Department of Agriculture issued a press release announcing that the support prices for shorn wool and mohair for the 1983 marketing year were $1.53 per pound and $4.627 per pound, respectively. Since the purpose of this notice is to affirm the level of the support prices previously announced in the press release, it has been determined that no further public rulemaking is required.

Determinations

Accordingly, the following determinations have been made for wool and mohair for the 1983 marketing year:

1. *Method of Support.* It has been determined that the prices of wool and mohair will be supported by means of payments to producers for the 1983 marketing year.

2. *Support Prices.* It has been determined that the support prices for shorn wool and mohair for the 1983 marketing year are $1.53 and $4.627 per pound, respectively. The support price for shorn wool, which is equal to 76.1 percent of the October 1982 parity for wool, has been calculated in accordance with the formula set forth in Section 703 of the Wool Act. The support price for mohair has been established at a level, in relationship to the support price for shorn wool, which is determined to be necessary to maintain approximately the same percent of parity for mohair as for shorn wool. The support price for mohair is 76.1 percent of the October 1982 parity for mohair. This is the same percent of parity at which shorn wool is supported. The support price for pulled wool will be based on the support price for shorn wool and will be established at a level, in relationship to the support price for shorn wool, which is determined to be necessary to maintain normal marketing practices for pulled wool. The rate of payment for pulled wool will be determined after the National average market price for shorn wool for the 1983 marketing year is announced.

(Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); Secs. 702-708, 68 Stat. 910-912, as amended (7 U.S.C. 1781-1787))

Signed in Washington, D.C. on April 19, 1983.

John R. Block,

Secretary of Agriculture.

[FR Doc. 83-11281 Filed 4-28-83; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

Arkansas Electric Cooperative Corporation; Little Rock, Arkansas; Proposed Loan Guarantee

AGENCY: Rural Electrification Administration (REA), USDA.

ACTION: Proposed loan guarantee.

SUMMARY: Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $17,094,000 to Arkansas Electric Cooperative Corporation (AECC), of Little Rock, Arkansas. This loan guarantee will be used to finance AECC's 35 percent undivided ownership interest in coal handling facilities common to units 1 and 2 of the Independence Steam Electric Station (ISES) located near Newark, in Independence County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Mr. Carl S. Whillock, President and Manager, Arkansas Electric Cooperative Corporation, P.O. Box 9469, Little Rock, Arkansas 73319.

SUPPLEMENTARY INFORMATION: Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for advances to the borrower of the guaranteed loan funds from Mr. Carl S. Whillock at the address given above.

In order to be considered, proposals must be submitted on or before (within 30 days from the date of the **Federal Register** publication of this notice) to Mr. Whillock. The right is reserved to give such consideration and to make such evaluation or other disposition of all proposals received as AECC and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Public Information Office, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: April 21, 1983.

Harold V. Hunter,

Administrator

[FR Doc. 83-11367 Filed 4-28-83; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Camden Snow Bowl Critical Area Treatment RC&D Measure, Maine; Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Camden Snow Bowl Critical Area Treatment RC&D Measure, Knox County, Maine.

FOR FURTHER INFORMATION CONTACT: Mr. Billy R. Abercrombie, State Conservationist, Soil Conservation Service, USDA Office Building, University of Maine, Orono, Maine 04473, telephone 207-866-2132.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Billy R. Abercrombie, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for control of a critically eroding ski slope. The planned works of improvement include filling rills and gullies, controlling subsurface seepage, reseeding areas devoid of vegetation and cleaning out, resetting and rip-rapping culverts.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Billy R. Abercrombie.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: April 22, 1983.

Billy R. Abercrombie,

State Conservationist.

[FR Doc. 83-11354 Filed 4-28-83; 8:45 am]

BILLING CODE 3410-16-M

Montpelier Creek Watershed, Idaho; Finding of No Significant Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for a Supplement to the Montpelier Creek Watershed, Bear Lake County, Idaho.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 N. 8th Street, Room 345, Boise, Idaho 83702, telephone 334-1601.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control, irrigation storage and watershed protection. This supplementary planned work of improvement is the reconstruction of the North Canal

Diversion Structure on Montpelier Creek. The existing structure has proven to be inadequate during periods of high spring runoff, which results in flooding to the surrounding area.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data during the environmental assessment are on file and may be reviewed by contacting the: U.S. Department of Agriculture, Soil Conservation Service, 304 No. 8th Street, Room 345, Boise, Idaho 83702.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: April 22, 1983.

(Catalog of Federal Domestic Assistance Progam No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Stanlely N. Hobson,

State Conservationist.

[FR Doc. 83-11166 Filed 4-28-83; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Docket 41077]

American International Airways, Inc. Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on May 2, 1983, at 10 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., April 21, 1983.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 83-11530 Filed 4-28-83; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permit

Permits filed under Subpart Q of the Board's Procedural Regulations; week ended April 22, 1983.

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings (see 14 CFR 302.1701 et. seq.).

Date filed	Docket No.	Description
Apr. 20, 1983	41433	American Airlines, Inc., P.O. Box 61616, DFW Airport, Texas 75261. Application of American Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests the Board to issue it a certificate of public convenience and necessity through expedited procedures to engage in foreign air transportation of persons, property and mail between Spokane, Washington, and Calgary, Alberta, Canada. Conforming Applications, Motions to Modify Scope and Answers may be filed by Mary 18, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-11531 Filed 4-28-83; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41320]

Classic Air, Inc. Fitness Investigation; Postponement of Hearing

Notice is hereby given that a hearing scheduled in the above-entitled proceeding for April 27, 1983, is rescheduled for May 24, 1983, at 10:00 a.m. (local time), Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., April 22, 1983.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 83-11528 Filed 4-28-83; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41127]

Sea and Sun Airlines, Inc. Enforcement Proceeding; Cancellation of Hearing

Notice is hereby given that the hearing in the above-entitled matter assigned to commence on April 26, 1983 (48 FR 11971, March 22, 1983) is hereby cancelled.

Dated at Washington, D.C., April 25, 1983.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 83-11529 Filed 4-28-83; 8:45 am]

BILLING CODE 6320-01-M

Office of the Secretary

[Transmittal 669; Dept. Organization Order 10-3; Amdt. 4]

Department Organization Order; Under Secretary for International Trade

Subject: This order effective April 8, 1983 further amends the materials appearing at 47 FR 57555 and 57558 of December 27, 1982.

Department Organization Order 10-3, dated February 16, 1982 is hereby further amended as shown below. The purpose of this amendment is to delegate the Secretary's authorities under the Export Trading Company Act of 1982.

Section 4. Delegation of Authority. a. In pen and ink at the end of subparagraph .01mm. delete the word "and." At the end of subparagraph .01nn. delete the period and add "; and".

b. A new subparagraph .01oo. is added to read as follows:

"oo. Titles I and III of P.L. 97-290 (15 U.S.C. 4001 *et seq.*, 4011 *et seq.*), except that the authority to negotiate with and obtain the concurrence of the Attorney General under Title III of the Act shall be reserved to the General Counsel."

Arlene Triplett,

Assistant Secretary for Administration.

[FR Doc. 83-11505 Filed 4-28-83; 8:45 am]

BILLING CODE 3510-BP-M

DEPARTMENT OF COMMERCE

President's Private Sector Survey on Cost Control

AGENCY: Office of the Secretary, Commerce.

ACTION: Change in meeting notice.

This amends a previous meeting notice published on April 15, 1983 (48 FR 16311) of the Subcommittee of the President's Private Sector Survey on Cost Control. The meeting will begin at 11 a.m. on May 2, 1982 instead of 10 a.m.

All other information concerning the meeting remains unchanged.

Dated: April 26, 1983.

Marilyn S. McLennan,

Chief, Information Policy and Management Division, Office of the Secretary.

[FR Doc. 83-11479 Filed 4-28-83; 8:45 am]

BILLING CODE 3510-CW-M

Economic Development Administration

Supplemental Appropriation for Economic Development Assistance Programs

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Notice. Catalogue of Federal Domestic Assistance: 11:300 and 11:304—Grants for Public Works and Development Facilities.

SUMMARY: The Economic Development Administration (EDA) announces that supplemental funds appropriated under the Emergency Jobs Act (Pub. L. 98-8) are available for public works grants authorized under the Public Works and Economic Development Act of 1965, as amended. This announcement includes funding criteria and application procedures for this supplemental appropriation. An earlier announcement (see 47 FR 52736, November 23, 1982) covering public works grants for the regular appropriation contained guidance on program requirements which is also applicable. However, emphasis for the supplemental appropriation is in meeting the spirit and intent of Pub. L. 98-8.

As a background, EDA has received two public works appropriations for fiscal year 1983: One regular and the supplemental. The earlier announcement, cited above, was published for partial funding made available from the regular appropriation. Later, funding from the remainder of the regular appropriation was made available. Response to the earlier announcement generated sufficient demand for expending the full regular appropriation, so no additional announcement was made.

I. Grants for Public Works and Development Facilities

A. *Availability of Funds:* Grant funds through this supplemental appropriation in the amount of $100 million are presently available for regular public works and for public works impact projects authorized by the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3121 *et seq.* (PWEDA).

B. *Eligibility Criteria:* To be eligible for public works funding under the supplemental appropriation, applicants must meet current eligibility criteria for public works assistance under Title I of PWEDA. Eligible applicants include states, political subdivisions thereof, Indian tribes and non-profit organizations which represent EDA-designated redevelopment areas. In addition to the requirements of Title I of PWEDA, The $100 million supplemental appropriation made under Pub. L. 98-8 will be allocated to eligible areas and administered in accordance with criteria of that law. Areas targeted by Section 101(a) of Pub. L. 98-8 for the purpose of receiving funds under this supplemental appropriation are deemed redevelopment areas under Title IV of PWEDA, however such areas are not required to have an Overall Economic Development Program.

C. *Grant Objectives:* Grant objectives are to stimulate local economic development and private sector employment through the renovation, repair and construction of needed public facilities, particularly in areas of high unemployment and economic distress. Types of projects can include, but not be limited to, water and sewer improvements, industrial park improvements, central business district improvements, public building improvements, street and railway improvements, railway passenger terminals and station improvements, marina and dock improvements, and university research facilities.

D. *Selection Criteria:* Priority will be given to projects which meet criteria as established in the earlier announcement (see 47 FR 52736, November 23, 1982), especially those for which construction can begin and be completed quickly. Regular Title I public works projects will receive high priority if: (1) Construction can begin within six months and be substantially completed within 18 months of approval and (2) other criteria are met. Selection critieria for regular public works projects will also emphasize long-term economic development benefits, including permanent private-sector jobs (both new and saved) and private sector investment.

Priority also will be given to Public Works Impact projects (PWIPs) eligible under Section 101(a)(1)(D) of PWEDA which involve the renovation, repair and improvement of existing public facilities, including energy conservation projects. These projects must be located in areas of high unemployment and provide immediate useful employment for unemployed and underemployed workers in the project area. They also should have on-site labor costs which equal at least 25% but not more than 80% of total project costs, be scheduled for construction within 3 months of approval, and be completed within 12 months.

E. *Grant Requirements and Limitations:* EDA provides direct grants up to 50 percent and in some cases provides supplementary grants as established under PWEDA and its regulations. Projects located in areas targeted for assistance under the criteria of Section 101(a) of the Emergency Jobs Act will be eligible for supplementary assistance on the same basis as projects located in redevelopment areas designated under Title IV of PWEDA. Applicants will be required to provide the matching share as appropriate.

For purposes of funding public works impact projects under this supplemental appropriation only, the maximum amount of a PWIP grant is increased to $1,000,000.

Fully completed applications will have all sections containing required information and documentation as well as:

- Complete information as required by the Civil Rights and Environmental sections.
- A title opinion showing current land ownership interests in or an irrevocable option to acquire all land, rights-of-way, easements, etc. necessary for improvements.
- Schematic drawings, cost estimates, outline specifications and a

development schedule completed by a professional, registered architect/engineer.

• A preliminary engineering report and/or a feasibility report prepared by a professional, registered architect/engineer.

• Evidence of immediately available matching share such as a letter of commitment from a lending institution or an approved expenditure item in the applicant's budget.

• Certification by the applicant that, pursuant to section 716 of PWEDA, the assistance requested will not be substituted for any other federal assistance authorized for the project and certification that without this assistance the applicant would not be able to create immediate new employment opportunities for individuals unemployed at least 15 of the 26 weeks preceding March 24, 1983.

Proposed projects requiring the preparation of environmental impact statements or projects involving land purchase and subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) may not be able to be approved for funding under this supplemental appropriation because applications must be approved by September 30, 1983. Proposed projects affecting flood plains, wetlands, historic sites or historic structures must have all necessary permits and clearances, and meet all necessary public notice and comment requirements before approval.

Applicants with unresolved audit, debt collection or grantee performance problems from previous DOC grants will be expected to resolve those problems before final EDA consideration for funding.

Application Procedures: Requests for eligibility determinations for these grants under the targeted portion of the Emergency Jobs Act may be obtained by writing: EDA Jobs Act Project, Department of Commerce, Herbert C. Hoover Building, Washington, D.C. 20230.

Written inquiries should include the specific geographic locations of proposed projects, the name of the person to receive EDA's response, and address of the sponsoring organization. Inquiries from areas determined to be eligible will receive by return mail the necessary material for filing applications.

Completed applications will be considered as they are submitted. It may not be possible for EDA to consider applications received by EDA after July 1, 1983. Delayed or deficient applications may result in denial.

Dated: April 25, 1983.

Carlos C. Campbell,

Assistant Secretary for Economic Development.

[FR Doc. 83-11445 Filed 4-28-83; 8:45 am]

BILLING CODE 3510-24-M

International Trade Administration

Antidumping; Final Determination of Sales at Not Less Than Fair Value; Bicycle Tires and Tubes From Taiwan

AGENCY: International Trade Administration, Commerce.

ACTION: Final determination of sales at not less than fair value: Bicycle tires and tubes from Taiwan.

SUMMARY: We have determined that bicycle tires and tubes from Taiwan are not being, nor are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this determination. Furthermore, we are directing the U.S. Customs Service to terminate the suspension of liquidation in effect with respect to the preliminary determination in this case which was made on December 7, 1982 (47 FR 54996). We are also directing the U.S. Customs Service to refund any cash deposits or other security posted as a result of the suspension of liquidation.

EFFECTIVE DATE: April 29, 1983.

FOR FURTHER INFORMATION CONTACT: Paul R. Nichols, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-1768.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that bicycle tires and tubes from Taiwan are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). We have found no sales at less than fair value for bicycle tires and tubes sold by Hwa Fong Rubber Industry Co., Ltd. (Hwa Fong), Li Hsin Rubber Industry Co., Ltd. (Li Hsin), Kenda Rubber Industrial Co., Ltd. (Kenda) and Cheng Shin Rubber Industrial Co., Ltd. (Cheng Shin). Two of these companies, Kenda and Cheng Shin, were preliminarily excluded from the preliminary determination since they were found to have no sales at less than fair value at that time. The four firms investigated account for approximately 98 percent of bicycle tires and tubes exported from Taiwan to the United States. We are notifying the ITC of this determination.

Case History

On April 30, 1982, we received a petition from counsel for the Carlisle Tire & Rubber Company, Carlisle, Pennsylvania, which constitutes the United States bicycle tire and tube industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that bicycle tires and tubes from Taiwan were being, or were likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such sales were materially injuring, or were threating to materially injure, a United States industry.

After reviewing the petition, we determined it contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated an investigation on June 1, 1982 (47 FR 23797). On June 7, 1982, the ITC found that there is a reasonable indication that imports of bicycle tires and tubes from Taiwan are threating to materially injure a United States industry. We determined this case to be "extraordinarily complicated," as defined in section 733(c) of the Act. Therefore, we extended the period for making a preliminary determination by 50 days until November 26, 1982 (47 FR 41607).

On December 7, 1982, the Department published its preliminary determination that sales of bicycle tires and tubes from Taiwan are being, or are likely to be, sold in the United States at less than fair value. Two Taiwanese manufacturers, Kenda and Cheng Shin, were excluded from the preliminary determination since we concluded preliminarily that neither firm had sales at less than fair value. For the remaining firms, Hwa Fong and Li Hsin, we preliminarily determined that margins existed in the amount of 11.7 percent of sales compared, with a weighted-average margin of 7.3 percent.

On January 21, 1983, we extended the period for making a final determination from February 8, 1983 to April 21, 1983 (48 FR 3797) based on a request received from respondents in accordance with section 735(a)(2)(A) of the Act.

Our notice of preliminary determination provided interested parties with an opportunity to submit views orally or in writing. On March 17, 1983, we held a public hearing.

It should be noted that a challenge to an earlier "Final Determination of Sales at Not Less Than Fair Value and Discontinuance of Antidumping

Investigation" (47 FR 61066) on bicycle tires and tubes from Taiwan is pending before the U.S. Court of International Trade.

Scope of Investigation

The merchandise covered by this investigation is pneumatic bicycle tires and tubes of rubber or plastic, whether imported as sets or separately, currently classifiable under item numbers 772.48 and 772.57, respectively, *Tariff Schedules of the United States*.

The period of investigation for bicycle tires and tubes sold in the United States is from December 1, 1981 through May 31, 1982.

Methodology of Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for each of the companies investigated because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on the f.o.b., c.&f. or the c.i.f., delivered, packed price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, insurance, brokerage charges, United States inland freight, and commissions. We made additions, where applicable, for countervailing duties collected, to the extent such duties offset an export subsidy, import duties which were rebated, and taxes which were rebated, or not collected, by reason of the exportation of the merchandise to the United States, pursuant to sections 772(d)(1) (B) and (C) of the Act.

Foreign Market Value

In accordance with section 773 of the Act, we calculated foreign market value based on home market sales or, in the case of thornproof tires, on third country sales. For purposes of determining an adjustments for similar merchandise under § 353.16 of the Regulations, we made adjustments based on the cost of the primary raw material inputs such as rubber, carbon black, nylon and butyl.

The home market prices for each of the companies were based on delivered, packed prices to unrelated purchasers. From these prices, we deducted inland freight and stamp taxes. We made adjustments for directly related credit costs and advertising expenses, differences in merchandise and packing costs. The adjustments for differences in merchandise, as provided for in § 353.16, were based on the differences in weight and costs of the raw materials used in the production of tires and tubes and sold to purchasers other than OEM's. No additional cost were incurred in the production of these products other than for the raw materials.

Foreign market value for sales of thornproof tires are based on sales to a third country (Australia) because no sales of this product took place in the home market. We calculated these prices by deducting shipping, f.o.b. and stamp tax charges made on third country sales. We made adjustments for directly related credit costs and advertising expenses and packing costs.

Kenda claimed an adjustment for a commission in the home market paid to a related party. We made no adjustment, since adjustments for commissions paid to related parties are generally not allowable under § 353.22(b) of the Regulations.

Kenda and Hwa Fong also claimed adjustments for a cost of production differential because of shorter production runs of tires and tubes sold in the home market. We disallowed these adjustments, since they do not relate to sales of the merchandise and, in any event, the claimed differences in cost could not be verified from available records as required by §§ 353.14 and 353.15 of the Commerce Regulations.

Each of the four companies claimed an adjustment for bad debt expense based on the Taiwanese government's allowance of two percent for bad debt losses for income tax purposes. None of the companies was able to show actual bad debt losses directly related to sales during the investigative period and this claim was disallowed.

Submitted Views

In response to our preliminary determination, counsel for the petitioner submitted written comments and participated in the public hearing. The petitioners major comments and the Department of Commerce's (DOC) position on them are summarized below.

Comment 1: Counsel for the petitioner argues that the Department erred in allowing an adjustment for differences in credit expenses in the markets compared because these expenses were not directly related to the transactions under investigation.

DOC Position: We believe that the directly related test is satisfied. An adjustment for differences in credit terms is warranted because each of the manufacturers investigated receives payment earlier in the case of sales to the United States than in the case of home market sales. Furthermore, it is our position that an adjustment based on each respondent's actual loan rate of interest for short-term borrowing is consistent with previous cases. The procedure used was a reasonable one for quantifying the allowance for differences in credit terms because it reflects the costs of borrowing short-term operating capital during the investigative period. Since it is inconsistent with general business practice to obtain financing for credit sales on an individual basis, it is unreasonable to require direct evidence specifically linking each and every credit transaction to particular sales in order to allow the adjustments.

Comment 2: Counsel for the petitioner argues that the Department made adjustments for advertising expenses which were not directly related to the sales in question as provided for under § 353.15(b) of the Commerce Regulations. Specifically, petitioner asserts that allowances were granted for general corporate advertising, such as company name T-shirts, posters, billboards and newspaper ads. Since the companies under investigation produce and sell products other than bicycle tires and tubes, petitioner claims that these expenses should be disallowed.

DOC Position: We made adjustments for direct advertising expenses assumed by the repondents and attributable to later sales by their purchasers. As an example, shirts and trinkets advertising bicycle tires, along with the company name, were considered allowable. Calendar pictures of bicycle tubes, attesting to their longevity, were considered directly related. However, in the case of Li Hsin and Kenda certain general advertising expenses, such as company name T-shirts and billboards, that were allowed in the preliminary determination have since been found not to be directly related to the product under investigation and have been disallowed for this final determination. A recomputation of these transactions does not result in sales at less than fair value.

Comment 3: Petitioner argues that the home market price information submitted by all respondents in this case should not be considered because they include sales to OEM's for exports to the United States as parts of Taiwan produced bicycles and, as such, are "* * * intended to establish a fictitious market * * *" as defined in section 773(a) of the Act. Specifically, petitioner asserts that the inclusion and comparison of sales to original

equipment manufacturers (OEM's) should not have been considered because such sales were not normal in the trade, in the usual wholesale quantities and not in the ordinary course of trade for home consumption. Furthermore, this market is an export market in view of the fact that the OEM's in Taiwan export most of their production of bicycles to the United States, as evidenced by the concurrent antidumping investigation of bicycles from Taiwan now before the Department.

DOC Position: Under § 353.16 of our regulations ITA may not consider a "sale or offer for sale intended to establish a fictitious market." We have no evidence indicating that the sales to OEM's in Taiwan were made by the respondents with the intent to establish a fictitious market.

The Department considers sales to OEM's to be in the ordinary course of trade, in the usual wholesale quantities. Respondents sold bicycle tires and tubes to unrelated Taiwanese OEM's, who in turn manufactured bicycles in the home market. Where the product sold by the OEM includes the merchandise under investigation, but is not of the same general class or kind, the final destination of the OEM's product is not relevant to our investigation.

Comment 4: Petitioner argues that no allowance should be made for inland freight, packing or other port charges because thes are included, respectively, in the home market and export to U.S. prices, and the statutory definition of foreign market value intends that adjustments for such expenses be made only by way of *addition* when such costs are not included in the price.

DOC Position: The U.S. Court of International Trade upheld the ITA practice of adjusting for the differential in the cost of packing and inland freight in making comparisons between the foreign market value and U.S prices.l See *Brother Industires, Ltd., et al. v. U.S.*, 3 CIT——, Slip Op. 82-34 (April 30, 1982).

Comment 5: Petitioner argues that the respondents overstated the amounts of customs duties rebated upon the exportation of tires and tubes. Petitioner states that the respondents used a larger quantity of domestically produced raw materials then indicated in their responses.

DOC Position: The Department is satisfied that the amounts of duties rebated were correctly stated in the responses to our questionnaire. During the course of the verifications conducted in this case, numerous customs documents and production records were randomly selected and verified. No evidence existed that either the amounts imported or rebated were incorrect.

Comment 6: Petitioner alleges that there is no basis for an adjustment for differences in merchandise.

DOC Position: The Department made no adjustments for differences in merchandise except where there were, in fact, no counterpart sales of the exact size tire in the home market sold to non-OEM purchasers. As indicated previously, those differences were based on the cost of raw materials used in the production of tires and tubes sold in the home market to non-OEM purchasers.

Verification

We verified all information used in making this determination in accordance with section 776(a) of the Act. We were granted access to the books and records of the four foreign manufacturers. We used standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and randomly selected documents containing relevant information.

Customs Notification

The U.S. Customs Service is being notified of this determination and directed to terminate the suspension of liquidation in effect for importations of tires and tubes exported to the United States by Hwa Fong and Li Hsin and to refund the full amount of any cash deposit or other security posted during the time that the suspension of liquidation was in effect.

ITC Notification

We are notifying the ITC of this determination.

Final Determination

Based on our investigation and in accordance with section 735(a) of the Act, we have reached a final determination that bicycle tires and tubes from Taiwan are not being, nor are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act.

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to section 774 of the Act (19 U.S.C. 1677c), and all expressed views have been considered in making this final determination.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Lawrence J. Brady,

Assistant Secretary for Trade Administration.

April 21, 1983.

[FR Doc. 83-11340 Filed 4-28-83; 8:45 am]

BILLING CODE 3510-25-M

Antidumping; Preliminary Determination of Sales At Less Than Fair Value; Bicycles From Taiwan

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value: Bicycles from Taiwan.

SUMMARY: We have preliminarily determined that bicycles from Taiwan are being, or are likely to be, sold in the United States at less than fair value. Therefore, we have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated duping margin as described in the "Suspension of Liquidation" section of this notice. We have preliminarily determined that seven Taiwanese bicycle producers should be excluded from this preliminary determination. Those firms which are subject to suspension of liquidation and those firms which are excluded from this action are indicated in the "Suspension of Liquidation" section.

If this investigation proceeds normally, we will make a final determination by July 6, 1983.

EFFECTIVE DATE: April 29, 1983.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Richard Rimlinger, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-1279.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that there is a reasonable basis to believe or suspect that bicycles from Taiwan are being sold or are likely to be sold, in the United States at less than "fair value," as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have found either no sales

or *de minimis* sales at less than fair value for bicycles produced by eleven of the firms investigated. However, additional information is needed for four of these eleven firms. Therefore, we are only excluding imports from the remaining seven firms from this preliminary determination. The concerned firms are indicated in the suspension of liquidation section of this notice.

We have found that the foreign market value of bicycles exceeded the United States price on 11.2 percent of the sales we compared. These margins ranged from 0.03 percent to 25.2 percent. The overall weighted-average margin on all sales compared is 0.65 percent. The weighted-average margins for individual companies investigated are presented in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by July 6, 1983.

Case History

On September 24, 1982, we received a petition in proper form from counsel for AMF Wheel Goods Division, Columbia Manufacturing Company, Huffy Corporation and Murray Ohio Manufacturing Company, on behalf of the U.S. industry producing bicycles. In accordance with the filing requirements of § 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petition alleged that bicycles from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a U.S. industry.

After reviewing the petition, we determined it contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on October 14, 1982 (47 FR 46837). The ITC subsequently found, on November 8, 1982, that there is a reasonable indication that imports of bicycles from Taiwan are materially injuring, or are threatening to materially injure, a United States industry. We determined this case to be "extraodinarily complicated," as defined in section 733(c) of the Act. Therefore, we extended the period for making a preliminary determination by 50 days until April 22, 1983 (48 FR 4013).

Scope of the Investigation

The merchandise covered by this petition are complete bicycles imported from Taiwan and classified under item numbers 732.02 through 732.26 of the Tariff Schedules of the United States.

We investigated sales of these bicycles which were made by sixteen Taiwanese producers and sold to the United States during the period of investigation, April 1, 1982, through September 30, 1982. The firms investigated were:

1. Asahi Enterprises Corporation (Asahi);
2. Ching Tong Shan Enterprise Co. Ltd (Ching Tong Shan);
3. Dodsun Bicycle and Machinery Manufacturers (Dodson);
4. EE Company. (EE co.);
5 Fairly Bike Manufacturing Co., Ltd. (Fairly);
6. Giant Manufacturing Co., Ltd. (GMC);
7. King Hsue She Co., Ltd. (KHS);
8. Liyang Co., Ltd. (Liyang)
9. Merida Industry Co., Ltd. (Merida);
10. Pacific Cycles Co., Inc. (Pacific);
11. Sheng Fa Industries Co., Ltd. (Sheng Fa);
12. Sony Cycle Industry Co., Ltd. (Sony);
13. Taiwan Hodaka Industrial Co., Ltd. (Taiwan Hodaka);
14. Wheeler Industrial Co., Ltd. (Wheeler);
15. Wheel King Corporation (Wheel King); and
16. Willing Industry Co., Ltd. (Willing).

Sales by the above firms accounted for approximately 92 percent of all bicycle sales to the United States during the period of investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value. In the cases of GMC, KHS, Merida and Wheel King we compared United States price based on purchase price with foreign market value based on home market price. In all other cases, we compared United States price based on purchase price with foreign market value based on the price to third countries (countries other than the United States).

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by all Taiwanese producers because, with one exception, the merchandise was sold to unrelated purchasers prior to its importation into the United States. In the cases of KHS, bicycles were sold to a related U.S. purchaser, KHS Inc. However, since we do not know the prices of KHS Inc., to unrelated purchasers, we have not made comparisons on these particular sales. We will seek to obtain this information prior to the final determination in this investigation.

We calculated the purchase price on the F.o.b. or c.&f. price to unrelated purchasers for sale in the United States. We made deductions, where appropriate, for inland freight, ocean freight, brokerage charges, bank charges, export promotion fees, stamp tax and sales commissions. We made additions for import duties or taxes which were rebated, or not collected, by reason of the exportation of the merchandise to the United States, pursuant to sections 772(d)(1) (B) and (C) of the Act. In the case of Sheng Fa, we deducted an amount for indirect selling expenses to offset a sales commission incurred on sales in a third country market.

Foreign Market Value

In the cases of GMC, KHS, Merida and Wheel King there were sufficint sales in the home market to allow us to use home market price as defined in section 773(a)(1)(A) of the Act, to determine foreign market value. We calculated home market price on the basis of the delivered or ex-factory prices to unrelated home market customers. Where appropriate we deducted stamp taxes, shipping charges, discounts and rebates. In the case of KHS, we deducted an amount of indirect selling expenses to offset a sales commission paid by KHS on certain U.S. sales. We made circumstance of sale adjustments for differences between U.S. and home market payment terms, direct advertising, royalty, and warranty expenses. We also adjusted for differences in packing and for physical differences in the merchandise.

GMC requested that we reduce the home market price to adjust for level of trade differences between the United States and the home market. GMC sells to the United States either directly to U.S. distributors or through unrelated trading companies. In the home market all sales are made to unrelated retailers through GMC's sole, related distributor, Giant Sales Co. (GSC). Since our fair value comparisons are based on GSC's prices to unrelated retailers, GMC has requested that a level of trade adjustment be made equal to GSC's entire mark-up.

For the purpose of this preliminary determination, we have made no level of trade adjustment, because the company was unable to provide data in a form sufficient to establish an objective quantity upon which to base such an adjustment. We will consider any additional data which will assist us in

this matter prior to reaching a final determination in this case.

In the cases of all other Taiwanese producers, there were either no sales, or insufficinet sales, in the home market to use as a basis for foreign market value. For these firms, we selected sales for export to a country other than the United States (third countries) as a basis for foreign market value pursuant to section 773(a)(1)(B) of the Act. Our selection of a particular third country to be used for fair value comparisons for each Taiwanese producer was made, in order of preference, on the following bases: (1) The comparability of the bicycles sold in each country to those sold in the United States, and (2) the third country with the largest sales volume to any country outside the home market or the United States. Using these bases the following third countries were selected for each Taiwanese bicycle producer:

Name of firm	Third Country selected
Asahi	Australia.
Ching Tong Shan	Panama.
Dodsun	Australia.
EE Co	Australia.
Fairly	Australia.
Liyang	Venezuela.
Pacific	Great Britain.
Sheng Fa	Venezuela.
Sony	Panama.
Taiwan Hodaka	Australia.
Wheeler	Australia.
Willing Co	Australia.

We calculated third country price on the basis of the f.o.b., or c.&f. price to unrelated purchasers for sale in the third country selected. We made deductions, where appropriate, for inland freight, ocean freight, brokerage charges, selling commission, export promotion fee and stamp tax. We also made additions for import duties, which were rebated or not collected by reason of the exportation of the merchandise, equal to those amounts added to United States price. We made circumstance of sale adjustments for differences between U.S. and third country payment terms and direct advertising. We also adjusted for differences in packing and for physical differences in merchandise.

Verification

For purposes of this preliminary determination, we have verified the data used in reaching the determination in this investigation, by using standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and randomly selected documents containing relevant information. In accordance with 776(a) of the Act, we will verify all data used in reaching a final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of bicycles from Taiwan, with the exception of those bicycles produced by Asahi, Dodsun, GMC, KHS, Liyang, Merida, Pacific, Sony, Taiwan Hodaka, Wheel King, and Willing, which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** With the exception of these the Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer and status	Weighted average margin percentage
Asahi (excluded)	0.37
Ching Tong Shan (subject to suspension)	1.11
Dodsun (excluded)	0.37
EE Co. (subject to suspension)	2.31
Fairly (subject to suspension)	3.16
GMC (excluded)	0.20
KHS (not subject to suspension but not excluded from this preliminary determination)	0.09
Liyang (excluded)	0.00
Merida (excluded)	0.00
Pacific (not subject to suspension but not excluded from this preliminary determination)	0.13
Sheng Fa (subject to suspension)	1.90
Sony (excluded)	0.00
Taiwan Hodaka (not subject to suspension but not excluded from this preliminary determination)	0.10
Wheeler (subject to suspension)	1.10
Wheel King (excluded)	0.00
Willing (not subject to suspension but not excluded from this preliminary determination)	0.20
All others	0.65

Although Pacific, KHS, Taiwan Hodaka and Willing have *de minimis* margins, we are not excluding these four firms from this preliminary determination because further information is needed from them which will allow the Department to make more extensive comparisons. If this information is received in a timely manner and verified, these four firms will be considered for exclusion in the final determination.

ITC Notification

In accordance with Section 733(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring or threatening to materially injure a U.S. industry, before the latter of 120 days after the Department makes its preliminary affirmative determination or 45 days after the Department makes its final affirmative determination.

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on May 26, 1983, at the U.S. Department of Commerce, room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by May 19, 1983. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within thirty days of publication of this notice, at the above address in at least 10 copies.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

April 22, 1983.

[FR Doc. 83-11339 Filed 4-28-83; 8:45 am]

BILLING CODE 3510-25-M

Antidumping; Certain Stainless Steel Sheet and Strip Products From France; Final Determinations of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final determinations of sales at less than fair value.

SUMMARY: We have determined that certain stainless steel sheet and strip products from France are being sold in the United States at less than fair value. The United States International Trade Commission (ITC) will determine within 45 days of publication of this notice whether these imports are materially injuring, or are threatening to materially injure, a United States industry.

EFFECTIVE DATE: April 29, 1983.

FOR FURTHER INFORMATION CONTACT: Raymond G. Busen, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230; (202–377–1276).

SUPPLEMENTARY INFORMATION:

Case History

On May 10, 1982, we received a petition filed by counsel on behalf of 11 United States specialty steel producers and on behalf of the United Steelworkers of America. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports from France of certain stainless steel sheet and strip products are being sold, or are likely to be sold, in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or are threatening to materially injure, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds to initiate antidumping investigations. We notified the ITC of our action and started investigations on June 1, 1982 (47 FR 24764). On June 24, 1982, the ITC found that there is a reasonable indication that imports of stainless steel sheet and strip products are materially injuring, or are threatening to materially injure, a United States industry. We determined this case to be "extraordinarily complicated," as defined in section 733(c) of the Act.

Therefore, we extended the period for making our preliminary determinations by 50 days until December 6, 1982 (47 FR 41799).

Questionnaires were presented to the Chatillon Division of Union Siderurgique (Usinor), Peugeot-Loire, and Ugine-Gueugnon on June 9, 10 and 18, 1982, respectively. The responses of Usinor and Peugeot-Loire were received in October 1982. Ugine-Gueugnon submitted computer tapes regarding sales information on November 17, 1982, and responses were received on November 24 and December 16, 1982. Chatillon also answered supplemental questions which were received on October 12, 1982.

The petitioners also alleged that sales in the home market were at prices below the cost of production. In letters dated September 21 and 22, 1982, petitioners provided information in support of their allegation. On October 15 and 18, 1982, after having determined that petitioners' information was adequate to support their allegation, we requested that cost of production information be submitted not later than December 2, 1982, which was later extended to and received by December 16, 1982.

On December 3, 1982, we preliminarily determined that certain stainless steel sheet and strip products from France were being, or were likely to be, sold in the United States at less than fair value (47 FR 55404). In making the preliminary determinations, we used best evidence available for Ugine-Gueugnon because their late filings did not allow us sufficient time to analyze the data.

Our notice of preliminary determinations provided interested parties an opportunity to submit views orally and in writing. On January 4, 1983, we held a public hearing.

On January 13, 1983, we published a notice extending the period for making the final determinations by 60 days until April 25, 1983, at the request of exporters who accounted for a significant proportion of exports of this merchandise in accordance with section 735(a)(2)(A) of the Act (48 FR 1529).

Verifications were conducted at the Paris offices of Chatillon Division of Usinor, Ugine-Gueugnon, and Peugeot-Loire on February 16–18, 22–24, and 25, 1983, respectively. Verification of the exporter's sales price portion of Ugine-Gueugnon's questionnaire response was conducted at the offices of Intsel Corporation in New York City on March 16, 1983.

Scope of Investigations

The products covered by these investigations are certain stainless steel sheet and strip products. For a further description of these products, *see* the appendix appearing with this notice. The appendix appearing with the preliminary determinations notice (47 FR 55404) incorrectly stated that the width of hot-rolled stainless steel sheet covered by these investigations was "not over 12 inches in width." The word "not" was inadvertently inserted. The correct wording, as it now appears in the attached appendix, should read "over 12 inches in width."

Since Usinor, Ugine-Gueugnon, and Peugeot-Loire export virtually all the certain stainless steel sheet and strip products exported from France to the United States, we limited our investigations to them.

These investigations cover the period from August 1, 1981 to May 31, 1982 for purchase price sales, and from August 1, 1981 to January 31, 1982 for exporter's sales price transactions.

None of the manufacturers have had sales of hot-rolled sheet and strip during the period of investigation. In the absence of assurances that they will not sell hot-rolled sheet and strip, we conclude that there is a likelihood of sales at less than fair value. Therefore, we are applying the same weighted-average margin for hot-rolled sheet as we did for cold-rolled sheet and the same weighted-average margin for hot-rolled strip as we did for cold-rolled strip.

Fair Value Comparison

To determine whether sales of cold-rolled stainless steel sheet and strip in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of cold-rolled stainless steel sheet and strip to represent the United States price for sales by Usinor and Peugeot-Loire and for certain sales by Ugine-Gueugnon because the merchandise was sold prior to the date of importation to unrelated United States purchasers. For other sales by Ugine-Gueugnon, we used exporter's sales price because the merchandise was sold by Intsel Corporation to unrelated purchasers in the United States after the date of importation.

We calculated the purchase price based on the c. & f., c.i.f., c.i.f. delivered duty paid, or f.o.b. packed price to unrelated purchasers. Where appropriate, we made a deductions for foreign inland freight, ocean freight, marine insurance, discounts and rebates, United States duty, United States inland freight, and United States inland insurance. We also made deduction for a value-added tax, erroneously reported as an uncollected export duty and included in the United States sales prices reported by Usinor, as the home market prices reported to us contained no amount for this tax.

Ugine-Gueugnon: Our investigation indicated that the amount for ocean freight was greater than what was

reported. We deducted the verified amount for ocean freight.

Credit costs were overstated for some United States customers due to a computation error. The corrected amounts were used in the final determinations.

We deducted previously unreported warehousing expenses on exporter's sales price sales from warehouse stock. We also computed and deducted an interest cost amount for carrying the merchandise in inventory.

Usinor: We did not adjust home market prices for items reported as direct selling expenses in the United States because they were considered to be general expenses.

A value added tax, erroneously described as an uncollected export duty and included in the United States sales prices reported by Usinor, was deducted from the United States price as the home market prices reported to us contained no amount for this tax.

Peugeot-Loire: Foreign inland freight relating to United States sales was found to be understated. We used the corrected amount in making our determinations.

Foreign Market Value

In accordance with section 773 of the Act, we calculated foreign market value based on home market sales for sales by Usinor and Peugeot-Loire, and for certain sales by Ugine-Gueugnon. For purposes of determining similar merchandise under section 771(16) of the Act, we made comparisons based on dimensional categories selected by a Commerce Department industry expert. The number of dimensional categories were increased subsequent to our preliminary determinations in order to make closer comparisons as to size.

The petitioners alleged that sales in the home market were below cost of production. We examined production costs including costs of materials, labor, and general expenses. We found sufficient sales of cold-rolled stainless steel sheet and strip products made at or above cost for Usinor and Peugeot-Loire to use them for price-to-price comparisons with sales in the United States market.

In the case of Ugine-Gueugnon, for certain categories of cold-rolled stainless steel sheet, we found that sales were made at less than cost over an extended period of time, in substantial quantities and at prices not permitting recovery of all costs within a reasonable period of time. Consequently, we could not use sales in the home market for these categories of cold-rolled stainless steel sheet to determine foreign market value. For Ugine-Gueugnon, for all other categories of cold-rolled stainless steel sheet, there were sufficient sales at or above cost of comparable merchandise. Therefore, for these categories we used home market sales prices to determine foreign market value.

Where we used constructed value as the basis for the foreign market value for Ugine-Gueugnon, we calculated the constructed value on the basis of the costs of production reported by Ugine-Gueugnon. These costs were for materials and fabrication, including general, selling and administrative expenses. Since general expenses were below the 10 percent minimum, we applied the 10 percent minimum to the costs reported.

We used the statutory 8 percent minimum profit because information submitted by Ugine-Gueugnon indicated a profit less than that amount. We also added packing to the United States as appropriate.

The home market prices for all three manufacturers were based upon delivered, packed prices to unrelated purchasers. From these prices we deducted, where appropriate, inland freight, discounts, and rebates. We made adjustments, where appropriate, for credit costs, warranty costs, bad debts expenses, and differences in the merchandise. Where we compared exporter's sales price with foreign market value, we treated the credit expenses as deductions and also deducted indirect selling expenses to offset United States selling expenses.

Usinor: We allowed warranty expenses as a circumstance of sale adjustment. We also allowed an amount for bad debts expenses as a circumstance of sale adjustment because we were provided with specific uncollected invoices which related to firms which went bankrupt during the period of investigation.

We did not allow a claimed deduction for higher administrative expenses in connection with small quantity sales because Usinor could not establish that the amount of the price differential on these sales was wholly or partly due to the differences in the quantities sold.

Peugeot-Loire: Foreign inland freight was found to be understated. We used the corrected amount in making our determinations. We also made a deduction for sales turnover rebates granted customers on a quarterly or yearly basis after invoicing.

We did not allow a claimed circumstance of sale adjustment for Peugeot-Loire's interest costs of maintaining a finished goods inventory to meet the needs of certain customers because the claimed costs were not directly related to sales as required by section 353.15 of the Commerce Regulations.

Ugine-Gueugnon: We did not adjust home market prices for items reported as direct selling expenses because they were considered to be general expenses.

Verification

In accordance with section 776(a) of the Act, we verified all the information used in making these determinations. We were granted access to the books and records of Ugine-Gueugnon, Usinor, Peugeot-Loire, and Intsel Corporation. We used standard verification procedures, including examination of accounting records, financial statements and selected documents containing relevant information.

Results of Investigations

We made fair value comparisons on all the reported cold-rolled stainless steel sheet and strip sold in the United States by the three French companies during the investigative period. For cold-rolled stainless steel sheet, margins were found on 38 percent of metric tons sold. The margins ranged from .01 percent to 46.5 percent. The overall weighted-average margin on these sales was 3.6 percent. For cold-rolled stainless steel strip, margins were found on 66.7 percent of metric tons sold. The margins ranged from .1 percent to 55.3 percent. The overall weighted-average margin on these sales was 6.5 percent.

Petitioners' Comments

Comment 1: The Department's preliminary determinations did not include an analysis of home market sales below the French producers' costs of production. Only such an analysis would yield true and accurate dumping margins.

DOC Position: Cost of production information was not furnished until December 1982, too late to be considered for our preliminary determinations. The cost of production information has been considered in making our final determinations.

Comment 2: The Department should reject Usinor's claims for adjustments for claimed differences in physical characteristics. Usinor's claims that cold-rolled stainless steel sheet and strip products sold in the home market require a higher level of finishing and treatment than do such products sold in the United States, primarily through steel service centers, are not justified. Products of like form, grade, dimension, and surface finish that are sold in France and exported to the United States are basically the same, including the costs of production.

DOC Position: We found that Usinor provided resquaring and other special tolerances and thickness and physical properties on its home market sales. Claims for these adjustments were based on differences in material costs, labor, and overhead expenses and were allowed as an adjustment for differences in the merchandise. We allowed a claimed adjustment for ultrasonic testing expenses that was included with these special items as an adjustment for circumstance of sale.

Comment 3: The Department should reject Usinor's claim for adjustments for differences in levels of trade at which Usinor's products are sold in the French and United States markets because the purchasing practices differ little in the two markets.

DOC Position: In accordance with § 353.19 of the Commerce Regulations, we found that there were sufficient sales at the same commercial level of trade in both markets to permit an adequate comparison of the United States price with the home market price without making a level of trade adjustment.

Comment 4: The Department should reject Usinor's claim for adjustments for differences in circumstances of sale because Usinor has not provided evidence to justify its claims.

DOC Position: As stated in the "Foreign Market Value" section of this notice, we allowed certain adjustments for circumstances of sale after verifying that the amounts claimed were proper under section 773 of the Act.

Respondents' Comments

Usinor—Comment 1: In making its preliminary determinations, the Department failed to take into account, when calculating margins of less than fair value sales, the adjustments claimed for differences in physical characteristics, differences in level of trade, and differences in circumstances of sale.

DOC Position: Our position is stated above under Comments 2, 3 and 4 to Petitioners' Comments.

Usinor—Comment 2: In making its preliminary determinations, the Department investigated an inadequate number of Usinor's sales to the United States (80 percent) because of the Department's claim that there were no comparable sales of similar merchandise in the home market. After furnishing additional information regarding the remaining sales, Usinor urged the Department to amend its prelinimary determinations to reflect an investigation of such further sales.

DOC Position: For purpose of our preliminary determinations with respect to sales by Usinor, we grouped sales of cold-rolled stainless steel sheet and strip to the United States into subgroups based on dimension, grade, and surface treatment of the product. These subgroups covered approximately 80 percent of Usinor's United States sales. The remaining sales were not considered because we could not find similar grades in the home market to match grades in the United States market.

We subsequently received additional information indicating the cost differences between grades in the two markets. We made adjustments to reflect the differences.

We did not amend the preliminary determinations to reflect the additional sales information because it is not our practice to amend when additional information is received between the preliminary and final determination dates.

Usinor—Comment 3: The "best information available" of what Usinor's antidumping duty bonding rate for sales of cold-rolled stainless steel strip should be, is the eight percent rate preliminarily determined by the Department for Usinor's sales of cold-rolled stainless steel sheet. It is not the 18 percent rate attributed to "Other manufacturers/producers/exporters" as alleged in the petition.

DOC Position: Sales information submitted on computer tapes prior to the preliminary determinations indicated that Usinor did not sell cold-rolled stainless steel strip in the United States market. Subsequently, however, Usinor advised us that it did have strip sales to the United States during the period February through May 1982, and submitted the new sales information during verification. These sales had not been reported previously because Usinor's original sales information covered the original six-month investigation period of August 1981 through January 1982. The investigation period was later extended to 10 months and covered the period August 1981 through May 1982.

The additional sales information regarding cold-rolled stainless steel strip sales has been taken into consideration for the final determinations.

Usinor—Comment 4: The Department should release to all parties to the investigation the computer programs used to calculate dumping margins, and should release to each respondent the computer printout showing each calculation.

DOC Position: The Department has released the computer printout which shows the margin calculations used in the preliminary determinations. We have denied a Freedom of Information Act request for release of the computer program and are holding discussions with counsel for Usinor and the Department's Assistant General Counsel for Administration concerning the appeal of the request for release of the computer program.

Usinor—Comment 5: The subgroups established by a steel industry expert employed by the Department for the purpose of establishing a means of comparing "such or similar merchandise" sold in the United States and the home market should be amended so as to differentiate between cold-rolled stainless steel sheets in sheets and cold-rolled stainless steel sheets in coils.

DOC Position: We have added six subgroups to differentiate between coils and cut-to-length sheets. This allowed us to differentiate between coil products and cut-to-length products and match the products in their respective markets.

Usinor—Comment 6: The Department should disclose the methods it will use to evaluate the cost of production information submitted by respondents and the application of the methods to such information. It should provide respondents an opportunity to comment before using such methods in the final determinations.

DOC Position: As stated in the preliminary determinations notice (47 FR 55404), after having determined that the petitioners' supplemental information was adequate to support their allegation of home market sales at prices below the cost of production, we investigated those allegations. The information submitted by the respondent regarding the allegation, which was not received until after the preliminary determinations, has been taken into consideration in making the final determinations.

Further, we follow an established policy of disclosing the results of our analysis only after a determination based on that analysis is finalized. Therefore, a disclosure prior to the final determinations would be in conflict with established Departmental policy.

The remaining respondents supplied no comments.

Final Determinations

Based on our investigations and in accordance with section 735(a) of the Act, we have reached final determinations that certain stainless steel sheet and strip products from France are being sold in the United States at less than fair value within the meaning of section 731 of the Act.

Continuation of Suspension of Liquidation

Liquidation will continue to be suspended on all entries of certain stainless steel sheet and strip products that are entered into the United States, or withdrawn from warehouse, for consumption. The United States Customs Service will continue to require the posting of a cash deposit, bond, or other security in amounts based on the following weighted-average margins for certain stainless steel sheet and strip products from France. The security amounts established in our preliminary determinations of December 3, 1982, are no longer in effect.

	Weighted-average margins
Hot-Rolled Stainless Steel Sheet:	
Ugine-Gueugnon	3.0
Usinor	5.5
Peugeot-Loire	6.1
All other manufacturers/producers/exporters	3.6
Hot-Rolled Stainless Steel Strip:	
Ugine-Gueugnon	3.9
Usinor	14.8
Peugeot-Loire	14.6
All other manufacturers/producers/exporters	6.5
Cold-Rolled Stainless Steel Sheet:	
Ugine-Gueugnon	3.0
Usinor	5.5
Peugeot-Loire	6.1
All other manufacturers/producers-exporters	3.6
Cold-Rolled Stainless Steel Strip:	
Ugine-Gueugnon	3.9
Usinor	14.8
Peugeot-Loire	14.6
All other manufacturers/producers/exporters	6.5

ITC Notification

We are notifying the ITC and making available to it all non-privileged and non-confidential information relating to these determinations. We will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC determines that such injury does exist, we will issue an antidumping order directing Customs officers to assess an antidumping duty on certain stainless steel sheet and strip products from France entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price. These determinations are being published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Dated: April 22, 1983.

Lawrence J. Brady,

Assistant Secretary for Trade Administration.

Appendix—Product Description: Certain Stainless Steel Sheet and Strip Products

For the purpose of these investigations, the term "certain stainless steel sheet and strip products" covers hot- or cold-rolled stainless steel sheet or strip, excluding hot- or cold-rolled stainless steel strip not over 0.01 inch in thickness, as currently provided for in items 607.7610, 607.9010, 607.9020, 608.4300, and 608.5700 of the *Tariff Schedules of the United States Annotated.*

Hot-rolled stainless steel sheet covers hot-rolled stainless steel sheet products whether or not corrugated or crimped and whether or not pickled; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; and under 0.1875 inch in thickness and over 12 inches in width.

Hot-rolled stainless steel strip is a flat-rolled stainless steel product whether or not corrugated or crimped and whether or not pickled; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; and under 0.1875 inch in thickness and not over 12 inches in width. Hot-rolled stainless strip, including razor blade strip, not over 0.01 inch in thickness is not included.

Cold-rolled stainless steel sheet covers cold-rolled stainless steel sheet products whether or not corrugated or crimped and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; and under 0.1875 inch in thickness and over 12 inches in width.

Cold-rolled stainless strip is a flat-rolled stainless steel product whether or not corrugated or crimped and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; under 0.1875 inch in thickness and over 0.50 inches in width but not over 12 inches in width. Cold-rolled stainless steel strip, including razor blade strip, not over 0.01 inch in thickness is not included in these investigations.

[FR Doc. 83-11395 Filed 4-28-83; 8:45 am]

BILLING CODE 3510-25-M

Antidumping; Preliminary Determination of Sales at Less Than Fair Value Portland Hydraulic Cement From Japan

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less than Fair Value: Portland Hydraulic Cement from Japan.

SUMMARY: We have preliminarily determined that portland hydraulic cement from Japan is being, or is likely to be, sold in the United States at less than fair value. Therefore, we have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin described in the "Suspenison of Liquidation" section of this notice.

We have also preliminarily determined that imports of portland hydraulic cement from Sumitomo Cement Company, Ltd. (Sumitomo) should be excluded from this prelimianry determination because we found no sales at less than fair value.

If this investigation proceeds normally, we will make a final determination by July 5, 1983.

EFFECTIVE DATE: April 29, 1983.

FOR FURTHER INFORMATION CONTACT: Terry Link, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377-0189.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that there is a reasonable basis to believe or suspect that portland hydraulic cement from Japan is being, or is likely to be, sold in the United States at less than "fair value," as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act).

We have also preliminarily determined that imports of portland hydraulic cement from Sumitomo should be excluded from this preliminary determination because we found no sales by Sumitomo at less than fair value.

The estimated margins for Nihon Cement Company, Ltd. (Nihon), are based on the best information availabe, as explained in the section of this notice which describes our fair value comparisons.

We have found that the foreign market value of portland hydraulic cement exceeded the United States price on 27.76 percent of sales. These margins ranged from 0.00 percent to 57.98 percent. The overall weighted-average margin on all sales compared is 16.10 percent. The weighted-average margins for individual companies investigated are presented in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by July 5, 1983.

Case History

On September 23, 1982, we received a petiton filed by counsel on behalf of Kaiser Cement Corporation; Gifford-Hill Cement Company; Monolith Portland Cement Company; Nevada Cement Company; the Stone, Glass and Clay Coordinating Committee, AFL/CIO; and the United Cement, Lime, Gypsum, and Allied Workers International Union, AFL/CIO; CLC. In accordance with the filing requirements of § 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petitioners alleged that portland hydraulic cement from Japan is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on October 19, 1982 (47 F.R. 46558). On November 8, 1982, the ITC found that there is a reasonable indication that imports of portland hydraulic cement are materially injuring, or are threatening to materially injure, a United States industry.

The petition alleges that Sumitomo and Nihon produce portland hydraulic cement for exort to the United States. Questionnaries were presented to the respondents on November 9, 1982. Responses were received from Sumitomo on December 17, 1982, and February 1, 1983. On February 10, 1983, Nihon submitted incomplete information, unaccompanied by the required non-confidential summary.

Unless extended, the preliminary determination in this investigation was scheduled for March 2, 1983. Pursuant to section 733(c)(1)(A) of the Act, we subsequently postponed the preliminary determination to no later than April 21, 1983 (48 F.R. 7243).

Scope of Investigation

For purposes of this investigation, the term "Portland hydraulic cement" covers portland hydraulic cement, other than white, non-staining portland cement, currently classifiable under item 511.1440 of the *Tariff Schedules of the United States Annotated.*

Since Sumitomo and Nihon manufactured all the portland hydraulic cement exported from Japan to the United States during the period of investigation, we limited our investigation to them.

This investigation covers the period from March 1, 1982, to September 30, 1982.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by Sumitomo and Nihon because the merchandise was sold to unrelated trading companies for resale to the United States, and the manufacturers knew the destination of the merchandise at the time of the sale. For Sumitomo, calculation of purchase price was based on the f.o.b. price of bulk cenemt to unrelated trading firms in the home market for export to the United States. We made deductions for foreign inland freight, foreign inland insurance, commissions and foreign brokerage.

In the case of Nihon, we used best information available, in accordance with section 776(b) of the Act, because a proper response was not submitted. A full discussion of the reasons for using the best information available is contained in the "Supplemental Information Requsted" section of this notice. The best information available for purposes of this preliminary determination is the information contained in the petition. This information consists of the f.o.b. port-of-exportation price to the United States with deductions for commissions and handling charges. The petitioners have shown that an additional deduction from the United States price is appropriate for credit expenses, for which we have adjusted in our calculation of home market sales prices.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value for Sumitomo based on its home market sales. For Nihon, we used the best information available as explained below.

For Sumitomo, we calculated the home market prices on the basis of delivered, unpacked prices to unrelated purchasers. We made deductions for foreign inland freight and discounts. We also made adjustments for differences in credit expenses and differences in the merchandise. Adjustments for the differences in the merchandise were based on the differences in the costs of materials, labor and directly-related factory overhead. We also made a deduction for indirect selling expenses as an offset to commissions deducted from the United States sales prices.

We have preliminarily determined that the moderate heat cement (MC) sold by Sumitomo in Japan is most similar to Type II portland hydraulic cement sold in the United States in accordance with the provisions of section 771(16) of the Act.

The petitioners provided information contrary to that furnished by Sumitomo in which ordinary portland cement (PC) was supported as the most similar type of cement sold in the home market to the Type II cement sold to the United States. We weighed this information against that of the respondent. We also reviewed the specifications of both PC and MC in conjunction with those of Type II cement and consulted with a National Bureau of Standards cement expert before making our decision.

Without formally making an allegation, the petitioners suggested the possibility of sales of MC in the home market at less than the cost of production. If we receive a proper allegation of sales at less than cost of production in the home market in time to request, analyze, and verify cost data from Sumitomo, we will consider this allegation for our final determination.

Sumitomo claimed adjustments for "direct selling expenses" and technical services expenses, but it has not established that these expenses are directly related to their sales of cement in Japan, as required by § 353.15(a) of the Commerce Regulations. We consider expenses of the type claimed to be indirect selling expenses. We allowed these expenses as an offset to commissions paid on sales to the United States in accordance with § 353.15(c) of the Commerce Regulations.

Sumitomo claimed a deduction for general selling and administrative expenses in the home market, including quality control, testing and inspection. However, amounts for general selling and administrative expenses are not allowable adjustments under § 353.15(a) of the Commerce Regulations, since they are not directly related to the sales under consideration. Indirect selling expenses were, however, also allowed as an offset for commissions paid on the United States sales.

In the case of Nihon, we used the best information available, in accordance with section 776(b) of the Act, because a proper response to our questionnaire was not received. A full discussion of the reasons for using the best

information available is contained in the "Supplemental Information Requested" section of this notice. The best information available for purposes of this preliminary determination is the information contained in the petition. This information consists of delivered selling prices in Japan with deductions for handling charges, inland freight costs, and selling expenses as an offset to commissions deducted from the United States sales prices. An adjustment was also made for differences in credit costs.

Supplemental Information Requested

Section 776(b) of the Act states that whenever any party refuses or is unable to produce information requested, the Commerce Department may use the best information otherwise available for determining the existence of sales at less than fair value. We did so with respect to Nihon for the following reasons.

We presented the questionnaire to Nihon on November 9, 1982. The response was due not later than December 9, 1982. Subsequently, at the request of the respondent, we granted several extensions of the response period. Nihon was cautioned on January 11, 1982, that we might not be able to use its information for the preliminary determination if its response was recieved too late for analysis.

Incomplete data were recieved from Nihon on February 10, 1983. This information was not accompanied by a non-confidential summary as required by § 353.28(a)(1) of the Commerce Regulations. We requested additional data and non-confidential summaries on March 11, 1983. On April 1, 1983, we received additional data which were also incomplete.

We have returned Nihon's submissions and requested that it submit complete data with non-confidential summaries. If Nihon submits complete and properly summarized data in time for analysis and verification, we may use them for our final determination.

Verification

We will verify all data used in reaching the final determination in this investigation, as provided in section 776(a) of the Act.

Suspension of Liquidation

In accordance with secion 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of portland hydraulic cement from Japan, with the exception of imports of portland hydraulic cement produced and exported by Sumitomo. This suspension of liquidation applies to all merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturers/producers/exporters	Weighted-average margins (percent)
Sumitomo Cement Company, Ltd.	0.00[1]
Nihon Cement Company, Ltd.	57.98
Other manufacturers/producers/exporters	16.10

[1] Imports of this product from Sumitomo Cement Company, Ltd. are excluded from this preliminary determination, because we found no sales at less than fair value.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy (for Policy) to the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring or are threatening to materially injure a U.S. industry before the later of 120 days after the Department of Commerce makes its preliminary affirmative determination or 45 days after the Department makes its final affirmative determination.

Public Comment

In accordance with § 353.47 of the Commerce Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on May 25, 1983, at the U.S. Department of Commerce, Room B841, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy (for Policy) to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy (for Policy) to the Deputy Assistant Secretary by May 19, 1983. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Judith Hippler Bello,

Deputy (for Policy) to the Deputy Assistant Secretary for Import Administration.

April 21, 1983.

[FR Doc. 83-11509 Filed 4-28-83; 8:45 am]

BILLING CODE 3510-25-M

Antidumping; Preliminary Determination of Sales at not Less Than Fair Value; Steel Wire Rope From the Republic of Korea

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary determination of sales at not less than fair value: Steel wire rope from Korea.

SUMMARY: We have preliminary determined that steel wire rope from the Republic of Korea (Korea) is not being, nor is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We found either zero or *de minimis* margins for all firms investigated.

If this investigation proceeds normally, we will make a final determination by July 11, 1983.

EFFECTIVE DATE: April 29, 1983.

FOR FURTHER INFORMATION CONTACT: Paul Thran, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1766.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that there is no reasonable basis to believe or suspect that steel wire rope from Korea is being, or is likely to be, sold in the United States at less than fair value, as provided in seciton 733 of the Tariff Act of 1930, as amended (the Act). We found an overall weighted-average margin of less than 0.5 percent for

exports of steel wire rope. This is *de minimis*. The preliminary results for each company are as follows:

Firm	Weighted-average margin percentage	Percentage of total sales compared
Boo-Kook Steel & Wire Co	0.48	99.3
Dong-Il Steel Mfg., Co	0.31	95.5
Korea Iron & Steel Works	0.02	95.2
Korea Sangsa Co	0.00	72.0
Young Heung Iron & Steel Co	0.14	98.8

If this investigation proceeds normally, we will make a final determination by July 11, 1983.

Case History

On September 28, 1982, we received a petition filed by counsel on behalf of the Committee of Domestic Wire Rope and Specialty Cable Manufacturers. In accordance with the filing requirements of § 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petitioner alleged that steel wire rope from Korea is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a U.S. industry. The petition also alleged that critical circumstances, within the meaning of section 733(e) of the Act, exist.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on October 18, 1982 (47 FR 47054). The ITC subsequently found, on November 12, 1982, that there is a reasonable indication that imports of steel wire rope are materially injuring, or are threatening to materially injure, a United States industry.

The petitioner alleged that a number of Korean companies produce steel wire rope for export to the United States. However, four producers, Korea Iron & Steel Works, Ltd. (KIS), Boo-Kook Steel & Wire Company, Ltd. (Boo-Kook), Dong-Il Steel Manufacturing Company, Ltd. (Dong-Il), and Young Heung Iron & Steel Company, Ltd. (Young Heung), produce more than 90 percent of the exports to the United States. Questionnaires were presented in Korea to these producers on November 2, 1982.

On November 29, 1982, we received a letter from counsel for the Korean wire rope producers requesting additional time in which to respond because of the large variety fo sizes and types of rope and the numbers of sales. Two additional weeks were granted and we received the responses on December 20, 1982. In addition to the responses from the four companies mentioned above, a fifth company, Korea Sangsa Company, Ltd. (Korea Sangsa), provided a response.

On January 20, 1983, we found this case to be extraordinarily complicatd because of the large number and complexity of the transactions and adjustments to be considered. We postponed our preliminary determination until April 26, 1983 (48 FR 2580).

Scope of Investigation

For purposes of this investigation, the term "steel wire rope" covers ropes, cables and cordage, other than wire strand, of steel, other than brass plated, not fitted with fittings, not made into articles, and not covered with textiles or other non-metallic materials, currently provided for in terms 642.1400, 642.1610 and 642.1650 of the *Tariff Schedules of the United States Annotated*.

Since the five respondents produced more than 90 percent of the steel wire rope exported from Korea to the United States during the period of investigation, we limited our investigation to them.

We investigated sales of wire rope which were made by these five producers during the period from April 1, 1982 to September 30, 1982.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by the Korean producers because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price for each type of wire rope based on the f.o.b., c.i.f., or c.&f., price to unrelated customers in the United States. We made deductions, were appropriate, for inland freight, ocean freight, marine insurance, product liability insurance, wharfage/stevedorage, brokerage and inspection. With the exception of Korea Sangsa we made an addition for import duties which were rebated or not collected by reason of the exportation of the merchandise to the United States, pursuant to section 772(d)(1)(B) of the Act. With respect to Korea Sangsa, we do not currently know the amount of import duties. Prior to the final determination in this investigation, we will seek to obtain this information and will add the amount to both purchase price and foreign market value, as appropriate.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on home market sales prices for KIS, Boo-Kook, Young Heung, and Dong-Il. For Korea Sangsa, we used sales prices for export to a country other than the United States (a "third country"), as required by section 773(a)(1)(B) of the Act. Korea Sangsa had no home market sales of the subject merchandise. We used Korea Sangsa's sales prices to the Federal Republic of Germany (Germany), the third country with the largest sales volume, for the purpose of calculating foreign market value.

We calculated the home market prices for each type of wire rope on the basis of the delivered prices to unrelated purchasers. We deducted inland freight. We made adjustments, where appropriate, for differences in the mechandise, packing and payment terms. For Korea Sangsa, we calculated third country price on the basis of the price to unrelated customers in Germany. We made deductions, where appropriate, for inland freight, ocean freight, and marine insurance. We made adjustments, where appropriate, for differences in merchandise, packing and payment terms.

Critical Circumstances

The petitioner alleged that "critical circumstances" exist with respect to imports of steel wire rope from Korea. Since we have preliminarily determined the subject merchandise has not been sold in the United States at less than fair value, we will not determine at this time whether critical circumstances exist. Should our final determination in this case be affirmative, we will address this allegation at that time.

Verification

For purposes of this preliminary determination, we have verified the data used in reaching the determination in this investigation, by using standard verification procedures, including on-site inspection of the books and records of the five manufacturers. In accordance with 776(a) of the Act, we will verify all data used in reaching a final determination in this investigation.

ITC Notification

In accordance with Section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on May 26, 1983, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by May 18, 1983. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within thirty days of publication of this notice, at the above address in at least 10 copies.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

April 22, 1983.

[FR Doc. 83-11506 Filed 4-28-83; 8:45 am]

BILLING CODE 3510-25-M

Antidumping Preliminary Determination of Sales at Less Than Fair Value; Portland Hydraulic Cement From Australia

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value: Portland hydraulic cement from Australia.

SUMMARY: We have preliminarily determined that portland hydraulic cement from Australia is being, or is likely to be, sold in the United States at less than fair value. Therefore, we have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or the posting of a bond for each such entry in an amount equal to the estimated dumping margin of 136.19 percent.

If this investigation proceeds normally, we will make a final determination by July 5, 1983.

EFFECTIVE DATE: April 29, 1983.

FOR FURTHER INFORMATION CONTACT: Terry Link, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377-0189.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that there is a reasonable basis to believe or suspect that portland hydraulic cement from Australia is being, or is likely to be, sold in the United States at less than "fair value," as provided in section 733 of the Tariff Act of 1930, as amended (the Act).

We have found that the foreign market value of portland hydraulic cement exceeded the United States price on 100 percent of sales. The margin for the one sale to the United States during the period of investigation was 136.19 percent.

If this investigation proceeds normally we will make a final determination by July 5, 1983.

Case History

On September 23, 1982, we received a petition filed by counsel on behalf of Kaiser Cement Corporation; Gifford-Hill Cement Company; Monolith Portland Cement Company; Nevada Cement Company; the Stone, Glass and Clay Coordinating Committee, AFL/CIO; and the United Cement, Lime, Gypsum, and Allied Worders International Union, AFL/CIO; CLC. In accordance with the filing requirements of section 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petitioners alleged that portland hydraulic cement from Australia is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on October 19, 1982 (47 FR 46557). On November 8, 1982, the ITC found that there is a reasonable indication that imports of portland hydraulic cement from Australia are materially injuring, or are threatening to materially injure, a United States industry.

Unless extended, the preliminary determination in this investigation was due no later than March 2, 1983. We determined that this investigation was "extraordinarily complicated" as defined in section 733(c)(1)(B0 of the Act. Therefore, we extended the deadline for making our preliminary determination to April 21, 1983 (48 FR 7243).

The petition alleged that Adelaide Brighton Cement, Ltd. (ABC) produces portland hydraulic cement for export to the United States. A questionnaire was presented to this firm on November 9, 1982. Responses were received on December 17, 1982 and March 1, 1983.

Scope of Investigation. For purposes of this investigation, the term "portland hydraulic cement" covers portland hydraulic cement, other than white, non-staining portland cement, currently classifiable under item 511.1440 of the *Tariff Schedules of the United States Annotated.*

Since ABC manufactured all the portland hydraulic cement exported from Australia to the United States during the period of investigation, we limited our investigation to that company.

This investigation covers the period from April 1 to September 30, 1982

Fair Value Comparison. To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price. As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price for the sale by ABC because the merchandise was sold to an unrelated export trading firm for resale to a U.S. purchaser and because ABC knew the destination of the merchandise at the time of the sale. We calculated purchase price based on the f.o.b., bulk price to the unrelated export trading

firm. We made deductions for wharfage and loading epenses.

Foreign Market Value. In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales by ABC of Type A cement. We calculated the home market prices on the basis of delivered or ex-factory bulk prices to unrelated purchasers. We made deductions, where appropriate, for inland freight and loading. We also made adjustments for differences in credit expenses and differences in the merchandise. Adjustments for the differences in the merchandise were based on the differences in the costs of power consumption.

In calculating foreign market value, we used sales in the home market of Type A cement. The respondent claimed that we should use sales in the home market of Type A clinker. Type A clinker is a precursor of cement which requires grinding and the addition of another material, usually gypsum, to make cement. We selected Type A cement sales in the home market for our comparison because the provisions of section 771(16) of the Act require the use of sales of the most similar merchandise in making fair value comparisons when identical merchandise is not sold.

The only sale of Type II cement to the United States during the period of investigation was a bulk sale considerably larger than any in the home market. Sales in the home market of Type A cement, which we consider most similar to Type II cement under section 771(16) of the act, were made in truckload bulk quantities of 5 to 25 tons.

We are not adjusting the home market price of cement for differences in quantity because there is no evidence in the record at present to support an adjustment for differences in cost which may be associated with the production and sale of sale of small tonnage lots in the home market relative to the large tonnage lot sold to the trading firm for export to the United States. If we receive verifiable information on cost differentials for quantity on a timely basis, we will consider using it for our final determination.

ABC claimed that we should adjust foreign market values for differences in selling expenses, technical services expenses, advertising expenses, and expenses associated with differences in the level of trade between the U.S. and the home market. ABC did not establish that its claimed selling expenses or technical services expenses were directly related to the sales of cement under consideration as required by § 353.15(a) of the Commerce Regulations. Therefore, we have made no allowance for these expenses.

ABC was able to show in only one instance that the claimed advertising expenses were attributable to a later sale by a purchaser. We would normally allow this expense as an adjustment to the home market selling price under § 353.15(a) of the Commerce Regulations. However, this expense was insignificant (0.002 Australian dollars per ton), so we disregarded this adjustment for the preliminary determination, in accordance with § 353.23 of the Commece Regulations.

ABC claimed two level of trade adjustments. We are not allowing either level of trade adjustment in this preliminary determination, because the respondent has not demonstrated any differences which would affect price comparability in accordance with section 353.19 of the Commerce Regualtions. If ABC submits verifiable information which justifies their claim for level of trade adjustments, we will consider using it in making our final determination.

Verification. For purposes of this preliminary determination, we verified sales data and information relative to adjustments claimed by ABC by using standard verification procedures, including examination of accounting records and selected documents containing relevant information. In accordance with section 776(a) of the Act, we will verify all data used in reaching a final determination in this investigation.

Suspension of Liquidation. In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of portland hydraulic cement from Australia. This suspension of liquidation applies to all merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The margins are s follows:

Manufacturers/producers/exporters	Margins (percent)
Adelaide Brighton Cement, Ltd	136.19
Other manufacturers/producers/exporters	136.19

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy (for Policy) to the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring or are threatening to materially injure a U.S. industry before the later of 120 days after the Department of Commerce makes its preliminary affirmative determination or 45 days after the Department makes its final affirmative determination.

Public comment

In accordance with § 353.47 of the Commerce Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on May 26, 1983, at the U.S. Department of Commerce, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy (for Policy) to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy (for Policy) to the Deputy Assistant Secretary by May 20, 1983. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Judith Hippler Bello,

Deputy (for Policy) to the Deputy Assistant Secretary for Import Administration.

April 21, 1983.

[FR Doc. 83-11508 Filed 4-28-83; 8:45 am]

BILLING CODE 3510-25-M

Countervailing; Galvanized Steel Wire Strand From South Africa; Suspension of Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of suspension of investigation.

SUMMARY: The Department of Commerce has decided to suspend the countervailing duty investigation involving galvanized steel wire strand from South Africa. The basis for the suspension is an agreement by Haggie Limited, the only known South African manufacturer and exporter of galvanized steel wire strand, to renounce all benefits which we find to be bounties or grants on exports of the subject merchandise to the United States.

EFFECTIVE DATE: April 29, 1983.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone: (202) 377–3965.

SUPPLEMENTARY INFORMATION: On November 17, 1982, we received a petition from counsel for Bethlehem Steel Corporation, Florida Wire and Cable Company, and Indiana Steel and Wire Company. The petition alleged that manufacturers, producers, or exporters in South Africa of galvanized steel wire strand receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. We found the petition sufficient, and on December 7, 1982, we initiated a countervailing duty investigation (47 FR 55986).

We presented a questionnaire concerning the allegations to the government of South Africa. On January 17, 1983, we received a response to the questionnaire.

On February 9, 1983, we preliminarily determined that the government of South Africa is providing bounties or grants to manufacturers, producers, and exporters of galvanized steel wire strand under two export programs. The programs preliminarily found to be countervailable were the Export Incentive Programs, categories A, B, and D; and the Iron/Steel Export Promotion Scheme.

Notice of the affirmative preliminary countervailing duty determination was published in the **Federal Register** on February 15, 1983 (48 FR 6756). We directed the U.S. Customs Service to suspend liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise on or after February 15, 1983, and to require a cash deposit or the posting of a bond in the amount of 23 percent of the f.o.b. value of the merchandise.

Counsel for Haggie Limited proposed entering into a suspension agreement pursuant to section 704 of the Tariff Act of 1930 (the Act), as amended (19 U.S.C. 1671c), and § 355.31 of the Commerce Regulations (19 CFR 355.31). On March 15, 1983, Haggie Limited and the Department of Commerce initialed a proposed suspension agreement, which was based upon Haggie's agreement to eliminate completely all benefits which we preliminarily found to be bounties or grants on exports of the subject merchandise to the United States.

On March 16, 1983, we provided copies of the proposed suspension agreement between Haggie Limited and the Department of Commerce to the petitioners and to other parties to the proceeding. After consulting with the petitioner and considering Haggie's comments, we have modified portions of the proposed suspension agreement.

On March 14 through March 25, 1983, we conducted a verification of Haggie's submission in this investigation. During verification, programs, not mentioned in the preliminary determination, were found. In the absence of additional information on operation and funding that we have requested, these programs appear to be conferring a benefit under the U.S. countervailing duty law. Accordingly we added a requirement that these programs be renounced in the suspension agreement as proposed and initialed.

New Programs

The General Levy and Import Subsidy Scheme

During the early 1970's, steel was in short supply in South Africa and had to be imported at prices higher than for steel produced in South Africa. In order to stabilize prices, the government absorbed the difference between the price controlled domestic and foreign price, but required repayment. The repayment program appears to be administered by the primary steel producers through the South African Steel Producers Coordinating Council (SASPCC). All secondary producers of steel products pay off the money advanced by the government, but exports are entitled to a rebate of R9.99 per metric ton while steel products for the domestic market are not entitled to a rebate from this fund. We do not have the operative laws and regulations applicable to the existence, operation and control of this program; the operational concepts have been described to DOC.

SEIFSA Training

Under the Manpower Training Act, the government approves programs for the vocational training of less than fully qualified hourly workers, sometimes referred to as artisans or apprentices. This vocational training is performed by associations operated by and/or for industrial councils. One such training facility is operated by the members of the Steel and Engineering Industries Federation of South Africa (SEIFSA). The purpose of this program is to develop an enlarging pool of skilled journeyman whose training is paid for by users and to prevent employers from unfairly benefitting by raiding skilled labor from other employers which the raiders have not paid to train. Each employer in SEIFSA is assessed a training fee which is based on a scale related to the number of artisans it employs. Any company that does training, with approved courses producing certified journeymen, is entitled to compensation from this training fund. We have no documentation on the types of things the fund will pay for. We do know that it is possible for a company to receive more funds from SEIFSA for training than it was assessed. We do not know if SEIFSA receives funds from sources other than from industrial council members. We do not know the schedules of benefits for training relating to salaries, expendibles and facilities.

Petitioner's Comments

Comment 1: Counsel for the petitioner contends that the Department should monitor prices under section 704(c) and include language in the agreement for this purpose. They cite another investigation in which Haggie renounced benefits and the price of that product was subsequently reduced despite that renunciation. Counsel cites an antidumping precedent on adjusting prices upwards as authority for DOC including such a provision in a countervailing duty determination.

DOC Position: Section 704(c) of the Act (19 U.S.C. 1671c(c)) is applicable only to suspension agreements which eliminate injurious effects of exports to the United States. Section 704(b) authorizes suspension agreements where, as here, respondent agrees to eliminate subsidies completely. There is no provision for price monitoring under this section 704(b). Assuming that the price history of other products, manufactured by the same respondent

and subject to another suspension agreement may be considered in determining whether to conclude this agreement, the price charges cited by petitioners' counsel have been attributed by the South African government to currency revaluation between the dollar and the rand. This revaluation was greater in magnitude than the subsidy found.

We have determined that respondent's agreement not to avail itself of South African programs which we have found or shall find to confer bounties or grants (on its exports to the United States of the products under investigation) is in the public interest. We have not determined that the respondent violated past agreements to give up benefits on exports to the United States of products covered by those agreements.

Antidumping investigations examine whether merchandise is being sold in the U.S. at a price which is less than fair value. Countervailing duty investigations inquire into the existence of a bounty or grant regardless of the selling price. Price considerations which may be germane to antidumping investigations are immaterial to this countervailing duty determination.

Comment 2: The statute requires that the quantity of merchandise exported between the effective date of the suspension agreement and the date when the subsidies are renounced should not exceed the most recent representative period as determined by DOC.

DOC Position: We agree that this provision of section 704(d) of the Act is required for this agreement. This suggestion has been adopted and incorporated in section B.3 of the suspension agreement.

Comment 3: The agreement should require the government of South Africa to provide resolutions, decrees and legislation applicable to subsidy programs. Also Haggie should be required to provide both the volume and value of exports of the products subject to this investigation.

DOC Position: The suspension agreement is with Haggie and not the government. We have adopted the suggestion on resolutions, decrees and legislation, but required these from Haggie rather than the government. Other reporting requirements, including volume and value, which were inherent in the initialed proposed suspension agreement, have been specifically indicated in the final agreement, section C. In view of the clear and specific requirement of Section C of the suspension agreement and Haggie's knowledge of programs found countervailable arising from involvement in this and preceding countervailing duty cases, we believe that Haggie is able to comply with these requirements fully.

Comment 4: Haggie should discontinue all benefit programs by June 1, 1983, or be required to raise its price by the amount preliminarily determined to be coutervailable (23 percent). Alternatively DOC should provide in the suspension agreement for self initiation of an antidumping investigation if there is no rise in prices.

DOC Position: The agreement provides a four-month phase of benefits, which is shorter than the maximum period authorized by the Act. Haggie says that it needs this time to ship orders for existing commitments. We have used this period in prior agreements with Haggie and have no compelling reason to deviate from past practice. The degree of stability of U.S. prices of imported strand does not establish the existence of dumping. If petitioners want an antidumping investigation initiated, they may file a new petition with reasonably available supporting documentation. Because antidumping requires the proof of injury to the U.S. industry, petitioners are in the best position to assemble the facts necessary for institution of an investigation.

Comment 5: Haggie should be required to forego countervailable benefits for all exports to all countries. Otherwise Haggie could "reshuffle" money for other products and for the merchandise for exports of galvanized steel wire strand to third countries. An export tax on all exports of galvanized steel wire strand is suggested.

DOC Position: Renunciation of benefits for exports of galvanized steel wire strand to the United States satisfies Haggie's statutory countervailing duty requirements. If this investigation went to a final affirmative determination, a countervailing duty on galvanized steel wire strand would be imposed on exports to the United States. As a general rule whether the exporter renounces its benefits on exports to the U.S. or an import tax is imposed on shipments to the U.S., the reach of countervailing duty law in this country does not extend to products for foreign destinations. There is and exception to this which is exemplified by the SEIFSA training where countervailable benefits received can not be related to specific products or destinations. (In this unusual instance the suspension agreement also covers the entire benefit since we have insufficient documentation to prove that only a lesser portion of receipts from SEIFSA is countervailable.) We are satisfied that a Section 704(b) renunciation of benefits can fulfill suspension agreement requirements of the Act even if petitioner's counsel suggests alternative provisions which might, in some circumstances, be alternatively appropriate.

Comment 6: Haggie should notify the DOC in advance if it intends to apply for any present or future benefits.

DOC Position: This suggestion has been adopted and is incorporated in section B(i) of the agreement.

Comment 7: Petitioners' counsel suggests we follow the settlement provisions of section 337 of the Tariff Act of 1930, as amended, where concurrence of all complainants is required.

DOC Comment: Section 337 applies to cases other than antidumping and countervailing duty and is administered by the International Trade Commission. Section 337 of the act is codified in 19 U.S.C. 1337. The applicable congressional intent to exclude the International Trade Commission from consideration of countervailing duty issues and from applying section 337 provisions to countervailing duty cases is codified in 19 U.S.C. 1337(b)(3).

Comment 8: Petitioner's counsel suggests that Haggie should not be allowed to apply for or receive benefits between the effective date of the suspension agreement and August 30, 1983. All benefits received aid future sales of the merchandise under investigation.

DOC Position: As noted in response to Comment 4 above, the Act provides for a phase out of benefits for up to six months. The present agreement phases out benefits in four months. This is reasonable, similar to other agreements with Haggie, and in accordance with the law.

Respondent's Comment

Comment 1: Haggie Limited construes Section 704(d) and 19 CFR 355.31(g) to allow it to export the total quantity previously exported to the United States in a representative (six month) period even though the phase out is for a shorter time (four months).

DOC Position: We do not accept the respondent's interpretation noting that the applicable law and regulation are captioned, "Exports not to increase during interim period." One of the characteristics of a representative period is that it is for substantially the same length of time as the phase out of benefits period.

Suspension of Investigation

We have determined that the agreement eliminates the bounties or grants completely with respect to the subject merchandise exported directly or indirectly to the United States, can be monitored effectively, and is in the public interest. Therefore, we find that the criteria for suspension of an investigation pursuant to section 704 of the Act have been met. The terms and conditions of the agreement are set forth in Annex 1 to this notice.

Pursuant to section 704(f)(2)(A) of the Act, the suspension of liquidation of entries or withdrawals from warehouse for consumption of galvanized steel wire strand from South Africa effective February 15, 1983, as directed in the preliminary affirmative countervailing duty determination, is hereby terminated. Any cash deposits on entries of galvanized steel wire strand from South Africa pursuant to that suspension of liquidation shall be refunded and any bonds posted shall be released.

The Department intends to conduct an administrative review within 12 months of the publication of this suspension as provided in section 751 of the Act.

Notwithstanding the suspension agreement, the Department will continue the investigtion if we receive such a request in accordance with section 704(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 704(f)(1)(A) of the Act.

Leonard M. Shambon,

Acting Deputy Assistant Secretary for Import Administration.

April 25, 1983.

Annex I—Suspension Agreement on Galvanized Steel Wire Strand from South Africa

Pursuant to the provisions of section 704(b) of the Tariff Act of 1930 (the Act) and § 355.31 of the Commerce Regulations, the United States Department of Commerce (the Department) enters into the following suspension agreement with Haggie Limited, Head Office, Lower Germinston Road, Jupiter, Johannesburg 2093, South Africa. On the basis of this agreement, the Department shall suspend its countervailing duty investigation initiated on December 7, 1982, with respect to galvanized steel wire strand from South Africa in accordance with the terms and provisions set forth below:

A. Product Coverage

The suspension agreement is applicable to galvanized steel wire strand manufactured by Haggie Limited in South Africa and directly or indirectly exported to the United States (hereinafter referred to as the subject product). Galvanized steel wire strand includes aluminum conductor steel reinforced (ACSR) core strand (except stainless) and other zinc coated steel wire strand currently provided for in items 642.1142 and 642.1144 of the *Tariff Schedules of the United States Annotated.*

B. Basis of the Agreement

1. Haggie Limited is the only known manufacturer and exporter of the subject product in South Africa. Haggie Limited voluntarily agrees not to apply for or receive any countervailing benefits from the South Africa Transport Service, the Export Incentive Programs administered by the South Africa Department of Industries, Commerce & Tourism, the Department of Inland Revenue, and the South African Steel Producers Coordinating Council on exports of the subject product. Specifically:

(a) Haggie Limited is paying and will continue to pay the domestic railroad rate on the subject product described in paragraph A above, for all shipments destined for the United States leaving Haggie Limited's factory on or after the effective date of this agreement.

(b) Effective April 1, 1982, the Central Government Rail Rebate has been terminated by the Republic of South Africa. Haggie Limited will not apply or receive countervailable benefits under this program if it is reinstated.

(c) Haggie Limited will not apply for or receive the tax credit (Category B) allowed on the value-added component of the subject product for all shipments entering the United States, or withdrawn from warehouse, for consumption on or after August 30, 1983.

(d) Effective April 1, 1982, the Finance Charges Aid Scheme has been terminated by the Republic of South Africa. Haggie Limited will not apply for or receive countervailable benefits under this program if it is reinstated.

(e) Haggie Limited will not apply for or receive a tax deduction on market development expenses under the Export Marketing Assistance Program (Category D) with respect to shipments of the subject product entering the United States, or withdrawn from warehouse, for consumption on or after August 30, 1983.

(f) Haggie Limited will not apply for or receive an income tax deduction for the customs duty paid on imported raw materials used in the production of exported materials (Category A) with respect to shipments of the subject product entering the United States or withdrawn from warehouse, for consumption on or after August 30, 1983.

(g) Haggie Limited will not apply for or receive any countervailable benefits under the General Levy and Import Subsidy Scheme administered by the South African Steel Producers Coordinating Council (SASPCC), with respect to shipments of the subject product entering the United States or withdrawn from warehouse for consumption on or after August 30, 1983.

(h) Haggie Limited will not participate in the Iron/Steel Export Promotion Scheme with respect to shipments of the subject product entering the United States, or withdrawn from warehouse, for consumption on or after August 30, 1983.

(i) Haggie Limited will not apply for or receive any countervailable benefits under the training programs operated by members of the Steel and Engineering Industrial Federation of South Africa (SEIFSA) on or after August 30, 1983.

(j) Haggie Limited shall notify the Department, within sixty days before taking any action, of any new potentially countervailable benefit it intends to apply for or of any present or future benefits it is receiving from the government of the Republic of South Africa with respect to shipments of the subject product entering the United States, or withdrawn from warehouse, for consumption on or after the effective date of this agreement except those specific benefits being phased out by August 30, 1983.

(k) Haggie Limited will not apply for or receive benefits under any other program subsequently determined by the Department in this or a subsequent proceeding to confer bounties or grants under the Act to the subject product.

(l) If any additional program is found countervailable in this or a subsequent proceeding the Department shall officially notify Haggie Limited.

(m) If any program that has been renounced in this agreement is subsequently determined not to be countervailable, Haggie Limited may officially notify the Department, who will determine whether to release the company from the obligation to continue the renunciation of that program in this agreement.

Renunciation of the receipt of these benefits does not constitute an admission by Haggie Limited that such benefits are bounties, grants or subsidies within the meaning of the U.S. countervailing duty law.

Haggie Limited certifies that no new countervailable benefits will be applied for or received for the subject product as a substitute for or supplement to any benefits eliminated by this agreement.

2. In accordance with the provisions of the Act and applicable regulations, this agreement applies to the product described in Paragraph A which is produced in South Africa and exported directly or indirectly to the United States.

3. Haggie Limited agrees that during the four-month period following the effective date of the suspension of the investigation the quantity of the subject product exported directly or indirectly to the United States from the Republic of South Africa, will not exceed the quantity of such exports during the four-month period of July through October, 1982.

C. Monitoring

Haggie Limited agrees to supply to the Department such information as the Department deems necessary to demonstrate that it is in full compliance with this agreement including, but not limited to, access to its financial records including receipts, payment records and vouchers, journals, and ledgers, and also copies of any resolutions, decrees, or legislation governing changes in the programs that it has renounced in this agreement. It shall also provide volume and value on exportation of galvanized steel wire strand to the United States and world-wide figures if necessary, and it shall provide copies of any application

and assessment forms for any programs that it has renounced in this agreement.

Haggie Limited will notify the Department if it: (1) Transships the subject product through third country, (2) alters its position with respect to any terms of the agreement, (3) applies for or receives directly or indirectly the benefits of the programs described in Part B of this agreement for the manufacture or exportation of the subject products.

Furthermore, Haggie Limited agrees to undertake the obligation to report to the Department within 15 days of the beginning of each calendar quarter (April, July, October, January) the volume of galvanized steel wire strand it has exported to the United States. Haggie Limited also agrees to permit such verification and data collection as deemed necessary by the Department in order to monitor this agreement. The Department shall request such information and perform such verifications periodically pursuant to administrative reviews conducted under section 751 of the Act.

D. Violation of the Agreement

If the Department determines that the agreement is being or has been violated or no longer meets the requirements of section 704 (b) or (d) of the Act, then the provisions of section 704(i) shall apply.

Signed on this 22nd day of April 1982.

For Haggie Limited.

Larry Klayman,

Special Counsel.

I have determined that the provisions of Paragraph B completely eliminate the bounties or grants being provided in South Africa with respect to galvanized steel wire strand exported directly or indirectly to the United States and that the provisions of Paragraph C ensure that this agreement can be monitored effectively pursuant to section 704(d) of the Act. Furthermore, I have determined that this agreement meets the requirements of section 704(b) of the Act and is in the public interest as required in section 704(d) of the Act.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

April 22, 1983.

[FR Doc. 83-11444 Filed 4-28-83; 8:45 am]

BILLING CODE 3510-25-M

Minority Business Development Agency

Minority Business Development Center Program; Minnesota

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) program to operate one project for a 12-month period beginning September 1, 1983 in the Minneapolis-St. Paul SMSA. The cost of the project is estimated to be $187,000. The maximum Federal participation amount is $168,300. The minimum amount required for non-Federal participation is $18,700. The award number will be 05-10-83005-01.

Applicants shall be required to contribute at least 10% of the total program costs through non-Federal funds. Cost-sharing contributions can be in the form of cash contributions, fee for services or in-kind contributions.

CLOSING DATE: June 2, 1983.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe, Suite 1440, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: John Kammerer Telephone: (312) 353-0182.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of this Announcement. Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to eligible clients in areas related to the establishment and operation of businesses. The MBDC program is specifically designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit through which and from which information and assistance to and about minority businesses are funneled.

B. Eligible Applicants: Awards shall be open to all individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.

C. Evaluation Process. All proposals received as a result of this announcement will be evaluated by a MBDA review panel.

D. Evaluation Criteria for Minority Business Development Center Applications. The evaluation criteria is designed to facilitate an objective evaluation of competitive applications for the Minority Business Development Center program.

MBDA reserves the right to reject any or all applications, including the application receiving the highest evaluation, and will exercise this right when it is determined that it is in the best interest of the Government to do so (e.g., the apparent successful applicant has serious unresolved audit issues from current or previous grants, contracts or cooperative agreements with an agency of the Federal Government).

Evaluation of proposals will employ the following criteria:

I. *Capability and Experience of Firm/Staff*—provide information that demonstrates the organization's capabilities and prior experiences in addressing the needs of minority business individuals and firms. Provide information that demonstrates the staff's capabilities and prior experiences in providing management and technical assistance to minority individuals and firms. Indicate previous experience in MBE community to be served in terms of: inventorying resources and opportunities; the brokering thereof; and providing management and technical assistance.

The following are key factors to be considered in this section:

Firm

—The organization's receptivity in the MBE community to be served, i.e., business contacts in the public and private sector; leadership responsibilities; and experience in assisting MBE business persons and firms. (References from clients assisted are pertinent.)

—Background credentials and references for the owners of the organization and a capability statement of what the organization can do.

—Knowledge of the geographic area to be served in terms of the needs of minority businesses and past ongoing relationships with local, public and private—entities that can possibly enhance the BDC program effort i.e., Chambers of Commerce, trade associations, venture capital organizations, banks, SBA, HUD, state, city and county government agencies, etc.

Staff

—List personnel to be used. Indicate their salaries, educational level and previous experience. Provide resumes for all professional staff personnel.

—Demonstrate competence among staff to effectuate mergers, acquisitions, spin-offs and joint-ventures.

—Provide organizational chart, job descriptions and qualification standards involving all professional staff persons to be utilized on the project.

—If any contractors are to be utilized, identify and indicate areas and level of experience. *Primary consideration will be given to inhouse capability.*

Note.—All contracting proposed should be in accordance with procurement standards in

Attachment Q of OMB Circulars A-110 or A-102.

II. *Techniques and Methodology*—specify plans for achieving the goals and objectives of the project. This section should be developed by using the outline of the Work Requirements and the MBDC responsibilities as *guides* and will become part of the award document. Include start-up plan and example of work plan format. Fully explain the procedures for: outreach, screening, assisting and monitoring clients; maintaining the profile inventory of minority businesses; and brokering of new business ownership, market and capital opportunities and prevention of business failures. In summary, address how, when and where work will be done and by whom. Include level of performance.

III. *Resources*—Address technical and administrative resources, i.e., computer facilities, voluntary staff time and space; and financial resources in terms of meeting MBDA's 10% cost-sharing requirement and including a fee for services for assistance provided clients. A fee for services in the amount of 10% of the cost of assistance will be charged to all clients receiving management and technical assistance.

Cost-charing is that portion of project costs not borne by the Federal Government. The composition and amount of cost-sharing are key factors that will be considered in determining the merit of this section. The cost sharing requirement can be met through the following order or priority: (1) Cash contributions; (2) fee for services; and (3) in-kind contributions.

A. *Cash contribution*—means cash that is contributed or donated by the recipient, and other non-Federal sources, i.e., public agencies and institutions, private organizations, corporations and individuals.

B. *Fee for services*—is a charge to a client for assistance provided by the MBDC for M&TA and/or SCS.

C. *In-Kind contribution*—represents the value of non-cash contributions provided by the recipient and other non-Federal sources. The order of priority for in-kind contributions are: high technology systems to be utilized to achieve program objectives; top level staff personnel and real and personnal property donated by other public agencies, institutions and private organizations. Property purchased with Federal funds will not be considered as the recipient's in-kind contribution. Under no circumstances can the in-kind contribution exceed 50% of the total non-Federal contribution.

IV. *Costs*–demonstrate in narrative format that costs being proposed will give the minority business client and the government the most effective program possible in terms of quality, quantity, timeliness and efficiency.

Include the principal costs involved for achieving work plan under Cooperative Agreement by completing Part III—the Budget Information Section of the Request for Application.

Provide cost-sharing plan information in terms of methodology and format for billing the costs of management and technical assistance and specialized consulting services to clients.

Total project cost will be evaluated in terms of:

—Clear explantions of all expenditures proposed, and

—The extent to which the applicant can leverage Federal program funds and operate with *economy* and *efficiency*.

In conclusion, the applicant's schedule for start of the MBDC operation should be included in Part II. Part II will be known as the applicant's plan of operation and will be incorporated into the Cooperative Agreement Award.

A detailed justification of all proposed costs is required for Part III and each item must be fully explained.

The failure to supply information in any given category of the criteria will result in the application being considered non-responsive and dropped from competitive review.

All information submitted is subject to verification by MBDA.

E. Disposition of Proposals. Notification of awards will be made by the Grants Officer, U.S. Department of Commerce (DOC) Organizatins whose proposals are unsuccessful will be advised by MBDA, DOC.

F. Proposal Instructions and Forms. This program is subject to OMB Circular A-95 requirements.

Questions concerning the preceding information, copies of application forms, and applicable regulations can be obtained at the above address.

Nothing in this solicitation shall be construed as committing MBDA to divide available funds among all qualified applicants.

G. A pre-application conference to assist all interested applicants will be held at the U.S. Courthouse, 110 South 45th Street, Room B-15, Minneapolis, Minnesota on May 16, 1983 at 1:00 p.m.

(11.812 Minority Business Development)
(Catalog of Federal Domestic Assistance)

Dated: April 22, 1983.

Richard Sewing,

Regional Director.

[FR Doc. 83-11323 Filed 4-28-83; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Salmon and Steelhead Advisory Commission; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: Meeting of the Salmon and Steelhead Advisory Commission.

DATE: May 19–20, 1983. The meeting will commence at 10:00 a.m. on May 19, 8:00 a.m. on May 20, and is scheduled to continue no later than 3:00 p.m. on May 20. The meeting will be open to interested members of the public; a public comment period will be held at 11:00 a.m. on May 20.

ADDRESS: Hyatt Hotel, 17001 Pacific Highway South, Seattle, Washington 98118, (206) 244–6000.

Meeting agenda: The Commission will meet to review the status of its management report and to attempt resolution of certain issues which are critical to coordinated management of the salmon and steelhead resource. The Commission will also consider current budgetary issues, time schedules for completing its report, and the remaining work that needs to be done.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, Regional Director, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115, Telephone: (206) 527–6150.

Dated: April 25, 1983.

Joe P. Clem,

Acting Chief, Fisheries Process Division.

[FR Doc. 83-11480 Filed 4-28-83; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1983; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1983 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: April 29, 1983.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On January 7, 1983, January 21, 1983, February 4, 1983, February 22, 1983 and March 4, 1983, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (48 FR 859, 48 FR 2816, 48 FR 5290, 48 FR 7491 and 48 FR 9331) of proposed additions to Procurement List 1983, November 18, 1982 (47 FR 52101):

After consideration of the revelant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce or provide commodities and services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1983:

Class 2540

Kit, Deep Water Fording
2540–00–473–0111

Class 4820

Valve, Ball
4820–00–052–4651
4820–00–052–4653

Class 7690

Folder, Chapel Program
7690–00–NSH–0001
Illustrative Sheet
7690–00–NSH–0002
(Requirements for Wright-Patterson Air Force Base, Ohio only)

Class 7930

Dishwashing Compound, Hand
7930–00–880–4454
7930–00–899–9534
7930–01–055–6163
(GSA Regions 4, 6, 7, 8, and 9)

SIC 7331

Mailing Service, National Science Foundation, 1800 G Street, N.W., Washington, D.C.

SIC 7349

Janitorial/Custodial, Paul E. Garber Complex, 3904 Old Silver Hill Road, Suitland, Maryland
Janitorial/Custodial, Vancouver Army Barracks, Vancouver, Washington

C. W. Fletcher,

Executive Director.

[FR Doc. 83–11525 Filed 4–28–83; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1983; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1983 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before June 1, 1983.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1983, November 18, 1982 (47 FR 52101):

Class 4130

Filter, Air Conditioning
4130–00–274–7800
4130–00–756–1840
4130–00–249–0986
4130–00–203–3321
(GSA Regions 1, 2, 3, 6, 7, 8, 9, 10 and W only)

Class 8340

Dropcloth, Painters Plastic
8340–00–068–7908

Class 8415

Strap Assembly, Chin
8415–01–057–3502

Class 8440

Belt, Trousers
8440–00–964–3978
8440–00–261–4965
8440–00–261–4966
8440–00–270–0535
8440–00–412–2309
8440–00–573–1686
8440–00–270–0536
8440–00–412–2312
8440–00–573–1765
8440–00–270–0537
8440–00–412–2314
8440–00–573–3727
8440–00–290–0567
8440–01–052–9738
8440–00–290–0568
8440–01–009–9290
8440–01–009–9292
8440–01–009–9293
8440–01–052–9739
8440–00–269–5311
8440–01–052–9740
8440–00–634–5632
8440–00–753–6363
8440–00–577–4177
8440–00–753–6364
8440–00–577–4178
8440–00–753–6365
8440–00–270–0541
8440–00–412–2326
8440–00–270–0542
8440–00–412–2341
8440–00–270–0543
8440–00–412–2342

SIC 5812

Catering Service, New Cumberland Army Depot, Armed Forces Entrance Examination Station, Building 521, New Cumberland, Pennsylvania

SIC 7641

Furniture Rehabilitation, Oklahoma City, Oklahoma, plus 25-mile radius, including FAA and Tinker AFB

C. W. Fletcher,

Executive Director.

[FR Doc. 83–11526 Filed 4–28–83; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Yatesville Lake, Big Sandy River Basin, Kentucky; Intent To Prepare a Draft Environmental Impact Statement; Supplemental

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement supplement.

SUMMARY: 1. The Huntington District Engineer has determined that significant environmental impact information on water quality necessitates the preparation of a supplement to the EIS

filed 12 April 1972. The DEIS Supplement will fully address existing and most probable future water quality conditions in the basin as well as within the lake, will identify and evaluate potential project modifications which may be required, and will recommend a course of action for addressing both existing and potential future contamination conditions.

2. Specific alternatives will be developed following ongoing efforts to inventory, monitor, evaluate, and model basin conditions. It is estimated that data should be available to initiate formulation of specific alternatives by April 1984.

3a. A public scoping meeting will be held to facilitate agency and public participation in the EIS process. All interested and affected individuals and agencies are encouraged to attend and to provide input. In addition to encouraging agency and public participation in the EIS process, this meeting will serve to inform local interests and the general public of the overall status of the Yatesville project in general and the EIS Supplement process in particular. Additional scoping meetings, public meetings, workshops, and/or coordination meetings will be conducted as determined necessary and advisable.

b. The DEIS Supplement will address only those issues relating to existing and most probable water quality conditions, potential corrective management measures and/or required remedial measures, and the recommended action to resolve or correct the problem.

c. The U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Kentucky Department for Natural Resources and Environmental Protection, Kentucky Geological Survey, Kentucky Department of Parks, and the Kentucky Pollution Abatement Authority have been requested to become cooperating agencies in the preparation of the EIS Supplement. Specific assignments for input into the EIS Supplement will be determined following the initial scoping meeting.

4. A scoping meeting will be conducted at Lawrence County High School, Louisa, Kentucky, at 7:00 P.M. on June 9, 1983.

5. It is anticipated that the DEIS Supplement will be available for public review by late 1984.

6. Questions about the proposed DEIS Supplement can be answered by: Mr. John P. Justice, Jr., P.E. (Study Manager). Phone: 304-529-5639.

Dated: April 21, 1983.

John W. Devens,

Colonel, Corps of Engineers, District Engineer, Huntington District.

[FR Doc. 83-11453 Filed 4-28-83; 8:45 am]

BILLING CODE 3710-GM-M

DEPARTMENT OF ENERGY

Albuquerque Operations Office; Trespassing on DOE Property

AGENCY: Department of Energy.

ACTION: Designation of Mound Facility as off-limits area.

SUMMARY: The Department of Energy hereby designates the Mound Facility, in Miamisburg, Ohio, as recently expanded, as an Off-Limits Area in accordance with 10 CFR Part 860, making it a Federal crime under 42 U.S.C. 2278a for unauthorized persons to enter into or upon the Mound Facility. If unauthorized entry into or upon the Facility is into an area enclosed by a fence, wall, roof, or other standard barrier, conviction of such unauthorized entry may result in a fine not more than $5,000 or imprisonment for not more than one year or both. If unauthorized entry into or upon the Facility is into an area not enclosed by a fence, wall, roof, or other standard barrier, conviction for such unauthorized entry may result in a fine of not more than $1,000.

FOR FURTHER INFORMATION CONTACT:

William Luck, Office of General Counsel, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-6975;

R. Travis Thompson, Office of the Chief Counsel, Albuquerque Operations Office, Department of Energy, P.O. Box 5400, Albuquerque, New Mexico 87115; (505) 846-2125; or

Elgin Arave, Administrative Officer, Dayton Area Office, P.O. Box 66, Miamisburg, Ohio 45342; (513) 865-3271.

Notice

Pursuant to Section 229 of the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2278a), Section 104 of the Energy Reorganization Act of 1974 (42 U.S.C. 5814), as implemented by 10 CFR Part 860, published in the **Federal Register** on July 9, 1975 (40 FR 28789, 28790), and Section 301 of the Department of Energy Organization Act (42 U.S.C. 7151), the Department of Energy hereby gives notice that the Mound Facility in Miamisburg, Ohio is designated an Off-Limits Area and prohibits the unauthorized entry and the unauthorized introduction of weapons or dangerous materials, as provided in 10 CFR 860.3 and 860.4, into or upon the Mound Facility.

The Atomic Energy Commission (AEC), a predecessor of the Department of Energy, published a notice subjecting the Mound Facility to the AEC's trespassing regulations. That notice was published at 30 FR 13284 (October 19, 1965). Recently the Mound Facility has been enlarged by the acquisition of additional land. This notice designates the entire Mound Facility, as recently enlarged, as an Off-Limits Area, in accordance with the authorities referenced.

A description of the land area encompassing the Mound Facility, as recently enlarged, including reference to its boundaries, is as follows:

Situated in the State of Ohio, County of Montgomery, Township of Miami, partly in the City of Miamisburg, being a part of Section 30 and fractional Sections 35 and 36, Town 2, Range 5, Miami Rivers Survey (M.R.S.), and being all of city lots numbered 2259, 2290, 4777, 4778 and 4779, and part of out lot 6 lying within the corporation limits of the City of Miamisburg, and also a 35.5 acre parcel and a 24.2 acre parcel lying outside and adjacent to said corporation limits, being all of the tracts of land conveyed to the United States of America by instruments as recorded in Deed Book 1214 pages 10, 12, 15 and 17, Deed Book 1215 page 347, Deed Book 1214 page 248, Deed Book 1246 page 45, Deed Book 1258 page 74, Deed Book 1258 page 56, Deed Book 1256 page 179, Micro-Fiche 81-376A01, and Micro-Fiche 81-323A11 of the Deed Records of said County; and being more particularly bounded and described with bearings referenced to the Ohio State Plane Coordinate System, South Zone, as follows:

Beginning at a spike found (0.5' deep) and reset in concrete, being the southwest corner of said Section 30 and the southeast corner of fractional Section 36, said point being in the center of Benner Road (40 feet R/W) and being referenced North 84°28'10" West 3102.92 feet from a spike found (0.5' deep) at the intersection of the centerline of Mound Road (60 feet R/W) with the centerline of said Benner Road in said Miami Township, and being the true point of beginning for the land herein described; thence along the centerline of Benner Road South 66°32'35" West 958.79 feet to a railroad spike found and reset in concrete; thence continuing along said centerline of Benner Road South 73°18'20" West 31.01 feet to a railroad spike found and reset in concrete, being a point in the East right-of-way line of the abandoned Miami and Erie Canal; thence leaving Benner Road and with said East right-of-way line for the following four courses: North 14°05'35" West 62.14 feet to an iron pin found; thence North 14°11'50" West 440.75 feet to an iron pin found; thence North 14°47'30" West 259.93 feet to an iron pin found; thence North 14°45'50" West 546.20 feet to an iron pin found and reset in concrete in the East right of-way line of the consolidated railway corporation; thence with said Conrail right-of-way line for the following 10 courses: North

75°00'55" East 85.04 feet to an iron pin found and reset in concrete; thence North 37°16'35" East 96.65 feet to an iron pin set in concrete; thence North 80°28'05" East 66.00 feet to an iron pin found and reset in concrete; thence North 09°31'55" West 499.80 feet to a concrete monument found; thence North 09°26'35" West 696.85 feet to an iron pin set in concrete; thence North 0°48'25" West 616.81 feet to a concrete monument found; thence North 84°43'35" East 75.08 feet to an iron pin set in concrete; thence along the arc of a curve to the right having a radius of 3669.83 feet, being concentric with and 150 feet distant, measured eastwardly at right angles, from the centerline between main tracks of said railroad; for a distance of 744.94 feet to a concrete monument set, the chord of said curve bears North 03°17'05" East 743.66 feet; thence South 84°39'20" East 150.34 feet to a concrete monument set; thence along the arc of a curve to the right having a radius of 3519.83 feet, being concentric with and 300 feet distant, measured eastwardly at right angles, from the centerline between main tracks of said railroad, for a distance of 1640.97 feet to a concrete monument found, the chord of said curve bears North 22°36'55" East 1626.15 feet; thence leaving said railroad right-of-way line South 84°14'50" East 102.31 feet to a concrete monument found; thence South 05°37'45" West 90.03 feet to a concrete monument found; thence North 65°35'50" East 809.36 feet to an iron pipe found and being referenced South 05°47'45" West 130.89 feet from a concrete monument found at the Northwest corner of said Section 30 and the Northeast corner of fractional Section 36; thence South 85°04'55" East 1023.90 feet to a concrete monument found; thence North 06°53'15" East 231.00 feet to a concrete monument found on the West right-of-way line of Mound Road (60 feet R/W); thence South 84°38'15" East 30.00 feet to an iron pin set in the centerline of Mound Road; thence South 06°53'15" West 100.00 feet to an iron pin set; thence South 84°38'15" East 193.40 feet to a concrete monument set; thence along the centerline of Mound Road South 05°32'40" West 2709.36 feet to a railroad spike found; thence leaving said Mound Road North 85°28'20" West 111.00 feet to an iron pipe found; thence South 07°06'55" East 714.44 feet to a concrete monument found; thence South 83°59'35" East 34.19 feet to a concrete monument found; thence South 04°42'45" West 2010.06 feet to a railroad spike found (0.2' deep) and reset in concrete located in the center of Benner Road; thence along the centerline of Benner Road North 84°29'45" West 1333.66 feet to the true point of beginning containing 305.116 acres more or less, and subject to all legal highways and easements of record.

This description is based upon an actual field survey of the described land conducted in May 1982.

Notices stating the pertinent prohibitions of 10 CFR 860.3 and 860.4 and the penalties of 10 CFR 860.5 are posted at all entrances of said Mound Facility and at intervals along the Facility's perimeter, as provided in 10 CFR 860.6.

Dated at Washington, D.C. this 14th day of April 1983.

Troy E. Wade, II,

Principal Deputy Assistant Secretary for Defense Programs.

[FR Doc. 83-11536 Filed 4-28-83; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. Ep-40-83-2]

Energy Emergency Preparedness: Oil Inventories

AGENCY: Office of Environmental Protection, Safety and Emergency Preparedness, DOE.

ACTION: Notice of inquiry and request for public comments.

SUMMARY: The Department of Energy (DOE) recongnizes that petroleum inventories provide part of the available protection against an oil supply interruption, along with the operations of the marketplace, the Strategic Petroleum Reserve (SPR), etc. In this regard, DOE is continuing its evaluation of the need for and the likely benefits and costs of inducing the buildup of private sector oil stockpiles. One of the studies in this program was prepared by Charles River Associates, Inc. under contract to the Office of Energy Emergencies. DOE invites public comments on the Charles River Associates, Inc. report entitled: "An Evaluation of Policy Options for Increasing Domestic Oil Inventories." DOE also seeks public comments on related issues, such as the need for any programs to encourage or affect the levels of private sector oil inventories; on the relative advantages and drawbacks of alternative ways to structure such a program; and on specific questions relating to the design of such a program. The comments on the Charles River Associates, Inc. report and responses to specific petroleum inventory questions will assist DOE in the analysis of potential program options concerning private sector oil inventory practices and the relationship of the SPR to oil inventory management by the private sector.

DATES: The comment period will be one hundred and twenty (120) days. Seven (7) copies of written comments and other materials should be submitted to DOE by 5:00 p.m. on or before August 29, 1983, to ensure their consideration.

ADDRESSES: Copies of the Charles River Associates, Inc. report "An Evaluation of Policy Options for Increasing Domestic Oil Inventories" may be obtained by calling or writing the DOE Office of Public Affairs, Room 1E-204, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585; (202) 252-5568. Comments should be addressed to WILLIAM A. VAUGHAN, Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness, Department of Energy, Room 4G-084, Forrestal Building, (Mail Stop EP-1), 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Finn K. Neilsen, U.S. Department of Energy, Director, Office of Energy Contingency Planning, Office of Energy Emergencies, Room GH-060 Forrestal Building, (Mail Stop EP-43), 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-4000; or

Glenn H. Coplon, U.S. Department of Energy, Director, Scenario Development and Response Strategy Analysis Division, Office of Energy Contingency Planning, Room GE-216 Forrestal Building, (Mail Stop EP-431), 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-4906.

SUPPLEMENTAL INFORMATION:

I. Background

Despite the current energy supply picture, with ample supplies of all needed fuels, continuing concern has been expressed by a number of sources, including Member of Congress, State Energy Offices, and private citizens, about declining levels of oil inventories. Depending upon the season of the year, this concern relates to crude oil, motor gasoline, or heating oil as well as diesel fuel and other products. While the absolute level of some petroleum inventories at the primary level have declined, when measured against demand, these stocks have actually remained fairly constant. DOE believes that the Administration has taken the most significant steps possible to encourage adequate inventories of oil supplies. Decontrol of all petroleum products was the major action. The most important inducement to maintenance of adequate oil stocks is the knowledge that, short of a declared national defense emergency, DOE will not in any way interfere with private sector use of their own stocks. President Reagan's veto last year of the Standby Petroleum Allocation Act (SPAA) confirmed the Administration's commitment to a free market energy policy. Other steps taken by the Administration to encourage increased oil inventories and reduce oil supply vulnerability include fostering economic policies which have led to reduced interest rates, and the rapid buildup of the SPR to over 315 million barrels of crude oil.

Nevertheless, despite these measures, there has been continuing concern expressed to DOE about whether stocks of crude oil and petroleum products are adequate, what impact of the SPR is on private sector stockpiling practices, and whether the Federal Government should do anything to encourage increased levels of private sector oil stockpiling.

To address the concerns, DOE has been undertaking a major review of the need for, feasibility, and the likely effectiveness of Government incentives for inducing buildings of private oil stocks. Within DOE a number of Offices have revised the issue of private sector oil stocks, including the Energy Information Administration, the Office of Policy, Planning and Analysis, the Office of Energy Emergencies and the Office of International Affairs.

There have been numerous studies made on domestic oil inventories. In 1979, the National Petroleum Council (NPC) published a study that estimated storage capacities and minimum operating inventory levels for crude oil and the major refind products (*Petroleum Storage and Transportation Capacities*, National Petroleum Council, Washington, D.C. December 1979). At the request of former Secretary of Energy Edwards, NPC currently has a new inventory study underway. The Energy Information Administration of DOE and the American Petroleum Institute each publish weekly, monthly and annual statistics on U.S. refinery operations and inventory levels. These data have been used to assess inventory trends in the past.

Current DOE studies have been examining current inventory/demand relationships and are attempting to detemine whether providing some form of Government incentives will result in a significant increase in the leval of private oil stocks. One of the studies in this investigation was made by Charles River Associates, Inc., under contract to the Office of Energy Emergencies, to evaluate policy options for increasing domestic oil inventories.

II. Purpose of the Notice

The purpose of this Notice is to invite public comments on the Charles River Associates, Inc. report, and on the issue of whether, in the context of the Administration's market oriented energy policy, any additional measures to promote the buildup and maintenance of private sector oil inventories might be necessary, appropriate, and feasible. This would include a review of the relative benefits and costs of alternative ways to structure such a program.

In addition, DOE would appreciate your responses to the following specific questions relating to a program to stimulate the buildup and/or maintenance of private oil stocks at the primary, secondary, and teritary levels:

1. Is there a need for any Federal Government programs with respect to the level of private sector inventories of crude oil and petroleum products? What factors suggest that such a program is needed/not needed? Is such a program consistent with the Administration's commitment to a market approach to energy policy? Does any perceived need for such a program outweigh the costs of such a program, particularly at this time when the Federal deficit is of great concern?

2. Suppose that the Federal Government were to provide a subsidy to refiners and importers, or to large users of petroleum products, for holding incremental oil security inventories, with the owner of the inventories having full use of stocks in an emergency and receiving any gains from price increases:

(a) How could one insure that the subsidy was paid only on incremental security stocks? Would it be necessary for the oil to be held in segregated storage facilities or could it be commingled with normal inventories? What kinds of restrictions would be necessary to prevent abuse under such a program, and what types of audits and/or inspections would be required?

(b) Is it likely that, during a petroleum supply shortfall, subsidized stocks would be voluntarily drawn down in a manner consistent with national economic interest? Or would it be necessary to establish, as a condition of receiving the subsidy, a schedule or formula specifying the drawdown or use of subsidized stocks?

(c) What types of restrictions on the use of the oil prior to an emergency would be appropriate to ensure that the subsidized stocks are not used as part of normal working inventories?

3. How could the Government ensure that it does not pay for oil that would normally be held, even in the absence of a program? To what extent would the buildup of private stocks, under either a lease or subsidy program, result in the backout of other privately held stocks?

4. What would be the approximate annual per barrel cost to the Federal Government of implementing a subsidy program? What would be the factors determining this cost? What would be the total cost to the U.S. economy of such a program?

5. What are the clear advantages, if any, to limiting the program to crude oil, or to crude oil plus certain refined products, to the exclusion of other products?

6. An alternative to general revenue financing of oil stocks is to finance them through a "user fee" on end-users of motor gasoline, all products, or refinery throughput. Would such a fee, if authorized and adopted, be difficult to devise, collect, and monitor? Would it cause differential burdens on particular segments of the nation?

7. Are any of the above options particularly infeasible, or especially attractive? Are there other viable options for increasing privately held oil stocks that are not discussed here?

8. What are the primary factors influencing private inventory decisions on crude oil and refined products? For example, expected demand levels, maintenance of market shares, acquisition cost of oil, interest rates, alternative investment possibilities, anticipated price changes, likelihood of oil supply interruptions, and engineering or technical considerations.

9. To what extent do refiners and importers stock oil in anticipation of price increases and, consequently, inventory profits, or to avoid large crude oil purchase outlays during a supply disruption? To what extent are inventories built up during a period of perceived shortfall, as insurance against a lack of future supply?

10. To what extent do holders of oil inventories anticipate that the Government will allow them to use the oil, and retain the profits in a supply interruption? Do they anticipate the reimposition of Federal controls? Are any further measures needed for the Government to relieve the fears that such controls will be reimposed at the Federal level?

11. What rate of return is used in calculating the prospective profitability of investment in oil inventories? Would this rate differ amongst the options under consideration by DOE? How does "risk" in oil inventory investment affect the rate of return?

12. Are there existing tax, regulatory or other government disincentives to holding stocks that could be removed?

13. To what extent do there presently exist stocks and supplies of petroleum products in excess of minimum working inventories or other unavailable stocks such as are required to meet seasonal demand, which, in an emergency, could be used or distributed without affecting the ability of the owner to operate at normal capacity? Where are these stocks? How are they stored? Are they easily available for shipment throughout the nation?

III. Written Comments Procedures

You are invited to participate in the development of the Department of Energy's analysis of domestic petroleum inventory issues by submitting views, reports, analyses or other materials to the Department. Comments should be submitted to the address indicated in the **"ADDRESSES"** section of this notice and should be identified on the outside of the envelope and on documents submitted to DOE by the designation "Oil Inventories." Seven (7) copies, if possible, should be submitted. All comments received will be available for public inspection in the DOE Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Comments should be received by the date noted in the **"DATES"** section of this notice in order to ensure consideration by DOE.

Pursuant to the provisions of 10 CFR 1004.11, if you are submitting material which you believe to be confidential and exempt by law from public disclosure, you should submit one (1) complete copy of the document, and six (6) copies from which the material claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

Issued in Washington, D.C., April 21, 1983.

William A. Vaughan,

Assistant Secretary, Environmental Protection, Safety and Emergency Preparedness.

[FR Doc. 83-11537 Filed 4-28-83; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Revision of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Energy Information Administration (EIA) published in the Aprl 20, 1983 **Federal Register** (48 FR 16956) on behalf of the Federal Energy Regulatory Commission, the alternative fuel price ceilings and incremental pricing threshold for high cost natural gas that are to become effective May 1, 1983. Subsequent to the publication, the EIA discovered an error in computing the alternative fuel price ceiling for the State of Montana. The error discovered was in the data bases that was used to compute the 3-month weighted average price. After correcting the error in the data base and recomputing the revised prices, only one State is impacted. The following shows the published price and the revised computed price for the impacted State.

State	Published price	Revised price
Montana	3.63	3.51

FOR FURTHER INFORMATION CONTACT: Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, SW., Room BE–034, Washington, D.C. 20585, Telephone: (202) 252–6077.

Issued in Washington, D.C. April 27, 1983.

J. Erich Evered,

Administrator, Energy Information Administration.

[FR Doc. 83-11705 Filed 4-28-83; 10:37 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Storey Oil Company, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Storey Oil Company ("Storey") of Seymour, Indiana. This Proposed Remedial Order charges Storey with pricing violations in the amount of $192,799.76 exclusive of interest, connected with the sale of motor gasoline from September 1, 1979 through November 30, 1979

A copy of the Proposed Remedial Order, with confidential information dleted, may be obtained from David H Jackson, Director, Kansas City Office, ERA (816) 374–2092. Within 15 days of publication of this notice, any aggrived person may file a Notice of Objection with the Office of Hearings and Appeals, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Kansas City, Missouri on the 8th day of April 1983.

David H. Jackson,

Director, Kansas City Office, Office of Special Counsel, Economic Regulatory Administration.

[FR Doc. 83-11535 Filed 4-28-83; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

Interest Rate Formula for Power Marketing Administrations

AGENCY: Assistant Secretary for Conservation and Renewable Energy, DOE.

ACTION: Extension of comment period on proposed amendment of formula for determining repayment interest rates.

SUMMARY: the period for receipt of public comment on the proposed revision of the interest rate formula for repayment purposes is hereby extended for thirty days.

DATE: Written comments must be received by close of business May 9, 1983.

ADDRESS: All written comments should be submitted to: Daniel M. Ogden, Jr., Director, Office of Power Marketing Coordination, Department of Energy, Room 5304, Federal Building, 12th Street and Pennsylvania Avenue, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: John J. DiNucci, Director, Division of Rates, Contracts and Power Allocation, Office of Power Marketing Coordination, Room 5312, Federal Building, 12th Street and Pennsylvania Avenue, NW., Washington, D.C. 20461.

SUPPLEMENTARY INFORMATION: On February 9, 1983, at 48 FR 5989, this office published a proposed change in the formula for determining interest rates to be used, unless otherwise provided by law, by the Alaska, Bonneville, Southeastern, Southwestern and Western Area Power Administrations (PMAs). The interest rate is to be used in computing interest during construction and interest on the unpaid balance of the costs of new Federal power facilities whose construction would begin after October 1, 1983. A comment period of sixty days was granted through April 9, 1983.

Because of the obvious interest by the many parties concerned this office hereby extends the public comment period for thirty days through May 9, 1983.

Issued in Washington, D.C. April 22, 1983.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 83-11481 Filed 4-28-83; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed; Week of April 1 Through April 8, 1983

During the Week of April 1 through April 8, 1983, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as precribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Dated: April 22, 1983.

George B. Breznay,

Director Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Apr. 1 through Apr. 8, 1983]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 4, 1983	Macmillam Oil Co, Washington, D.C	HRD-0124	Motion for Discovery. If granted: Discovery would be granted to Macmillam Oil Company in connection with the Statement of Objections submitted in response to a Proposed Remedial Order (Case No. HRO-0122).
Apr. 7, 1983	Lesse Oil Co., Washington, D.C	HFA-0137	Appeal of an Information Request Denial. If granted: The March 11, 1983 Information Request Denial issued by the San Francisco Regional Office would be rescinded and the Lesse Oil Company would receive access to certain DOE documents.
Apr. 7, 1983	Exxon Co., U.S.A., Cities Service Co. and Gulf Oil Corp., Washington, D.C.	HER-0055	Request for Modification/Rescission. If granted: The April 17, 1981, Decision and Order (Case No. BEX-0179) issued to Husky Oil Company would be modified regarding the firm's participation in the Entitlements Program for the period March 1977 through May 1978.
Apr. 7, 1983	Sun Co., U.S.A., Washington, D.C	HRD-0122	Motion for Discovery. If granted: Discovery would be granted to Sun Company, U.S.A. in connection with the firm's comments on a Motion of Modification/ Rescission filed by the Economic Regulatory Administration (Case No. HRR-0045).
Apr. 6, 1983	Miller & Chevalier, Washington, D.C	HFA-0136	Appeal of an Information Request Denial. If granted: The March 4, 1983, Information Request Denial issued by the Office of Special Counsel would be rescinded and the firm would receive a more thorough search for documents relating to specified portions of the price regulations of the Department of Energy and predecessor agencies.
Apr. 5, 1983	Decision Management Co., Inc., Laguna Hills, Calif	HFA-0134	Appeal of an Information Request Denial. If granted: The March 4, 1983, Information Request Denial issued by the Chicago Operations Regional Office would be rescinded and Decision Management Company, Inc. would receive access to information regarding the numerical weights used in RFP No. DE-RP02-83CH10128 "Project Control Support Service."
Apr. 5, 1983	Gerald D. Townsend, Sunnyvale, Calif	HFA-0135	Appeal of an Information Request Denial. If granted: The March 25, 1983, Information Request Denial issued by the Nevada Operations Office would be rescinded and Gerald D. Townsend would receive access to certain personnel records from 1962 to the present time regarding his employment.
Apr. 1, 1983	T.N.T., Inc., New Orleans, La	HRR-0054	Request for Modification/Rescission. If granted: The July 16, 1982, Decision and Order issued to T.N.T., Inc. (Case No. BRO-1324) would be rescinded on the basis of a Consent Order entered into on February 24, 1983, between T.N.T., Inc. and the Office of Special Counsel.

REFUND APPLICATIONS RECEIVED

[Week of Apr. 1 To Apr. 8, 1983]

Date	Name of refund proceeding/Name of refund applicant	Case No. assigned
Apr. 4, 1983-Apr. 8, 1983	Amoco Refund Applications	RF21-5717 through RF21-6226.

[FR Doc. 83-11482 Filed 4-28-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CI68-978-001 et al.]

Cabot Oil & Gas Corporation of West Virginia and Cabot Oil & Gas Corporation; Corporate Name Change

April 25, 1983.

Take notice that on March 10, 1983 as amended April 11, 1983, Cabot Oil & Gas Corporation of West Virginia, (Cabot) of 921 Main Street, Suite 900, Houston, Texas 77002 filed in Docket Nos. CI68-978-001, *et al.* an application for amendment of certificates of public convenience and necessity and for redesignation of certain rate schedules as listed in the attached Appendix to reflect a change in corporate name from Cabot Oil & Gas Corporation to Cabot Oil & Gas Corporation of West Virginia.

Effective December 17, 1982, Cabot Oil & Gas Corporation of West Virginia became the holder of all rights, interests, and obligations under each certificate listed on the attached Appendix by reason of the change of its corporate name. Applicant seeks to become the holder of the certificates identified in the appendix by succession and requests that the orders issuing certificate of public convenience and necessity in the dockets identified in the appendix be amended in each instance by substituting Cabot Oil & Gas Corporation of West Virginia as the certificate holder. Cabot Oil & Gas Corporation filed a Certificate of Amendment of Certificate of Incorporation with the Office of Secretary of State of the State of Delaware making the name change on December 17, 1982.

Notice is hereby given that all the certificate and rate schedules as listed in the attached appendix are hereby redesignated to reflect the corporate name change from Cabot Oil & Gas Corporation to Cabot Oil & Gas Corporation of West Virginia, effective December 17, 1982.

Kenneth F. Plumb,

Secretary.

APPENDIX.—APPLICATION BY CABOT OIL CORPORATION OF WEST VIRGINIA

Certificate docket No.	Location	Purchaser	Rate schedule No.
C168-976	Rocky Fork Field, Putnam & Kanawha Co., WV	Columbia Gas Trans. Corp	1
C168-1148	Poca District, Kanawha Co., WV	Columbia Gas Trans. Corp	2
C171-343	(Hager Wells) Washington District, Boone Co., WV	Pennsoil Company	5
C169-665	Shonk Lease, Boone Co., WV	Consolidated Gas Supply Corp	7
C169-666	Bailey Lease, Wyoming Co., WV	Consolidated Gas Supply Corp	8
C169-667	Logan-Wyoming Lease, Wyoming Co., WV	Columbia Gas Trans. Corp	9
C169-668	Dickinson-Levi Lease, Kanawha Co., WV	Columbia Gas Trans. Corp	10
C161-1823	J. E. Clay Lease, Wyoming Co., WV	Bailey Gas Company	12
C167-81	Sandy River District, McDowell Co., WV	Consolidated Gas Supply Corp	13
C170-570	Pocahontas "B" Lease, Center District, Wyoming Co., WV	Columbia Gas Trans. Corp	18
C173-327	L. D. Griffin Lease, McDowell Co., WV	Cabot Corporation	22
C173-344	S. C. Bowen Lease, McDowell Co., WV	Cabot Corporation	23
C173-425	Pocahontas Bricker Lease, McDowell Co., WV	Cabot Corporation	24
C175-416	Pocahontas D-1 Lease, McDowell Co., WV	Cabot Corporation	25
C175-636	Panther State Lease, McDowell Co., WV	Cabot Corporation	26
C176-343	Cabin Creek District, Kanawha Co., WV	Columbia Gas Trans. Corp	27
C178-371	W. I. Cale Lease, Wood Co., WV	Cabot Corporation	29
C178-599	H. C. Dickerson Lease, Kanawha Co., WV	Columbia Gas Trans. Corp	30
C178-620	Pocahontas Lease, McDowell Co., WV	Cabot Corporation	31
C178-848	Certain Acreage in Nicholas Co., WV	Equitable Gas Company	32
C179-341	Pocahontas Lease, Barkers Ridge District, Wyoming Co., WV	Consolidated Gas Supply Corp	33
C161-1559	Jewell Lease, Buchanan Co., VA	Consolidated Gas Supply Corp	34
C162-524	Pardee Lease, Whipoorwill Hollow Field, Cameron & Elk Co., PA	Consolidated Gas Supply Corp	35
C172-801	Raish Lease, Steuben Co., NY	Consolidated Gas Supply Corp	36
C176-432	Sylvania Lease, Steuben Co., NY	Consolidated Gas Supply Corp	37

[FR Doc. 83-11397 Filed 4-28-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-4881-000, et al.]

ARCO Oil and Gas Company, Division of Atlantic Richfield Company, et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

April 26, 1983.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 13, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commissions Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene if filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 [2]	Pressure base
G-4881-000, D, Apr. 8, 1983	ARCO Oil & Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Tennessee Gas Pipeline Company, San Salvador and Mercedes Field, Hidalgo County, Tex.	[1]	
G-6272-000, D, Apr. 18, 1983	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77251	El Paso Natural Gas Co., State Q Well No. 1 Blinebry, et al. Fields, Lea County, N. Mex.	[2]	
G-6272-001, D, Apr. 18, 1983	do	El Paso Natural Gas Co., Sarkey Well No. 4, Lea County, N. Mex.	[3]	
G-11072-001, D, Apr. 18, 1983	Sun Exploration & Production Co., formerly Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221.	Panhandle Eastern Pipeline Co., Hansford Morrow (Prairie) Field, Hansford County, Tex.	[4]	
CI63-819-001, D, Apr. 6, 1983	ARCO Oil & Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Northwest Central Pipeline Corp. (formerly Cities Service Gas Co.) Northwest Lovedale Field, Harper County, Okla.	[4]	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 [2]	Pressure base
CI67-868-000, D, Apr. 8, 1983	do	Tennessee Gas Pipeline Co., Ship Shoal Block 169 Field, Offshore Louisiana.	(1)	
CI70-311-000, Mar. 28, 1983	Amoco Production Co., P.O. Box 50879, New Orleans, La. 70150.	Texas Gas Transmission Corp., Eugene Island Block 273, Offshore Louisiana.	(2)	14.73
CI73-12-000, D, Apr. 8, 1983	ARCO Oil & Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Michigan Wisconsin Pipe Line Co., Eugene Island Area, Offshore Louisiana.	(1)	
CI82-282-001, Apr. 13, 1983	Odeco Oil & Gas Company, P.O. Box 61780, New Orleans, La. 70161.	Tennessee Gas Pipeline Co., a Division of Tenneco Inc., Ship Shoal Block 94, Offshore Louisiana.	(3)	14.73
CI82-282-002, Apr. 13, 1983	do	do	(3)	14.73
CI83-197-000, (CI82-288), B, Mar. 17, 1983.	The Pittsburg & Midway Coal Mining Co., P.O. Box 2100, Houston, Tex. 77252.	ARMC Corp., Barrel Springs Field, Carbon County, Wyo.	(4)	
CI83-198-000, (CI82-289), B, Mar. 17, 1983.	do	do	(4)	
CI83-199-000, A, Apr. 1, 1983	Tenneco Oil Co., *et al.*, P.O. Box 2511, Houston, Tex. 77001.	Florida Gas Transmission Co., Ship Shoal Block 170, Offshore Louisiana.	(1)	14.73
CI83-200-000, A, Apr. 1, 1983	Samedan Oil Corp., P.O. Box 909, Ardmore, Okla. 73401.	Transcontinental Gas Pipe Line Corp., Ship Shoal Block 237, Offshore Louisiana.	(5)	15.025
CI83-201-000, (G-11912), B, Apr. 4, 1983.	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, Tex. 77046.	Michigan Wisconsin Pipe Line Co., Cameron Field, Cameron Parish, Louisiana.	(6)	
CI83-202-000, B, Apr. 5, 1983	D. K. Moore, Route 2, Box 234, Fairview, W. Va. 26570.	Equitable Gas Co., Clay District, Monongalia County, W. Va.	(10)	
CI83-203-000, B, Apr. 6, 1983	Wisenbaker Production Co., 400 Peoples Plaza Building, Tyler, Tex. 75702.	Arkansas Louisiana Gas Co., a Division of Arkla Inc., Beckville (Travis Peak) Field, Rusk County, Tex.	(11)	
CI83-204-000, A, Apr. 7, 1983	Eugene Shoal Oil Co., Union Oil Center, Room 904, P.O. Box 7600, Los Angeles, Calif. 90051.	Tennessee Gas Pipeline Co., East ½ Block 48, South Pass Area, Offshore Louisiana.	(12)	15.025
CI83-205-000, (G-7382), B, Mar. 21, 1983.	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, Tex. 77046.	El Paso Natural Gas Co., J. F. Nunn *et ux*, Reagan County, Tex.	(13)	
CI83-206-000, (G-7388), B, Mar. 21, 1983.	do	El Paso Natural Gas Co., G. F. Wimberly *et ux* lease, Reagan County, Tex.	(13)	
CI83-207-000, (CI64-1541), B, Apr. 11, 1983.	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77252.	Northern Natural Gas Co., Hansford Upper Morrow Field, Hansford County, Tex.	(14)	
CI83-208-000, A, Apr. 11, 1983	Amerada Hess Corp., P.O. Box 2040, Tulsa, Okla. 74102.	Transcontinental Gas Pipe Line Corp., Block A-568, High Island Area, Offshore Texas.	(15)	14.73
CI83-209-000, (CI60-168), B, Apr. 18, 1983.	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, Tex. 77046.	Northern Natural Gas Co., Perryton Field, Ochiltree County, Tex.	(16)	

[1] Deletion of acreage. ARCO no longer holds an interest in acreage involved in this application.
[2] Redesignation of gas well to oil well by New Mexico Oil Conservation Commission.
[3] By instrument dated January 16, 1979, Sun released rights to a portion of the lease because all economically recoverable gas reserves had been depleted and its well was plugged and abandoned in December, 1968.
[4] Deletion of acreage. ARCO has no remaining reserves or production in leases being abandoned.
[5] Applicant is filing to reflect the change in delivery point.
[6] Applicant reflects assignment dated November 1, 1982 to ARMC Corporation.
[7] Applicant is filing under Gas Purchase and Sales Agreement dated March 31, 1983.
[8] Applicant is filing under Gas Purchase Contract dated September 21, 1982.
[9] The gas reserves committed to the contract have been depleted through unit wells.
[10] Equitable Gas Company has sold the lines and right-of-way Grants so they can no longer purchase the gas.
[11] Delivery point on Arkla's sales line is too far from wellhead to justify economics of gathering system for Clyde Jones Heirs Number 1 well (API No. 42-401-31413). Eastex Gas Transmission Co., Tyler, Texas, has agreed to purchase the gas for use in intrastate market.
[12] Applicant is filing under Gas Purchase and Sales Agreement dated March 14, 1983.
[13] On April 15, 1977, TransOcean filed an assignment to Paul F. Barnhart, Trustee, as a supplement to its Rate Schedule No. 15 to be effective on date of dissolution of units, as to Sorayberry formation, and January 1, 1974, as to other formations.
[14] The last producing well on leases was plugged and abandoned on May 14, 1982 and the leases were released to Lessor on July 23, 1982.
[15] Applicant is filing under Gas Purchase Contract dated March 18, 1983.
[16] Lease surrended to A. J. George (lesaor).

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 83-11516 Filed 4-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-465-000]

Arizona Public Service Co.; Filing

April 26, 1983.

The filing Company submits the following:

Take notice that on April 19, 1983, the Arizona Public Service Company (APS) tendered for filing Amendment No. 1 and Supplemental Agreement for early termination of the Wholesale Power Agreement between Plains Electric Generation and Transmission Cooperative, Inc., and APS. These Amendments were executed on March 23, 1983,in conjunction with settlement proceedings of FERC Docket No. ER82-481-000.

APS states that Amendment No. 1 and the Supplemental Agreement are requested to become effective 60 days from the date of filing.

A copy of this filing was served upon the Arizona Corporation Commission and Plains Electric Generation and Transmission Cooperative, Inc.

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, N.E., 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 May 10, 1983. Protests will be considered by 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. 83-11517 Filed 4-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-466-000]

Arizona Public Service Co.; Filing

April 26, 1983.

The filing company submits the following:

Take notice that Arizona Public Service Company (APS) on April 19, 1983, tendered for filing Amendment No. 1 executed March 23, 1983, to the Power Coordination Agreement for

transmission service to be initiated January 1984 between Plains Electric Generation and Transmission Cooperative, Inc. and APS.

APS states that this Amendment is requested to become effective 60 days from the date of filing.

A copy of this filing was served upon the Arizona Corporation Commission and Plains Electric Generation Transmission Cooperative, Inc.

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, N.E., 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 May 10, 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. 83-11518 Filed 4-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-468-000]

Consolidated Edison Company of New York, Inc.; Filing

April 26, 1983.

The filing Company submits the following:

Take notice that on April 18, 1983 Consolidated Edison Company of New York, Inc. ("Con Edison"), acting on behalf of itself and Public Service Electric and Gas Company ("Public Service"), tendered for filing as an initial rate schedule an agreement of interconnection between the Companies. The rate schedule provides for payment of carring charges by Con Edison on Public Service's interconnection facilities during the life of the agreement, and for payment by Public Service to Con Edison for construction and maintenance of Public Service's segment of an underwater cable that is part of the facilities.

Con Edison requests waiver of the notice requirements of § 35.3 of the Commission's regulations so that the Amendment can be made effective as of July 8, 1982.

Con Edison also filed a certificate of concurrence of Public Service and states that a copy of this filing has been served by mail upon Public Service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 11, 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. 83-11519 Filed 4-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-462-000]

Kansas Power and Light Co.; Filing

April 26, 1983

The filing Company submits the following:

Take notice that on April 18, 1983, the Kansas Power and Light Company (KLP) tendered for filing a newly executed renewal contract dated April 5, 1983 with the City of Minneapolis, Kansas for wholesale service to that community. KPL states that this contract permits the City of Minneapolis to receive service under rate schedule WTU-81 designated Supplement No. 9 to R.S. FERC No. 186.

KLP request and effective date of May 1, 1983, and therefor requests waiver of the Commission's notice requirements.

KPL further states that the proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract.

Copies of the filing have been mailed to the City of Minneapolis and the State Corporation Commission of Kansas.

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, N.E., 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 of protests should be filed on or before May 10, 1983. Protests will be considered by the Commission in determining the appropritate 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. 83-11521 Filed 4-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-254-000]

Montana-Dakota Utilities Co.; Application

April 25, 1983.

Take notice that on March 29, 1983, Montana-Dakota Utilities Co. (Applicant), 400 North Fourth Street, Bismarck, North Dakota 5850, filed in Docket No. CP83-254-000 an application pursuant to Section 7(c) of the Natural Gas Act for certificate of public convenience and necessity authorizing the storage of natural gas on behalf of certain of Applicant's suppliers and the incidental transportation of such gas pursuant to Applicant's proposed Rate Schedule S-2, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is experiencing marketing problems which prevent it from selling all of the gas production it has under contract and, as a consequence, it is currently unable to purchase the total available volumes under gas purchase contracts with the suppliers. Applicant projects a reduction in purchases from its suppliers of approximately 44 percent below take-or-pay levels. In addition, Applicant asserts that it is unable to continue purchasing gas and reselling it to Forntier Gas Storage Company (Frontier) for storage because Frontier's existing line of credit is expected to reach its limit of $125 million as early as March 1983.

Applicant further states that a large portion of its gas supply is casinghead or residue gas. In order to maintain current levels of production of the petroleum products associated with such gas and produced from the same wells, it is asserted that the casinghead or residue gas must be produced and taken at levels consistent with takes of the associated petroleum. Applicant submits that reductions of its takes of such gas would require that both the gas and petroleum production be shut in or that the petroleum production be continued by flaring the associated gas. Applicant states that it risks the permanent loss of gas supplies to flaring for the North

Dakota Industrial Commission has approved such flaring of gas.

In order to remedy these problems, Applicant proposed to store natural gas volumes on behalf of its casinghead and residue gas suppliers until such time as Applicant can again resell the gas or until a supplier notifies Applicant that it has secured an alternate market for the gas. Applicant states that, upon receipt of such notification, Applicant would have the option to purchase said gas or to deliver the gas to the delivery point on Applicant's system designated by the supplier. Applicant proposes to store such gas for its suppliers without charge pursuant to Applicant's proposed Rate Schedule S–2. It is submitted that the transportation of gas sold to an alternate market would be transported for a rate of 20.0 cents per Mcf. Applicant proposes a contractual term for service under Rate Schedule S–2 of two years from the date of initial deliveries to Applicant for storage, and from year to year thereafter. Applicant requests that its storage authorization extend to gas injected into storage on or after February 1, 1983.

Applicant therefore seeks blanket authorization to render the proposed service because of the immediacy of the declining market for its gas, the impact on producers of Applicant's reduced purchases, Applicant's financial inability to continue purchasing the gas, and the immediate and permanent loss of gas supplies to flaring should Applicant reduce its takes of gas from its casinghead and residue gas suppliers.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 13, 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 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. 83-11522 Filed 4-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL83-18-000]

Stonington and Deer Isle Power Co.; Filing

April 26, 1983.

Take notice that on March 31, 1983, Stonington and Deer Isle Power Company ("Company") filed a petition which requests that the Commission waive its jurisdictional right with respect to Company's proposed sale of power to the Isle au Haut Electric Power Company in favor of the Maine Public Utilities Commission. Company states that its service area is small, serving an island territory off the Maine coast, and the proposed Isle au Haut transaction would reflect the equivalent of about one percent of Company's annual sales.

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, N.E., 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 May 27, 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 persons 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. 83-11523 Filed 4-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-210-000]

John W. Tosaw; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

April 26, 1983.

On March 11, 1983, John W. Tosaw, (Applicant), 1219 N. Benton Street, Aurora, Illinois, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle cogeneration facility is located at the Model Laundry at Applicant's address. It consists of a reciprocating engine, generator and heat recovery equipment for hot water heating. The primary energy source is natural gas. The electric power production capacity is 50 kilowatts. Installation was completed April 1, 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, N.E., 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 persons 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. 83-11520 Filed 4-28-83; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2356-3]

Availability of Environmental Impact Statements Filed April 18 Through April 22, 1983 Pursuant to 40 CFR Part 1506.9

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 382–5075 or 382–5076.

Corps of Engineers:
EIS No. 830209, Final, COE, NC, Ararat River Flood Damage Reduction, Mount Airy, Surry County, Due: May 30, 1983.
Department of the Interior:
EIS No. 830217, Draft, BLM, CA, South Sierre Foothills Livestock Grazing Mgmt. Plan, Kern/Tulare Counties, Due: June 13, 1983.
EIS No. 830219, Final, OSM, WY, North Rochelle Mining/Reclamation Plan, Approval, Campbell County, Due: May 30, 1983.
Department of Transportation:
EIS No. 830215, Draft, FHW, CA, CA-55/Newport Boulevard Improvement, CA-1 to CA-73, Orange County, Due: July 15, 1983.
EIS No. 830212, Draft, FHW, MI, I-94/Blue Water Bridge and Plaza Improvements, St. Clair County, Due: June 13, 1983.
EIS No. 830210, Final, FHW, FL, Acosta Bridge Replacement, I-95 to Bay St., St. Johns River, Duval County, Due: May 30, 1983.
EIS No. 830214, Final, FHW, IN, US 20 Bypass Construction, US 31 to Co. Rd. 17, St. Joseph/Elkhart County, Due: May 30, 1983.
Environmental Protection Agency:
EIS No. 830213, Final, EPA, SEV, PAC, OR, WA, Columbia River Dredged Material Disposal Site, Designation, Due: May 30, 1983.
EIS No. 830221, Draft, EPA, MN, Moose Lake-Windemere WWT System, Approval/Grant, Pine and Carlton Counties, Due: June 13, 1983.
Department of Housing and Urban Development:
EIS No. 830220, Final, HUD, HI, Mililani Town Expansion, Mortgage Insurance, Honolulu County, Due: May 30, 1983.
Department of Defense, Army:
EIS No. 830211, Final USA, VA, Fort Lee Ongoing Mission, Prince George County, Due: May 30, 1983.
Department of Agriculture:
EIS No. 830218, Final, AFS, AK, Quartz Hill Molybdenum Claims, Amendments 2/3/4, Tongas National Forest, Due May 30, 1983.
Veterans Administration:
EIS No. 830216, Final VAD, FL, Florida VA National Cemetery Development, Marion and Sumter Counties, Due: May 30, 1983.
Amended Notices:
EIS No. 830147, Draft, OSM, MT, PRO Rosebud Coal Mining Operations, Comprehensive Plan, Rosebud County, published FR 3/25/83—Officially withdrawn.
EIS No. 830159, Final, USA, WA, Fort Lewis/Yakima Firing Center Ongoing Mission, Yakima/Kittias Counties, published FR 4/1/83—Review period reestablished due noncompletion of distribution, Due: June 3, 1983.

Dated: April 26, 1983.

Pasquale A. Alberico,

Action Director, Office of Federal Activities.

[FR Doc. 83-11557 Filed 4-28-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Whale Communications, Inc., et al.; Hearing

Memorandum Opinion and Order

In re applications of; Whale Communications, Inc., Mt. Holly, New Jersey: Req: 1460 kHz, 5 kW, DA-D, MM Docket No. 83-392, File No. BP-821022AS; Real Life Broadcasting, Mt. Holly, New Jersey: Req: 1460 kHz, 5 kW, DA-D, MM Docket No. 83-393, File No. BP-821203AB; Rancocas Valley Broadcasting Company, Inc., Mt. Holly, New Jersey: Req: 1460 kHz, 5 kW, DA-D, File No. BP-821203AA, for construction permit; designating applications for consolidated hearing on stated issues.

Adopted: April 13, 1983.
Released: April 27, 1983.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it for consideration the above-captioned mutually exclusive applications for the deleted facilities of station WJJZ, Mt. Holly, New Jersey. In addition it has before it an informal objection [1] to the Whale Communications, Inc. proposal [2] filed by Mount Holly Radio Company, a petition to return the Rancocas Valley Broadcasting Company, Inc., proposal filed by Whale, and related pleadings.

2. *The Mount Holly petition.* Mount Holly asserts that its application is the only legitimate proposal for Mt. Holly before the Commission; that it was protected from competing applications by virtue of having passed a November 5, 1981 cut-off date. Mount Holly's assertion is not correct. In February, 1975, Mount Holly filed a proposal for the facilities of station WJJZ mutually exclusive with the then-licensee's renewal request. This application was amended during the course of the comparative renewal proceeding to specify a new frequency (640 kHz) and was removed from hearing status and returned to the processing line as a result, *West Jersey Broadcasting Company (WJJZ),* FCC 81M-2955 (Administrative Law Judge 1981). As a new proposal, the amended Mount Holly application lost the cut-off and technical protection it had enjoyed with respect to WJJZ's facilities, a loss which Mount Holly's pleading totally fails to acknowledge. While Mount Holly faults us for accepting the above applications and for allegedly allowing them to interfere improperly with its proposed operation, Mount Holly's 640 kHz application is in fact a proposed second to the community, the first being the service on 1460 kHz provided previously by WJJZ and ultimately by the applicant prevailing in this proceeding. To the extent that compliance with our technical requirements must be established, Mount Holly, the newcomer, bears the burden of proof.[3]

3. *The Rancocas Valley proposal.* That the Rancocas Valley proposal does not comply with § 73.3513 of our Rules is undisputed. Contrary to the requirements of that section, the application was signed by the attorney for a corporate officer rather than by the officer himself.[4] It is true, as Rancocas Valley maintains, that we have at times permitted amendments correcting faulty signatures. However, the factors governing our decision in those cases—namely an application substantially complete when filed and surrounding circumstances creating equities favoring acceptance—are conspicuously absent here. See *e.g. Communication Gaithersburg, Inc.,* 60 FCC 2d 537 (1976); *Payvision Communications,* 47 FR 50907 (Mass Media Bureau 1982). With respect first to the contents of Rancocas Valley's proposal, the application before us addresses only four of ten questions concerining the parties to the proposal, omitting entirely all information about their other broadcast interests and about the ownership and control of the applicant itself. Furthermore, the application does not include a certification as to the applicant's financial qualifications. A significant portion of the application form, the missing data is essential to a threshold showing of legal qualification to be a Commission licensee. Certainly no application can be considered substantially complete without it.

4. As for the equities of the situation, Rancocas Valley justifies its use of a power of attorney as reflecting its principal's anticipated absence from the community and possibly the country. It does not indicate that the principal was in fact unable to sign the proposal when completed,[5] though, and provides as

[1] Mount Holly's pleading has been considered as an informal objection because of its lack of formal standing.

[2] While directed to the Whale application, the pleading is applicable to all of the proposals considered here.

[3] Whether Mount Holly has met this burden is a question properly addressed in connection with our examination of its 640 kHz proposal.

[4] That the attorney was acting pursuant to a power of attorney is of no consequence in this context, as the representations certified by the signature are personal to and binding upon the applicant itself.

[5] We take Rancocas Valley's proposed corrective amendment, which bears the principal's signature and the date of original submission, to represent its understanding of a *nunc pro tunc* acceptance rather than the availability of its principal at that time.

well no explanation as to why one of the corporation's three other officers could not sign the proposal in his place. We are left then with an application patently not in accord with our rules and regulations and with no basis for waiver of our rules to permit its acceptance subject to amendment. Rancocas Valley's request that we accept a proposed ameliorative amendment will therefore be denied and, pursuant to § 73.3566 of our Rules, the proposal dismissed.

5. As indicated above, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, however, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, *it is ordered*, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, to the applications *are designated for hearing in a consolidated proceeding*, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

7. *It is further ordered*, That the petition to return application filed by Whale Communications, Inc., *is granted*, and the application of Rancocas Valley Broadcasting Company, Inc., *is dismissed*.

8. *It is further ordered*, That the informal objection filed by Mount Holly Radio Company, *is denied*.

9. *It is further ordered*, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

10. It is further ordered, That, the applicants herein shall, pursuant to Section 311(a)(2) of the Communication Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communication Commission.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-11515 Filed 4-28-83; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 83-396; File No. BPH-810223AD, et al.]

Leflore-Dixie, Inc. et. al.; Applications for Consolidated Hearing

Hearing Designation Order

In re applications of Leflore-Dixie, Inc., Greenwood, Mississippi: Req: 99.1 MHz, Channel 256C, 100 kW (H&V), 220 feet, MM Docket No. 83-396, File No. BPH-810223AD; Mid-Delta Boradcasting, Inc., Greenwood, Mississippi: Req: 99.1 MHz, Channel 256C, 100 kW (H&V) 220 feet, MM Docket No. 83-397, File No. BPH-810511AC; Ronnie J. Grantham, Greenwood, Mississippi: Req: 99.1 MHz, Channel 256C, 100 kW (H&V) 220 feet, MM Docket No. 83-398, File No. BPH-810511AE; East Delta Communications, Inc., Greenwood, Mississippi: Req: 99.1 MHz, Channel 256C, 100 kW (H&V) 220 feet, MM Docket No. 83-399, File No. BPH-810522AP; for construction permit for a new FM station; and Leflore-Dixie, Inc., Greenwood, Mississippi: Req: 1540 KHz, 1 kW, D, MM Docket No. 83-400, File No. BP-810312AE; Mid-Delta Broadcasting, Inc., Greenwood, Mississippi: Req: 1540 KHz, 1kW, D, MM Docket No. 83-401, File No. BP-810511AN; Ronnie J. Grantham, Greenwood, Mississippi: Req: 1540 KH, 1kW, D, MM Docket No. 83-402, file No. BP-810511AR; for construction permit for a new AM station; designating applications for consolidated hearing on stated issues.

Adopted: April 15, 1983.
Released: April 22, 1983.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Leflore-Dixie, Inc., (Leflore), Mid-Delta Broadcasting, Inc. (Mid-Delta), and Ronnie J. Grantham, (Grantham) for new FM and AM broadcast stations, and the application of East Delta Communications, (East Delta) Inc. for a new FM Station at Greenwood, Mississippi. These applications are being consolidated in a single proceeding.

2. *Leflore.* Leflore seeks to amend its AM and FM applications [1] to report its preference to operate the FM facility in the event the Administrative Law Judge determines that one applicant may not be awarded the authority to operate both the FM and the AM stations. Leflore states that the amendment will not prejudice the rights of any of the parties and therefore should be accepted. East Delta, in its opposition to petition for leave to amend, states that the amendment is either irrelevant or may be intended to improve Leflore's position relative to the other applicants. Leflore states in its reply that the Commission, in *Webster-Baker Broadcasting, Co.*, 45 RR 2d 725 (1979), endorsed the use of preference selection between AM or FM when concurrent competing applications had been filed for both facilities. Leflore, therefore, contends that in accordance with *Webster-Baker*, it should as a matter of right, be allowed to designate its preference for the FM station. In *Webster-Baker*, the Commission held that a presiding Administrative Law Judge, after taking the particular circumstances of the case into account, could, if he choose, require those applicants applying for both AM and FM facilities to indicate a preference for either facility. Whether an election of an AM or FM preference was to be allowed was clearly left to the descretion of the presiding Administrative Law Judge. Thus, election prior to a pre-hearing conference would appear premature. Accordingly, Leflore's petition for leave to amend will be denied, without prejudice to later resubmission to the Administrative Law Judge.

3. *Mid-Delta.* Mid-Delta seeks to amend its AM and FM applications to report: (i) The reduction in the number of stockholders from five to three; (ii) the integration of ownership and mangement by all three stockholders; (iii) the name and address of its engineering counsel; (iv) the submission of the certified by-laws of the corporation; (v) the business and financial interests of its principals; and (vi) the proposed number of employees. The "B" cut-off date for minor amendments as a matter of right was June 26, 1981 for the AM applications and March 12, 1982 for the FM applications. While timely filing its FM amendments, Mid-Delta filed its AM amendments late. As pointed out in Grantham's opposition to the acceptance of the amendments, the FM amendments were not filed in compliance with § 73.3513(a)(3) of the Commission's Rules because they were not signed by an officer of Mid-Delta and, therefore, will not be accepted.

4. On August 18, 1981, Mid-Delta filed a petition for leave to amend its application for a new AM station seeking to show that one of its stockholders, Dr. E. A. Boykins, would devote 25 hours to the proposed station. Leflore-Dixie opposes the amendment

[1] These amendments were filed after the B cut-off date for amendments as a matter of right had passed for the FM and AM applications.

contending that the integration plan significantly alters Mid-Delta's comparative standing and therefore should not be allowed. Since Dr. Boykins has withdrawn as a shareholder from the corporation, this matter is now moot.

5. Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. We have no evidence that Mid-Delta published the required notice. To remedy this deficiency, Mid-Delta must publish local notice, if it has not already done so, and so inform the presiding Administrative Law Judge within 30 days of ther release of this Order.

6. *Grantham.* Grantham has filed petitions for leave to amend which seek to amend his AM application to report that he has moved from Sallis, Mississippi, to Greenwood, Mississippi and that he is in the process of setting up a recording and production studio in Greewood.[2] Leflore opposes acceptance of the amendments on the grounds that they would enhance Grantham's comparative standing due to the merit awarded for local residence. Leflore also asserts Grantham's change of occupation from timber broker to production activity might also serve to enhance his comparative standing. Leflore asserts that if Grantham is allowed to amend, it should be allowed solely for the purpose of compliance with § 1.65 and that no consideration be allowed to accrue for comparative purposes. Grantham contends that acceptance of the amendment is permissible under *Town and County Radio, Inc.*, 41 RR 2d 627 (A.L.J. 1977). There an applicant was allowed to amend its application after hearing designation to show that it had sold its AM station, in the same community as the proposed FM station, which eliminated the prospect of joint ownership. The amendment was accepted even though a comparative advantage accrued because of the diverstiture. The Administrative Law Judge reasoned that sufficient action had been taken prior to designation to permit acceptance of the amendment. This action consisted of informing the Commission that the applicant would divest itself of its AM station if the FM application was granted, as well as having filed an assignment application for the AM station with the Commission. The ALJ also found that the rationale for denial of post-designation amendment—that such amendments stimulate similar amendments by the competing applicants and therefore delay finalization of the applications and the hearing—was not present in that case since it was unlikely that the proffered amendment would trigger further amendments causing delay. We do not find the facts analogous to the instant case. Grantham has not show that he took diligent action to appraise the Commission prior to designation that he was planning to procure a resident in Greenwood, Mississippi. More importantly, there is a likelihood that acceptance of this amendment would indeed stimulate similiar amendments by the competing applicants which would delay finalization of the applications and the hearing. We find the facts more closely resemble the situation in *Redding Broadcasting Co.*, 41 RR 2d 925 (A.L.J. 1977). There, an applicant sought to amend its application after the designation date to show that two major principals, who had an aggregate of 82 percent of the stock, had moved to the proposed city of license. The applicant argued that the change in residence occurred prior to designation so that any comparative advantage accruing there from would not be barred. The ALJ denied the petition for leave to amend and found that a comparative advantage would accrue. We will deny the petitions for leave to amend the AM application. However, the amendments will be accepted for § 1.65 purposes but no comparative advantage will accrue thereby. *Cypress Communications, Inc.*, 47 RR 2d 132 (1980).

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive they must be designated for hearing in a consolidated proceeding.

8. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That Leflore-Dixie, Inc.'s petition for leave to amend its AM and FM applications is denied.

10. It is further ordered, That the petition for leave to amend filed by Mid-Delta for its AM and FM applications is denied.

11. It is further ordered, That Mid-Delta Broadcasting, Inc. shall inform the presiding Administrative Law Judge as to whether it has complied with the public notice requirements of § 73.3580(f) of the Commission's Rules.

12. It is further ordered, That Ronnie J. Grantham's petitions for leave to amend is denied to the extent indicated above.

13. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein, shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

14. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communication Commission.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-11511 Filed 4-28-83; 8:45 am]

BILLING CODE 6712-01-M

[2] The AM amendments were submitted after the June 26, 1981, deadline for amendments as of right had passed.

FEDERAL MARITIME COMMISSION

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C 3501, et seq.). Interested parties may obtain a copy of the item and the justifications submitted from Ronald D. Murphy, Agency Clearance Officer, Federal Maritime Commission, 1100 L Street, N.W., Room 9305, Washington, D.C., 20573, telephone number (202) 523-5326.

Requests for information, including copies of the collection of information and supporting documentation, may be addressed to the Agency Clearance Officer. Comments may be submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Federal Maritime Commission, within 15

days after the date of the Federal Register in which this notice appears.

Summary of Item Submitted for OMB Review

46 CFR Part 543—Financial Responsibility for Oil Pollution (Alaska Pipeline) (General Order 37) and Related Forms FMC–224P, FMC–11P, and FMC–244P

General Order 37 is the Commission's regulation to implement subsection (c) of Section 204 of the Trans-Alaska Pipeline Authorization Act. The Order requires the operator of any vessel transporting Trans-Alaska Pipeline Oil subject to Section 204 to obtain and carry on board the Vessel a Certificate of Financial Responsibility (Alaska Pipeline) in order to load oil at the pipeline terminal for carriage to any U.S. port, or to participate in the carriage of such oil before it has been off-loaded ashore at a United States port. General Order 37 and the related forms are used to determine vessel operators' financial responsibility for all damages including cleanup costs sustained by any person or entity, public or private, resulting from discharges of oil from their vessels.

The Commission estimates the annual respondents and annual manhours at 230 and 60, respectively. The respondents and manhours have been apportioned among the requirements as follows:

Agency Form No.	Estimated annual respondents	Estimated annual manhours
46 CFR 543 (G.O. 37)	164	41
FMC-224P	10	5
FMC-11P	40	10
FMC-244P	16	4

Total estimated annual cost to the government is $47,625.

Francis C. Hurney,

Secretary.

[FR Doc. 83-11454 Filed 4-28-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies Credit and Commerce American Holdings

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire additional voting shares of a bank. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Credit and Commerce American Holdings*, N.V., Willemstad, Netherlands Antilles; Credit and Commerce American Investment, B.V., Amsterdam, Netherlands; First American Corporation, Washington, D.C.; First American Bankshares, Inc., Washington, D.C.; which already, directly or indirectly own 36.6 percent of the shares of Valley Fidelity Bank and Trust Company, Knoxville, Tennessee ("Bank"), to acquire the additional 63.4 percent of the shares of Bank. Comments on this application must be received not later than May 25, 1983.

Board of Governors of the Federal Reserve System, April 25, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-11421 Filed 4-28-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Notice of Proposed de novo Nonbank Activities; Philadelphia National Corp.

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of Philadelhia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Philadelphia, National Corporation*, Philadelphia, Pennsylvania (mortgage activities; Kansas and Missouri): Proposes to engage through its subsidiary, Colonial Mortgage Service Company Associates, Inc., a corporation having its principal office in Philadelphia, Pennsylvania, in the origination of FHA, VA and conventional residential mortgage loans and second mortgage loans at a proposed new office of Colonial Mortgage Service Company Associates, Inc. located within a three mile radius of the intersection of College Boulevard and Metcalf Street, Overland Park, Johnson County, Kansas. This office will serve the States of Kansas and Missouri and primarily in the Counties of Wynadotte, Johnson, Douglas and Leavenworth in Kansas and Jackson, Kass, Clay and Platte in Missouri. Comments on this application must be received not later than May 25, 1983.

2. *Philadelphia National Corporation*, Philadelphia, Pennsylvania (mortgage activities, California and Nevada): Proposes to engage through its subsidiary, Colonial Associates, Inc., a corporation having its principal office in San Diego, Califorina, in the origination of FHA, VA and conventional residential mortgage loans and second mortgage loans at a proposed new office of Colonial Associates, Inc. located within a three mile radius of the intersection of Mill and Vassar Streets, Reno, Nevada. This office will service the States of Nevada and California and primarily in the counties of Washoe, Douglas and Carson in Nevada and Placer and El Dorado in Califorina. Comments on this application must be received not later than May 25, 1983.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104

Marietta Street, N.W., Atlanta, Georgia 30303:

1. *United Bank Corporation,* Barnesville, Georgia (mortgage banking, leasing, loan servicing, computer services; Georgia): To engage through a *de novo* subsidiary in mortgage banking activities, including the extension of direct loans to consumers and commercial borrowers secured by mortgages and the resale of mortgages to government agencies and other investors; commercial leasing of personal property; servicing loans, both commercial and consumer, for subsidiary banks and others; and providing computer services to subsidiaries and others as allowed by applicable regulations. These activities would be conducted from an office in Barnesville, Georgia servicing Crawford, Lamar, Pike and Spalding Counties, Georgia. Comments on this application must be received not later than May 25, 1983.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Northwest Bancorporation,* Minneapolis, Minnesota (sale of travelers checks; Alabama, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Washington, and Wyoming): To engage through its subsidiary Dial Corporation ("Dial") or its designated consumer finance subsidiaries, in the offering for sale and the sale of travelers checks. These activities would be conducted from branch offices of Dial or its subsidiaries located in the above designated states, each office serving its respective state. Comments on this application must be received not later than May 19, 9183.

Board of Governors of the Federal Reserve Systen, April 25, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-11422 Filed 4-28-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Central Shares, Inc.

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, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Central Shares, Inc.,* Lebanon, Missouri; to become a bank holding company by acquiring 70 percent of the voting shares of Central Bank, Lebanon, Missouri. Comments on this application must be received not later than May 25, 1983.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Northern Wisconsin Bank Holding Company, Inc.,* Laona, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of Laona State Bank, Laona, Wisconsin. Comments on this application must be received not later than May 25, 1983.

C. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Hays State Bankshares, Inc.,* Wichita, Kansas; to become a bank holding company by acquiring 92.5 percent of the voting shares of Hays State Bank, Hays, Kansas. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Kansas City. Comments on this application must be received not later than May 25, 1983.

Board of Governors of the Federal Reserve System, April 25, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-11420 Filed 4-28-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced:

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. May 13, 8 a.m., Conference Rm. 10, Bldg. 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open committee discussion, 8 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m.; open committee discussion, 12 m. to 4 p.m.; Conrad J. Ledet, National Center for Drugs and Biologics (HFN-160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3500. If any special arrangements or accommodations are needed, contact Mr. Ledet by May 6.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee with discuss whether metaproterenol metered dose inhalers should continue to be marketed over-the-counter (OTC). The committee will also discuss sulfiting agents used as antioxidants in drug products and the pharmacokinetics and labeling of sustained release theophylline preparations.

As part of the OTC Drug Review proceeding on Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products, the agency proposed that metaproterenol sulfate as a pressurized, metered dose inhalation aerosol be classified as safe and effective for OTC use (tentative final monograph for OTC Bronchodilator Drug Products; 47 FR 47520; October 26, 1982). FDA's Pulmonary-Allergy Drugs Advisory Committee's discussion and conclusions regarding such products will be considered by the agency in its preparation of the final monograph on OTC bronchodilator drugs.

FDA is not providing the usual 15-day advance notification of the May 13 meeting of the Pulmonary-Allergy Drugs Advisory Committee because it is the Commissioner of Food and Drugs' judgment that it would be inappropriate to delay the committee's deliberation on the subject of the continued OTC marketing of metaproterenol metered dose inhalers. This judgment was made because FDA gas received a number of public comments alleging that there is a potential hazard due to OTC marketing of metaproterenol metered dose inhalers. These comments claim that, because of the possibility that this drug may be abused, it continued availability without a prescription may encourage some asthmatics to delay seeking needed medical advice.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Dated: April 27, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83–11706 Filed 4–28–83; 10:49 am]

BILLING CODE 4160–01–M

[Docket No. 83M–0123]

American Optical Corp.; Premarket Approval of Softicon® (Vifilcon A) Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Softcon® (vifilcon A) Contact Lens, sponsored by American Optical Corp., Framingham, MA. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by May 31, 1983.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, National Center for Devices and Radiological Health (HFK—402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7445.

SUPPLEMENTARY INFORMATION: On April 1, 1982, American Optical Corp., Framingham, MA, submitted to FDA an application for premarket approval of the Softcon® (vifilcon A) Contact Lens for aphakic extended wear. The lens is available in powers of +8.00 to +18.00 diopters, and is indicated for the correction of visual acuity in aphakic patients with nondiseased eyes who may have no more than 2.00 diopters of astigmatism. The lens is to be disinfected using chemical disinfection systems. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA Advisory committee, which recommended approval of the application. On March 31, 1983, FDA approved the application by letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), soft contact lenses and solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201 (h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 (h)), soft contact lenses and solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of Part 310 (21 CFR Part 310), Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public

inspection at the Office of Medical Devices—contact Charles H. Kyper (HFK–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling for the approved contact lens states that the lens is to be used only with chemical disinfecting systems. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses. However, the restrictive labeling needs to be updated periodically to refer to new lens solutions that FDA approves for use with approved soft contact lenses. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at any othere time FDA prescribes by letter to the sponsor.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 31, 1983, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may by seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 22, 1983.

William F. Randolph

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-11430 Filed 4-28-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83F-0121]

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 to amend the food additive regulations to provide for the safe use of ethylenebis(oxyethylene) bis(3-*tert*-butyl-4-hydroxy-5-methylhydrocinnamate) as a stabilizer for adhesives and polymers, except olefin-type polymers.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

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 3B3713) has been filed by Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 10532, proposing that § 175.105 *Adhesives* (21 CFR 175.105), Part 175—Indirect Food Additives: Adhesive Coatings and Components (21 CFR Part 175); Part 176—Indirect Food Additives: Paper and Paperboard Components (21 CFR Part 176); Part 177—Indirect Food Additives: Polymers (21 CFR Part 177); Part 178—Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers (21 CFR Part 178); Part 179—Irradiation in the Production, Processing and Handling of Food (21 CFR Part 179); and Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181), be amended to provide for the safe use of ethylenebis(oxyethylene) bis(3-*tert*-butyl-4-hydroxy 5-methylhydrocinnamate) as a stabilizer for adhesives and polymers, except olefin-type polymers.

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: April 21, 1983.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 83-11426 Filed 4-28-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82D-0369]

Draft Revised Guideline for Drug Combinations for Use in Animals; Notice of Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft revised "Guideline for Drug Combinations for Use in Animals" prepared by the Bureau of Veterinary Medicine (BVM). The revised guideline describes the type of data required to establish effectiveness of drug combinations. The revision provides for deletion of the requirements for titrating the optimum levels and establishing effective ranges for drugs intended to improve animal productivity. Interested persons may submit written comments on the revised guideline.

DATE: Submit comments on or before May 31, 1983.

ADDRESS: The draft revised guideline is available for public examination at, written comments may be submitted to, and requests for single copies 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: Richard P. Lehmann, Bureau of Veterinary Medicine (HFV–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3134.

SUPPLEMENTARY INFORMATION: The Federal Food, Drug, and Cosmetic Act (the act) requires that a new animal drug be the subject of an approved new animal drug application (NADA) before it may be marketed. Section 512(b)(1) of the act (21 U.S.C. 360(b)(1)) requires that each NADA include full reports in investigations showing that the drug is safe and effective for use. If the drug is a combination of two or more active drug ingredients, 21 CFR 514.1(b)(8)(v) requires the submission of studies that demonstrate that each such ingredient makes a contribution, i.e., that the combination is better than each ingredient individually.

On September 5, 1978, BVM adopted a "Guideline for Drug Combinations for Use in Animals" that describes in detail the type of data required to establish the effectiveness and safety of new animal drug combinations. The revised guideline provides for deletion of the previously existing requirement of establishing, in studies conducted with the combinations, the optimum levels or the effective ranges of active drug ingredients that are indicated for improving animal productivity (e.g., increased rate of weight gain, improved feed efficiency, and increased production of milk or eggs). This provision will apply where the optimum levels or effective ranges of the individual drugs have been established separately in approved applications or by the National Academy of Sciences/National Research Council (NAS/NRC) Drug Effectiveness Study Implemenation (DESI) review.

This notice of availability is issued under § 10.90(b) (21 CFR 10.90(b)), which provides for use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. Sponsors may rely upon the guideline with the assurance that it represents procedures acceptable to the agency. (See 21 CFR 10.90.) Of course, if a sponsor believes that alternative procedures are also applicable, the guideline does not preclude a sponsor from pursuing the alternative procedures. Under such circumstances, however, the agency encourages sponsors to discuss the propriety of the alternative procedures in advance with FDA to prevent the expenditure of money and effort on activity that may later be found to be unacceptable.

The guideline is available for public examination at, and requests for single copies may be sent to, the Dockets Management Branch (address above).

Interested persons may, on or before May 31, 1983, submit written comments on the guideline to the Dockets Management Branch. Such comments will be considered in determining further revisions of the guideline. Respondents should submit two copies (except that individuals may submit single copies) identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch from 9 a.m. to 4 p.m., Monday through Friday.

Dated: April 25, 1983.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-11435 Filed 4-28-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83F-0068]

Eastman Kodak Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Eastman Kodak Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer intended for use in contact with alcoholic food and beverages.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

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 3B3693) has been filed by Eastmen Kodak Co., Eastman Chemicals Division, Kingsport, TN 37662, proposing that § 177.1315 *Ethylene-1, 4-cyclohexylene dimethylene terephthalate copolymer* (21 CFR 177.1315) be amended to provide for the safe use of ethylene-1, 4-cyclohexylene dimethylene terephthalate copolymer intended for use in contact with alcoholic food and beverages.

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: April 21, 1983.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 83-11427 Filed 4-28-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83N-0114; DESI 11159]

Ergotamine Tartrate With Cyclizine Hydrochloride and Caffeine; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice withdraws approval of the new drug application for Migral Tablets (NDA 11-159) containing ergotamine tartrate, cyclizine hydrochloride, and caffeine. Approval is withdrawn because the combination drug product lacks substantial evidence of effectiveness for its labeled indications. The product has been used for the treatment of vascular headache.

EFFECTIVE DATE: May 31, 1983.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 11159 and directed to the Division of Drug Labeling Compliance (HFN-310), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Margery C. Erickson, National Center for Drugs and Biologics (HFN-8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice of opportunity for hearing (formerly Docket No. FDC-D-680) published in the **Federal Register** of January 4, 1974 (39 FR 1093), the Food and Drug Administration (FDA) proposed to withdraw approval of the new drug application for Migral Tablets on the ground that the product lacks substantial evidence of effectiveness as a combination drug as required by 21 CFR 300.50 (formerly 21 CFR 3.86). In response to the notice, Burroughs Wellcome, the holder of the new drug application for Migral, requested a hearing.

Burroughs Wellcome has since informed FDA that it no longer markets Migral and has withdrawn its request for a hearing. Accordingly, approval of the following new drug application is now being withdrawn:.

NDA 11-159; Migral Tablets containing ergotamine tartrate, cyclizine hydrochloride, and caffeine; Burroughs

Wellcome and Co., Inc., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.

Any drug product that is identical, related, or similar to the drug product named above and is not the subject of an approved new drug application is covered by the new drug application reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address given above).

The Director of the National Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82 and 47 FR 26913 published in the Federal Register of June 22, 1982), finds, on the basis of new information before him with respect to the drug product, evaluated together with the evidence available to him when the application was approved, that there is a lack of substantial evidence that the product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 11–159 and all its amendments and supplements is withdrawn effective May 31, 1983. Shipment in interstate commerce of the above product or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: April 25, 1983.

Harry M. Meyer, Jr.,

Director, National Center for Drugs and Biologics.

[FR Doc. 83-11431 Filed 4-28-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0228]

Travenol Laboratories, Inc.; Seal-Less Centrifugal Automated Blood Cell Separator; Denial of Petition for Reclassification

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order denying a petition submitted by Travenol Laboratories, Inc., Deerfield, IL 60015, to reclassify from class III (premarket approval) into class II (performance standards) its seal-less centrifugal automated blood cell separator, as a category of device separate from all other types of automated blood cell separators.

FOR FURTHER INFORMATION CONTACT: Sharon Risso, National Center for Drugs and Biologics (HFN–825), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–5433.

SUPPLEMENTARY INFORMATION: On January 19, 1981, Travenol Laboratories, Inc., Deerfield, IL 60015, submitted to FDA, under section 513(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(e)) and § 860.130 (21 CFR 860.130) of the regulations, a petition to reclassify from class III into class II its seal-less centrifugal automated blood cell separator, as a category of device separate from all the other automated blood cell separators that have been classified into class III (21 CFR 864.9245). FDA referred the petition to the Hematology and Pathology Device Section (the Section) of the Clinical Chemistry and Hematology Devices Panel. The Section discussed the petition during an open public meeting on April 20, 1981. After considering the information contained in the petition and the presentations made at the meeting, the Section determined that the seal-less feature of Travenol's device does not make it significantly less hazardous than any other type of automated blood cell separator. The Section recommended that Travenol's seal-less centrifugal automated blood cell separator not be reclassified from class III into class II as a category of device separate from the other devices of the generic type identified in § 864.9245. As an additional finding, the Section recommended that FDA reclassify from class III into class II all automated blood cell separators (including the petitioner's seal-less type device) intended for donor procedures but that this reclassification not take effect until a performance standard for the device is effective. Thus, the Section recommended that FDA deny the petition to reclassify into class II the seal-less centrifugal automated blood cell separator as a category of device separate from the other devices in § 864.9245 and that the petitioner's device remain in class III. The transcript of the April 20, 1981 open public meeting is available upon request at 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.

In the Federal Register of September 22, 1981 (46 FR 46838), FDA published a notice that announced the Section's recommendations on the seal-less centrifugal automated blood cell separator and provided a period of 30 days for interested persons to submit written comments to FDA. The notice contained a summary of the data on which the Section's recommendation was based.

In response to the September 22, 1981 notice, FDA received comments from Travenol Laboratories, Inc. (the petitioner), another manufacturer of blood cell separators, and a blood bank. The following is a summary of these comments and FDA's responses to them.

1. The petitioner noted that during the public meeting of the Section on April 20, 1981, both the favorable and unfavorable information on automated blood cell separators was discussed. The petitioner stated that the data presented in the notice concentrated principally on the negative information about these devices.

FDA acknowledges that the summary does not reflect all the information presented at the meeting. The Section's recommendation that the device remain in class III was expressly based on the known risks of blood cell separators and the lack of evidence that a seal-less feature would decrease those risks. Because of the volume of information discussed, only data directly related to those risks were included in the notice. Persons interested in reviewing all of the information presented at the meeting should obtain a copy of the transcript of the meeting from the Dockets Management Branch (address above).

2. The petitioner suggested that the final order based on its petition be expanded to include the reclassification from class III into class II of an automated blood cell separators for donor procedures.

FDA disagrees with this comment. The petition considered by FDA and the Section requested reclassification of only the seal-less centrifugal automated blood cell separator. FDA believes that the petition provided insufficient information regarding the other devices identified in § 864.9245 for FDA to determine whether all devices of that generic type should be reclassified.

3. Two comments, including a comment from the petitioner, agreed with the Section's additional recommendation that automated blood cell separators intended for therapeutic purposes remain in class III.

FDA agrees with these comments because insufficient information exists to establish a performance standard to assure the safety and effectiveness of these devices for therapeutic uses.

4. The petitioner agreed with the Section's recommendation that all automated blood cell separators intended for donor procedures should be reclassified from class III to class II.

However, the petitioner disagreed with the Section's additional recommendation that such reclassification not take effect until a performance standard for these devices is effective. The petitioner stated that it is discriminatory to require a performance standard to be in effect prior to the effective date of reclassification of the petitioner's device, considering all the other devices already classified into class II for which no performance standards are in effect.

FDA disagrees with the petitioner. FDA is authorized both to make reclassification effective on the effective date of a performance standard and to set priorities among class II devices for adopting performance standards. Setting a high priority for developing a performance standard for a certain device based upon public health considerations or requiring that a performance standard be in place before reclassification takes effect does not constitute discrimination. However, in this case FDA no longer believes reclassification is appropriate. In the notice of September 22, 1981, FDA stated that it agreed with the Section's additional findings and would reclassify automated blood cell separators intended for donor procedures into class II upon the effective date of a performance standard for these devices. After re-evaluating all available data, including the information presented in the petition and at the Section meeting, and the comments received, FDA is withdrawing its stated intent to reclassify into class II the generic device intended for donor procedures upon the effective date of a performance standard for the device. Section 513(e) of the act (21 U.S.C. 360c(e)) and 21 CFR 860.7 and 860.123 requires that there be new valid scientific evidence to suport the reclassification of a device FDA has concluded that it does not have available to it sufficient new information on all blood cell separators to develop a performance standard that will assure safety and effectiveness of these devices. FDA believes further that the seal-less feature of the petitioner's device does not make it less hazardous than any other type of automated blood cell separator. Therefore, FDA does not intend to initiate reclassification of the device and the question of whether to delay the effective date of reclassification is moot.

5. Two comments agreed with the recommendations of the Section that the petitioner's seal-less centrifugal automated blood cell separator continue to be included in the same generic type of device with the other automated blood cell separators identified in § 864.9245 and that any reclassification of the generic type of device from class III into class II not take effect until a performance standard for the device is effective.

FDA agrees in part and disagrees in part with the comments. FDA has determined that the seal-less centrifugal automated blood cell separator should continue to be included in the same generic type of device with all the other automated blood cell separators. However, FDA has determined that all devices of that generic type should remain classified into class III. Because of these determinations, FDA now believes it is inappropriate to declare an intent to reclassify the generic device from class III into class II upon the effective date of a performance standard for the device.

6. One of the comments states that it has developed information to begin the process of establishing performance standards for all automated blood cell separators intended for use in blood donation. FDA invites any interested party who believes he or she has sufficient new information to develop a standard which will assure the safety and effectiveness of this generic group of devices, for one or more indications, to submit a petition for reclassification as prescribed under section 513(e) of the act (21 CFR 860.130).

Accordingly, FDA is issuing an order under section 513(e) of the act and § 860.130(d) (21 CFR 860.130(d)) of the regulations denying Travenol's petition to reclassify from class III into class II the seal-less centrifugal automated blood cell separator, as a category of device separate from all other automated blood cell separators.

FDA certifies that this notice requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354).

Dated: April 13, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-11433 Filed 4-28-83; 8:45 am]

BILLING CODE 4160-01-M

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on April 22.

Public Health Service

National Institutes of Health

Subject: Survey of Last Days of Life—Preliminary Plan
Respondents: Individuals
OMB Desk Officer: Fay S. Iudicello

Food and Drug Administration

Subject: Registration of Procedures of Drugs and Listing of Drugs in Commercial Distribution (0910-0045)—Extension/No Change
Respondents: Pharmaceutical manufacturers, repackers, and relabelers of prescription, over-the-counter, veterinary, bulk and imported drugs
OMB Desk Officer: Richard Eisinger

Centers for Disease Control

Subject: Congenital Rubella Syndrome Case Report (0920-0013)—Revision
Respondents: State and territorial epidemiologists
OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

Subject: Social Security Office Report of State Buy-In Problem (HCFA-1957)—Extension/No Change
Respondents: State Medicaid offices
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to both the HHS Reports Clearance Officer and the appropriate OMB Desk Officer designated above at the following addresses:

Joseph F. Costa, Acting HHS Reports Clearance Officer, Hubert H. Humphrey Building, Room 524-F, Washington, D.C. 20201; or
OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer).

Dated: April 22, 1983.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 83-11401 Filed 4-28-83; 8:45 am]

BILLING CODE 4150-04-M

Public Health Service

National Toxicology Program, Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation; Meeting

Notice is hereby given of a meeting of the Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation, National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, to be held on May 17, 1983, in the First Floor Auditorium, Hubert Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. The meeting will begin at 9:00 a.m. and end at approximately 4:00 p.m. The meeting is open to the public.

This ad hoc panel was requested by the NTP Board of Scientific Counselors at its March 1983 meeting to review basic biology and chemistry of chemical carcinogenesis and recommended to the Board methods that the NTP use for the detection and evaluation of chemical carcinogens. Panel members are listed below:

Dr. John Doull (Chairman), Professor, Department of Pharmacology and Toxicology, University of Kansas Medical Center, Kansas City, Kansas 66103;

Dr. Richard Adamson, Director, Division of Cancer Cause and Prevention, National Cancer Institute, Building 31, Room 11A04, Bethesda, Maryland 20205;

Dr. Perry J. Gehring, Vice President of Agricultural Products R&D and Director of Health and Environmental Science, Dow Chemical Company, Midland, Michigan 48640;

Dr. Richard A. Griesemer, Director, Biology Division, Oak Ridge National Laboratory P.O. Box Y, Oak Ridge Tennessee 37830;

Dr. Kim Hooper, Chief, Hazard Evaluation System and Information Service, State of California, Department of Health Services, 2151 Berkeley Way, Room 504, Berkeley, California 94704;

Dr. Sanford Miller, Director, Bureau of Foods, Food and Drug Administration, Federal Building 8, 200 C Street, S.W. Washington, D.C. 20201;

Dr. Ruggero Montesano, Head, Unit of Mechanisms of Carcinogenesis, International Agency for Research on Cancer, World Health Organization, 150 Cours Albert-Thomas, 69372 Lyon Cedex 2, France;

Dr. Ian Munro, Director, General, Food Directorate, Health Protection Branch, Health and Welfare Canada, Tunney's Pasture, Ottawa, Ontario K1A OL2, Canada;

Dr. Frederica Perera, Senior Staff Scientist, The Natural Resources Defense Council, 122 East 42nd Street, New York, New York 10168;

Dr. Robert A. Scala, Senior Scientific Advisor, Medicine and Environmental Health Department, Research and Environmental Health Division, Exxon Corporation, P.O. Box 235, Mettlers Road, East Millstone, New Jersey 08873;

Dr. Andrew Sivak, Vice President, Biomedical Science, Arthur D. Little, Inc., Acorn Park, Cambridge, Massachusetts 02140;

Dr. I. Bernard Weinstein, Professor of Medicine and Public Health, Faculty of Medicine, Columbia University, 701 W. 168th Street, New York, New York 10032;

Dr. Gerold N. Wogan, Head, Department of Nutrition and Food Science, Massachusetts Institute of Technology, 77 Massachusetts Avenue, Bldg. 16–333, Cambridge, Massachusetts 02139.

NTP Board of Scientific Counselors

Dr. Norman Breslow, Professor, Department of Biostatistics, Mail Stop SC–32, University of Washington, Seattle, Washington 89195;

Dr. Henry C. Pitot, Director McArdle Laboratory for Cancer Research, Medical School, University of Wisconsin, 450 North Randall Avenue, Madison, Wisconsin 53706;

Dr. James A. Swenberg, Chief, Pathology Department, Chemical Industry Institute of Toxicology, P.O. Box 12137, Research Triangle Park, North Carolina 27709.

The meeting will include discussion of the objectives, appropriate methods for conduct of the review, and key areas to be included in the review, and presentation of an overview of NIP's current practices and progress in areas relevant to carcinogenesis.

Topics to be considered by the Panel may include but are not limited to:

Data Required from Prechronic Studies
- Chemical disposition and metabolism
- Dose route/dose vehicle
- Identify target organs
- Establish dose response parameters

Design of Chronic Studies
- Definition of cancer and toxicity endpoints
- *In utero* exposure
- Study duration
- Interim evaluation
- Number of doses
- Animal species
- General pathology requirements:
- Tissues examined
- Diagnoses review
- Data interpretation:
- Selective combining of tumors
- Historic data base
- Negative trends
- Dose trend analyses

Techniques to supplement or Foreshorten Cancer tests
- Genetic toxicity
- Transformation assays
- Promotion, co-carcinogenesis

the Ad Hoc Panel seeks comments and views on these and any additional areas for their consideration. All comments should be addressed to the Chairman as follows: Dr. John Doull, Chairman, Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation c/o Ms. Janet Riley, Secretary to the Panel, P.O. Box 12233, Research Triangle Park, North Carolina 27709.

Every effort will be made at the May 17 meeting to consider comments received by C.O.B. Friday, May 13. Comments received after May 13 will also be considered. The Panel encourages input.

Attendance is limited only by space available. For further information regarding the meeting, please contact Panel Secretary, Ms. Riley, at the above address or telephone 919/541–7621 or FTS 629–7621.

Dated: April 25, 1983.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 83–11591 Filed 4–28–83; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Chuichu Indian Irrigation Project, Arizona; Assessment Rate for Operation and Maintenance of Irrigation Facilities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to change the annual per acre assessment rate for the operation and maintenance of the irrigation facilities on the Chuichu Indian Irrigation Project to properly reflect the actual costs for labor, materials, equipment and services. The change is from $26 to $250 per irrigable acre for non-Indian owned land and Indian owned land leased to non-Indians, and from $2 to $65 per irrigable acre for Indian owned land farmed and operated by Indians.

EFFECTIVE DATE: This notice shall be effective on April 29, 1983.

FOR FURTHER INFORMATION CONTACT: Curtis Nordwall, Superintendent, Bureau of Indian Affairs, Papago Indian Agency, Sells, Arizona 85634, telephone number (602) 383–7286.

SUPPLEMENTARY INFORMATION: This notice is issued by authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Deputy Assistant Secretary for Indian Affairs (Operations) to the Area Directors in 10 BIAM 3.

The costs of labor, materials, power and energy have continued to increase each year until costs now exceed revenue from current charges.

An analysis of the cost of operation and maintenance of the Chuichu Indian Irrigation Project was discussed with the individual farmers and advertised in two local newspapers. Comments recieved were carefully considered in arriving at the new rate.

The notice will read as follows:

Chuichu Indian Irrigation Project, Arizona

Annual Operation and Maintenance Charges

Charges—The annual basic operation and maintenance assessment rates for land to which water can be delivered under the Chuichu Indian Irrigation Project, Arizona, for operation and maintenance of the project are hereby fixed at $250 per acre for non-Indian owned lands and Indian owned lands leased to non-Indians and $65 per irrigable acre for Indian owned lands farmed and operated by Indians. The payment of the assessment rate shall entitle water users to their prorated share of water as determined by the production capacity of the wells and/or the availability of funds to pay the pumping operation and maintenance costs.

Payments—Annual charges shall become due on March 1 of each year and payable on or before that date, and any unpaid charges shall stand as a first lien against the land without penalty until paid.

Delivery—Delivery of water shall be refused to all tracts of land for which the charges have not been paid, except where the lands are in Indian ownership, not under lease to non-Indians, and the Indian owners are financially unable to pay the assessment when due. In such instances, water may be delivered under the following conditions:

1. The Indian owner shall make necessary arrangements with the Superintendent to pay the assessment from proceeds derived for labor performed on the project works as authorized by the Superintendent, or from proceeds of crops grown on the land when harvested and marketed within that calendar year.

2. In any instances where the Superintendent is convinced that an Indian landowner, whose land is not under lease to a non-Indian, is financially unable to pay his assessment from proceeds for labor performed on the project works, or from the proceeds of crops grown on the land, or from any other source, water may be delivered following certification by the Superintendent to the official in charge of the irrigation project that such Indian is financially unable to pay the assessment.

Water Users Responsibility for Water After Delivery—The water users are responsible for the water after it has been delivered to their lands, and are required to have their field ditches of proper capacity and in a suitable condition for delivery of irrigation water.

Distribution and Apportionment—All water of the project is deemed a common water supply in which all irrigable lands of the project are entitled to share equally and such water will be distributed to the lands of the project as equitably as physical conditions will permit.

Walter R. Mills,

Acting Assistant, Area Director.

[FR Doc. 83-11301 Filed 4-28-83; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Platter River Resource Area, Casper District, Wyoming; Availability of Amendment to the Eastern Powder River Basin Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Availability of Amendment to the Eastern Powder River Basin Management Framework Plan.

SUMMARY: The Casper District, Platte River Resource Area, has reviewed and amended the coal component of the Eastern Powder River Basin (ERPB) Management Framework Plan. The amendment brings the plan into conformance with the federal coal management program adopted by the Secretary of the Interior in 1979. The plan covers northern Converse County and was originally prepared in 1977. Copies of the final amendment are available.

FOR FURTHER INFORMATION CONTACT: For additional information, to review detailed documentation, or to obtain a copy of the amendment, contact: Jim Melton, Area Manager, Platte River Resource Area, Bureau of Land Management, 951 Rancho Road, Casper, Wyoming 82601, (307) 261–5556.

SUPPLEMENTARY INFORMATION: The Platte Resource Area of the Casper, Wyoming District of the Bureau of Land Management reviewed and amended portions of the ERPB Management Framework Plan (MFP) related to coal. Approximately 30,000 acres with about 555 million tons of coal will be available for further consideration for coal development. This final amendment also indicates those areas in northern Converse County which are unsuitable, acceptable pending study, acceptable with stipulations, or deferred from leasing consideration.

Decisions in the amendment will become final 30 days following publication of this notice unless written protests are received by BLM by June 1, 1983. Protests may be made by any person who has participated in the planning process and who has an interest in or may be adversely affected by the amendment decisions. Protests may only raise issues submitted during the planning process.

The draft amendment was made available November 19th, 1982 and was subject to 90 day public comment. A public hearing was held December 7, 1982 in Douglas, Wyoming. All comments received were noted and incorporated when applicable. The amendment was completed by an interdisciplinary team.

Les Olver,

Associate District Manager.

[FR Doc. 83-10204- Filed 4-28-83; 8:45 am]

BILLING CODE 4310-84-M

[AA-6688-A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 1427(d) of the Alaska National Interest Lands Conservation Act of December 2, 1980, Pub. L. 96–487 (94 Stat. 2371, 2524–2525), will be issued to Ouzinkie Native Corporation for approximately 7,468 acres. The lands involved are within T. 22 S., R. 19 W., Seward Meridian.

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the *Kadiak Times* upon issuance of the decision. For

information on how to obtain copies, contact Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal Government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of the decision by personal service or certified mail, return receipt requested, shall have thirty days from the receipt of the decision to file an appeal.

2. Unknown parties, unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt, and parties who received a copy of the decision by regular mail which is not certified, return receipt requested, shall have until May 31, 1983 to file an appeal.

Any party known or unknown who is adversely affected by the decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Ouzinkie Native Corporation, P.O. Box 89, Ouzinkie, Alaska 99644; or

Koniag, Inc., Regional Native Corporation, P.O. Box 746, Kodiak, Alaska 99615.

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 83-11500 Filed 4-28-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Mines

Advisory Committee on Mining and Mineral Research: Meeting

This notice is issued in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I) and the Office of Management and Budget Circular No. A63, Revised.

The Advisory Committee on Mining and Mineral Research will meet from 8:00 a.m. to noon (or completion of business) on Wednesday, June 15, 1983, at the Utah Mining and Mineral Resources Research Institute and Center for Generic mineral Technology Research in Communition. The meeting will be held in: The Board Room, Alumni House, 155 South, Central Campus Dirve, University of Utah, Salt Lake City, Utah.

The meeting will deal with the following subjects:

1. Welcome of new Committee members;

2. Review of minutes of meeting of March 2, 1983;

3. Rationale for guidelines used in making FY 1983 grants;

4. Status of establishment of a new center of generic mineral technology in respirable dust;

5. Review of progress at generic mineral technology centers;

6. Status of enhanced support for generic centers;

7. New business.

The meeting of this committee is open to the public. Approximately 40 visitors can be accommodated on a first-come first-serve basis. Written statements concerning the subjects are welcome.

Visitors who expect to attend should make this known no later than June 13, by informing Dr. Ronald Munson, Chief, Office of Mineral Institutes, Bureau of Mines, MS 1020, 2401 E Street, NW., Washington, D.C. 20241, phone (202) 634-1328.

Dated: April 21, 1983.

Robert C. horton,

Director

[FR Doc. 83-11475 Filed 4-28-83; 8:45 am]

BILLING CODE 4301-53-M

Minerals Management Service

North Aleutian Basin Lease Offering (April 1985); Call for Information

Purpose of Call

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shalf (OCS) Lands Act (43 U.D.C. 1331-1343), as amended (92 Stat. 629), and regulations appearing at 30 CFR 256.23. Potential bidders are requested to outline areas where they believe hydrocarbon potential is sufficient to warrant offering these areas in the North Aleutian Basin. The Secretary is also requesting comments from all interested parties—Federal, State, and local governments, environmental groups, the general public, and potential bidders—on possible environmental effects and use conflicts in the Call area and on the appropriateness of initial lease terms longer than 5 years and lease areas larger than 5,760 acres (2,331 hectares).

Use of Information From Call

Information submitted in response to this Call will be considered in the area identification which selects the areas of hydrocarbon potential to be proposed for leasing and analyzed in the environmental impact statement as the proposed Federal Action. This information will also be used in identifying alternatives to the proposed action. Comments received on possible environmental effects and use conflicts may be used in the analysis of local environmental conditions within the Call areas so that the potential effects of oil and gas exploration and development, other than the benefits accruing to the Nation as a result of inventorying and producing oil and gas, can be assessed. These comments may also be useful in developing special lease terms and conditions designed to assure safe offshore operations. Comments submitted regarding length of lease term and size of lease areas may be used in the assessment of the appropriate initial lease term and appropriate lease size, pursuant to section 8 of the OCS Lands Act, as amended (43 U.S.C. 1337).

Description of Area

In general, the North Aleutian Basin lies in the eastern Bering Sea northwest of the Alaska Peninsula and is bounded on the north by 59° N. latitude and on the north, south, and east by the 3-geographical-mile line. It is bounded on the west by 165° W. longitude from 59°N.

latitude to the 3-geographical-mile line at approximately 54°40'N. latitude.

Indications of interest and comments may be considered for all Federal Acreage within the boundaries of the Call. Boundaries of the call area are shown on the map at the end of this Call. Boundaries of the Call area are depicted in detail on the standard Call for information Map available free from the Regional Manager, Alaska OCS Region, P.O. Box 1159, 620 East 10th Ave., Anchorage, Alaska 99510.

The following list identifies the Official Protraction Diagrams in this Call. The diagrams may be purchased for $2.00 each from the Regional Manager, Alaska OCS Region.

NO 3–4 Cape Newenham (Approved September 30, 1976) All Federal blocks
NO 4–3 Hagemeister Island (Approved September 30, 1976) All Federal blocks
NO 4–4 Naknek (Approved September 30, 1976) All Federal blocks
NO 3–6 (Approved October 27, 1976) All blocks
NO 4–5 (Approved June 11, 1975) All blocks
NO 4–6 Uqashik (Approved June 3, 1976) The following Federal blocks: 1–16, 45–60, 89–104, 133–148, 177–192, 221–235, 265–279, 309–323, 353–366, 397–410, 441–453, 485–497, 529–540, 573–583, 617–626, 661–668, 705–711, 749–755, 793–798, 837–841, 881–885, 925–928, 969–972
NO 3–8 (Approved March 20, 1975) All Federal blocks
NO 4–7 Chignik (Approved September 30, 1976) All Federal blocks
NO 4–8 Sutwik Island (Approved August 1, 1975) The following Federal blocks: 1–3, 45, 46, 89
NN 3–2 Cold Bay (Approved September 30, 1976) All Federal blocks *except:* 964, 1006–1008
NN 4–1 Stepovak Bay (Approved October 6, 1976) The following Federal blocks: 1–6, 45–47, 89, 90
NN 3–4 False Pass (Approved June 4, 1981) The following Federal blocks: 1–11, 45–51, 53, 54, 89–94, 133–137, 177–181, 221–224, 265–268, 309–312, 353, 354

Instructions on Call

Indications of interest from potential bidders should be limited to the Federal acreage included in the Call area described above. Respondents should indicate interest in those portions of the Call area having sufficient potential for the discovery of oil and gas to be offered for lease. Those indicating interest are requested to do so on the standard Call for Information Map, available free from the Regional Manager, Alaska OCS Region, at the address stated in the second paragraph under "Description of Area," telephone (907) 276–2955. Interest should be shown by outlining the area(s) along block lines.

The standard Call Map shows the Call area and highlights the area identified by the Minerals Management Service (MMS) as having potential for the discovery of oil and gas. Although individual indications of interest are considered to be privileged and confidential information, the names of persons or entities indicating interest or submitting comments well be of public record.

Respondents are encouraged to broadly rank areas according to priority of interest (e.g., priority 1 (high), 2, or 3). Priority information submitted by companies will be held confidential and may be used as a criterion in determining the area to be analyzed in the environmental impact statement.

In addition to indications of interest, we are seeking comments from all interested parties about particular geological, environmental, biological, archeological, or socioeconomic conditions or problems, or other information which might bear upon potential leasing and development of particular areas. Comments should preferably address broad areas but may be restricted to designated blocks of particular concern.

Comments are also being sought from all interested parties on the appropriateness of initial lease terms longer than 5 years and on the need, if any, for lease areas larger than 5,760 acres (2,331 hectares). Such comments should describe why such modifications would be appropriate and identify where such modifications should be applied. Those making comments are requested to mark the area commented upon on the standard Call for Information Map discussed above.

Indications of interest and comments must be submitted no later than 30 days following publication of this document in the **Federal Register** in envelopes labeled "Indications of Interest for Leasing in the Outer Continental Shelf, North Aleutian Basin" or "Comments on Leasing in the Outer Continental Shelf, North Aleutian Basin" as appropriate. The map (original) and indications of interest or comments must be submitted to the Regional Supervisor for Leasing and Environment, Alaska OCS Region, at the address stated in the second paragraph under "Description of Area". One copy of the map and indications of interest or comments are also to be sent to the Chief, Offshore Resource Evaluation Division, Minerals Management Service, Mail Stop 643, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

Final delineation of the area for competitive bidding will be made only at a later date after compliance with established departmental procedures, all requirements of the National Environmental Policy Act of 1969, and the OCS Lands Act, as amended. A final Notice of Lease Offering, detailing areas to be offered for competitive bidding, will be published in the **Federal Register** stating the conditions and terms for leasing and the place, date, and hour at which bids will be received and opened.

Dated April 22, 1983.

Harold Doley,

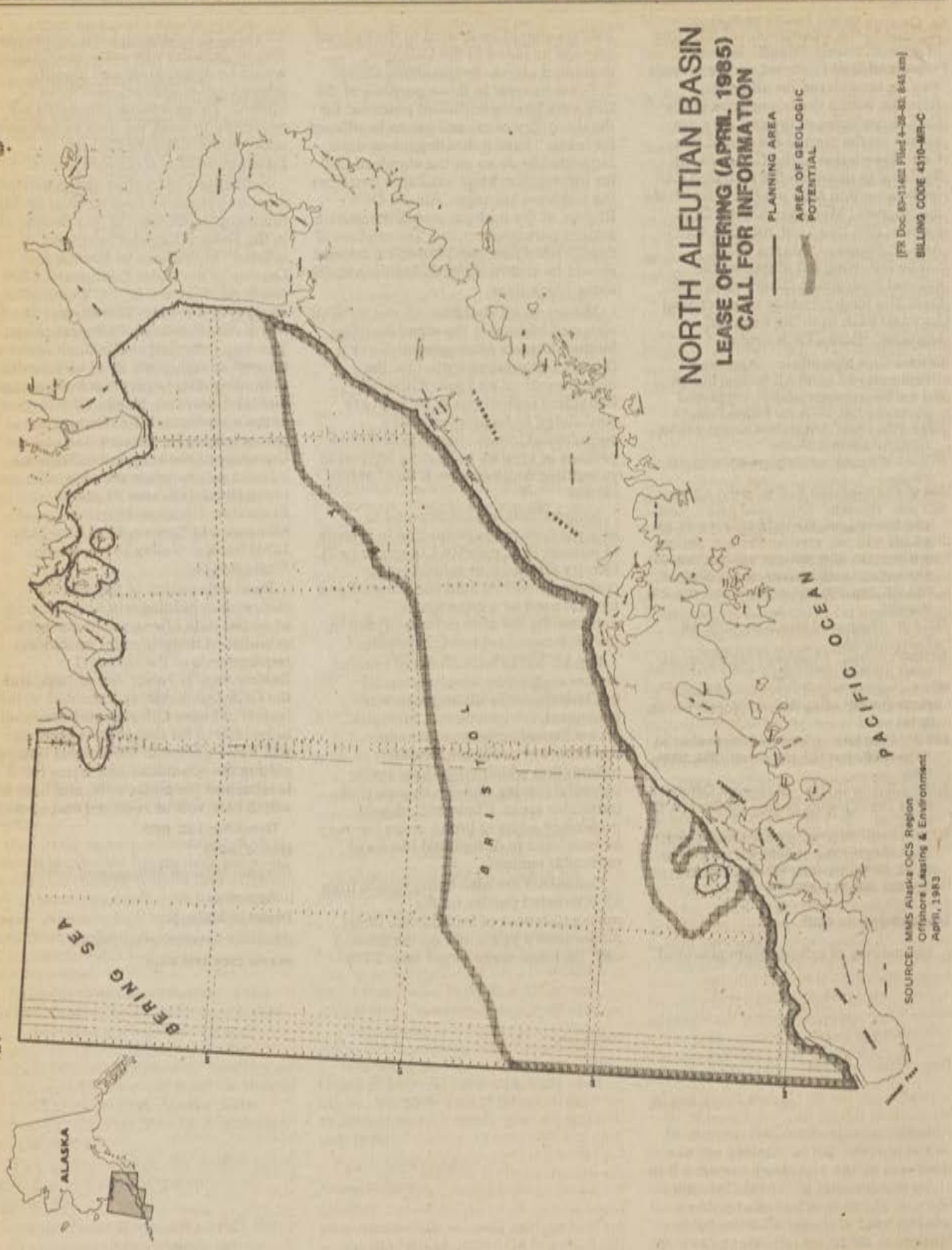
Director, Minerals Management Service.

Approved:

Daniel N. Miller, Jr.,

Assistant Secretary of the Interior.

BILLING CODE 4310-MR-M


NORTH ALEUTIAN BASIN
LEASE OFFERING (APRIL 1985)
CALL FOR INFORMATION
PLANNING AREA
AREA OF GEOLOGIC POTENTIAL
[FR Doc 83-11482 Filed 4-28-83; 8:45 am]
BILLING CODE 4310-MR-C
BERING SEA
BRISTOL
PACIFIC OCEAN
ALASKA
SOURCE: MMS Alaska OCS Region
Offshore Leasing & Environment
April, 1983

St. George Basin Lease Offering (December 1984); Call for Information

Purpose of Call

The purpose of the Call is to assist the Secretary fo the Interior in carrying out his responsibilities under the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1343), as amended (92 Stat. 629), and regulations appearing at 30 CFR 256.23. Potential bidders are requested to outline areas where they believe hydrocarbon potential is sufficient to warrant offering these areas in the St. George Basin. The Secretary is also requesting comments from all interested parties—Federal, State, and local governments, environmental groups, the general public, and potential bidders—on possible environmental effects and use conflicts in the Call area and on the appropriateness of initial lease terms longer than 5 years and lease areas larger than 5,760 acres (2,331 hectares).

Use of Information From Call

Information submitted in response to this Call will be considered in the area identification which selects the areas of hydrocarbon potential to be proposed for leasing and analyzed in the environmental impact statement as the proposed Federal action. This information will also be used in identifying alternatives to the proposed action. Comments received on possible environmental effects and use conflicts may be used in the analysis of local environmental conditions within the Call area so that the potential effects of oil and gas exploration and development, other than the benefits accruing to the Nation as a result of inventorying and producing oil and gas, can be assessed. The comments may also be useful in developing sepcial lease terms and conditions designed to assure safe offshore operations. Comments submitted regarding length of lease term and size of lease areas may be used in the assessment of the appropriate initial lease term and appropriate lease size, pursuant to section 8 of the OCS Lands Act, as amended (43 U.S.C. 1337).

Description of Area

In general, the St. George Basin lies in the eastern Bering Sea northwest of the Aleutian Islands chain and is bounded on the north by 59° N. latitude and on the south by the 3-geographical-mile line along the northern side of the Aleutian Islands. The area is bounded on the west by 174° W. longitude from 59° N. latitude to 56° N. latitude and by 171° W. longitude from 56° N. latitude to approximately 53° 35′ N. latitude. It is bounded on the east by 165° W. longitude form 59° N. latitude to the 3-geographical-mile line at approximately 54° 14′ W. latitude.

Indications of interest and comments may be considered for all Federal acreage within boundaries of the Call. Boundaries of the Call area are shown on the map at the end of this Call. Boundaries of the Call area are depicted in detail on the standard Call for Information Map available free from the Regional Manager, Alaska OCS Region, P.O. Box 1159, 620 East 10th Ave., Anchorage, Alaska 99510.

The following list identifies the Official Protraction Diagrams in this Call. The diagrams may be purchased for $2.00 each from the Regional Manager, Alaska OCS Region:

NN 2–2 (Approved November 29, 1974)
NN 2–4 Okmuk Canyon (Approved February 18, 1977)
NN 2–6 Umnak (Approved July 21, 1977) All Federal blocks except: 744–746, 778–790, 831–834, 874–878, 918–922, 962–966, 1006–1010
NN 2–8 Samalga Island (Approved June 14, 1977) All Federal blocks except: 34–43, 77–87, 118–131, 161–175, 203–219, 235–263, 274, 275, 278–307, 316–351, 359–395, 402–439, 441, 442, 444–483, 485–527, 529–571, 573–615, 617–659, 661–703, 705–747, 749–791, 793–835, 837–879, 881–923, 925–967, 969–1011
NN 3–1 Davidson Bank (Approved November 29, 1974)
NN 3–3 Akutan (Approved June 14, 1977) All Federal blocks except: 1000–1002, 1005, 1041–1054
NN 3–5 Unalaska (Approved October 24, 1978) All Federal blocks except: 29–42, 72–86, 117–130, 161–174, 205–218, 248–262, 291–306, 333–350, 375–394, 418–438, 462–482, 504–526, 547–570, 585–614, 628–658, 669–702, 705–708, 713–746, 749–790, 793–834, 837–878, 881–922, 925–966, 969–1010
NO 2–3 (Approved December 13, 1976)
NO 2–4 (Approved December 13, 1976)
NO 2–5 (Approved June 11, 1975)
NO 2–6 St. Paul Island (Approved March 20, 1975)
NO 2–7 (Approved March 20, 1975)
NO 2–8 St. George Island (Approved November 29, 1974)
NO 3–3 (Approved December 13, 1976)
NO 3–5 (Approved June 11, 1975)
NO 3–7 (Approved November 29, 1974)

Instructions on Call

Indications of interest from potential bidders should be limited to the Federal acreage included in the Call area described above. Respondents should indicate interest in those portions of the Call area having sufficient potential for the discovery of oil and gas to be offered for lease. Those indicating interest are requested to do so on the standard Call for Information Map, available free from the Regional Manager, Alaska OCS Region, at the address stated in the second paragraph under "Description of Area," telephone (907) 276–2955. Interest should be shown by outlining the area(s) along block lines.

The standard Call Map shows the Call area and highlights the area identified by the Minerals Management Service (MMS) as having potential for the discovery of oil and gas. Although individual indications of interest are considered to be privileged and confidential information, the names of persons or entities indicating interest or submitting comments will be of public record.

Respondents are encouraged to broadly rank areas according to priority of interest (e.g., priority 1 (high), 2, or 3). Priority information submitted by companies will be held confidential and may be used as a criterion in determining the area to be analyzed in the environmental impact statement.

In addition to indications of interest, we are seeking comments from all interested parties about particular geological, environmental, biological, archeological, or socioeconomic conditions or problems, or other information which might bear upon potential leasing and development of particular areas. Comments should preferably address broad areas but may be restricted to designated blocks of particular concern.

Comments are also being sought from all interested parties on the appropriateness of initial lease terms longer than 5 years and on the need, if any, for lease areas larger than 5,760 acres (2,331 hectares). Such comments should describe why such modifications would be appropriate and identify where such modifications should be applied. Those making comments are requested to mark the area commented upon on the standard Call of Information Map discussed above.

Indications of interest and comments must be submitted no later than 30 days following publication of this document in the **Federal Register** in envelopes labeled "Indications of Interest for Leasing in the Outer Continental Shelf, St. George Basin" or "Comments on Leasing in the Outer Continental Shelf, St. George Basin" as appropriate. The map (original) and indications of interest or comments must be submitted to the Regional Supervisor for Leasing and Environment, Alaska OCS Region, at the address stated in the second paragraph under "Description of Area." One copy of the map and indications of interest or comments are also to be sent to the Chief, Offshore Resource Evaluation Division, Minerals

Management Service, Mail Stop 643, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

Final delineation of the area for competitive bidding will be made only at a later date after compliance with established department procedures, all requirements of the National Environmental Policy Act of 1969, and the OCS Lands Act, as amended. A final Notice of Lease Offering, detailing areas to be offered for competitive bidding, will be publish in the **Federal Register** stating the conditions and terms for leasing and the place, date, and hour at which bids will be received and opened.

Harold Doley,

Director, Minerals Management Service.

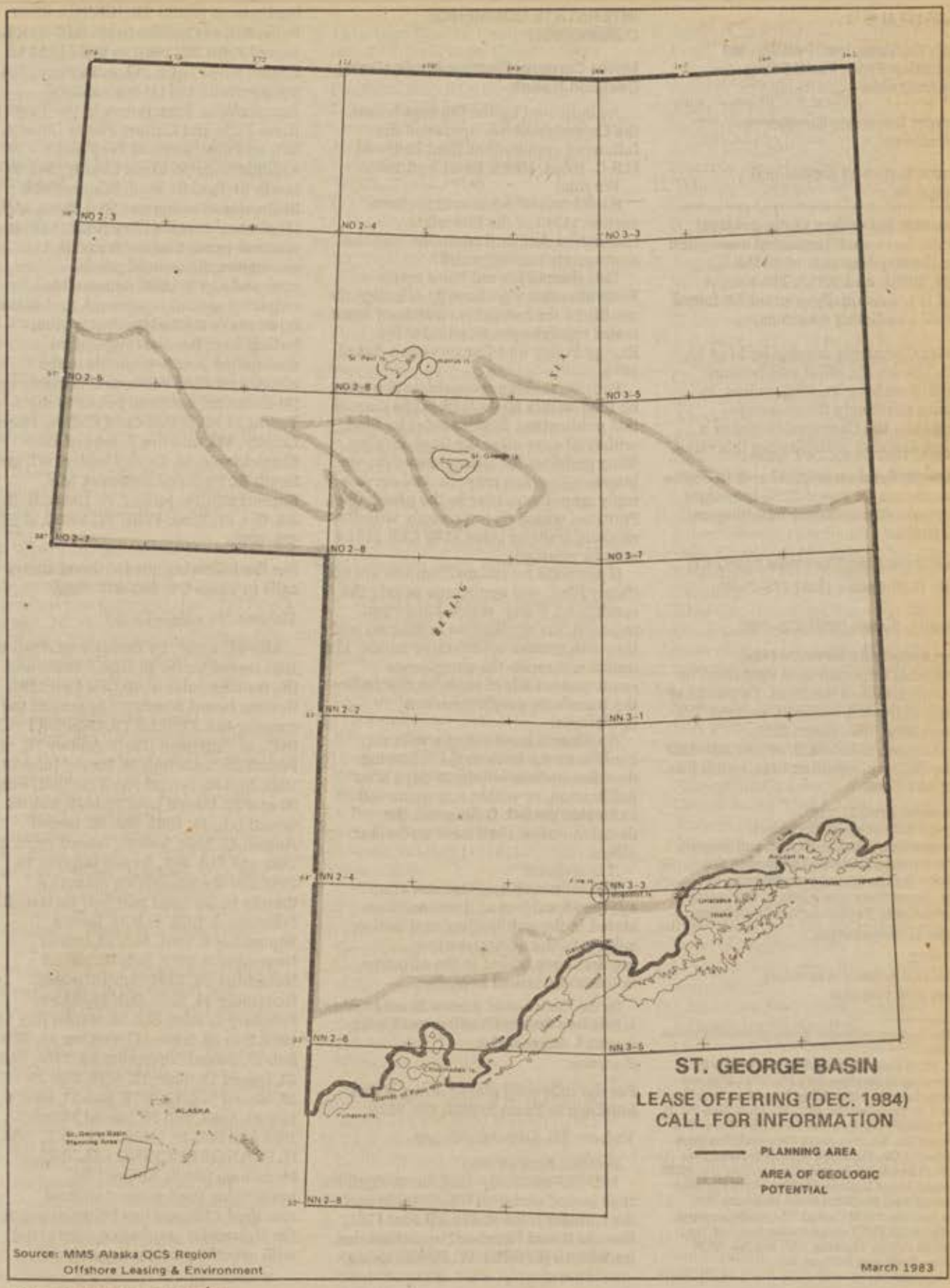
Approved:

Date: April 22, 1983.

Daniel N. Miller, Jr.,

Assistant Secretary of the Interior.

BILLING CODE 4310-MR-M



[FR Doc. 83-11403 Filed 4-28-83; 8:45 am]

BILLING CODE 4310-MR-C

[No. 39113 et al.[1]]

Fresh Express, Inc.; Petition for Exemption From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Seventeen motor contract carriers have each requested exemption from the requirements of 49 U.S.C. 10702, 10761, and 10762. The sought relief is provisionally granted for future as well as existing contracts.

DATES: Comments are due by May 16, 1983. The sought relief will become effective on May 31, 1983, unless, in response to timely filed adverse comments, the Commission issues a further decision withdrawing this relief.

ADDRESS: Send an original and 15 copies of comments to: Room 2139; Interstate Commerce Commission; Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Marie B. Simpson; (202) 275–7108

or

Howell I. Sporn; (202) 275–7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2227, Washington, D.C. 20423, or call 289–4357 in the D.C. metropolitan area or toll free (800) 424–5403.

Decided: April 22, 1983.

By the Commission, Division 1, Commissioners Andre, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-11437 Filed 4-28-83; 8:45 am]

BILLING CODE 7035-01-M

[1] The dockets embraced by this proceeding are as follows:

No. 39113 Fresh Express, Inc.; No. 39114 J–R Transportation Services, Inc.; No. 39115 Shippers Express, Inc.; No. 39116 Allied Van Lines, Inc.; No. 39118 R. F. Truesdell Co., Inc.; No. 39118 (Sub-No. 1) R. F. Truesdell Co., Inc.; No. 39118 (Sub-No. 2) R. F. Truesdell Co., Inc.; No. 39119 Transport Storage & Distributing Co.; No. 39120 Sunbelt Express, Inc.; No. 39121 Sundance Express Corporation; No. 39122 Mainliner Motor Express, Inc.; No. 39123 Highway Transport, Inc.; No. 39124 North American Van Lines, Inc.; No. 39126 Capital Transport Company, Inc.; No. 39127 FFE Transportation Services, Inc.; No. 39129 Argosy Trucking, Ltd.; and No. 39130 Coolidge Grain and Produce, Inc.

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 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.

Petition 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 1, Members Parker, Chandler, and Fortier.

Agatha L. Mergenovich,

Secretary.

For the following please direct status inquiries to Team 3, (202) 275–5223.

Volume No. OP3–MCFC–181

Decided: April 20, 1983.

MC–FC–81329. By decision of April 20, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 1 approved the transfer to JEFFREY W. DEISS, doing business as DEISS TRUCKING, River Falls, WI, of Certificate No. MC–64105, issued April 30,. 1965, to WILLIAM M. DEISS, River Falls, WI, authorizing the transportation of (1) *agricultural commodities*, from points in the Town of River Falls and Clifton, Pierce County, WI, and the Towns of Troy and Kinnickinnic, St. Croix County, WI, to South St. Paul St. Paul, Minneapolis, Stillwater, Hasting and Red Wing, MN, (2) *general commodities* (except those of unusual value, classes A and B explosives, household goods, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, from the above-specified destination points to points in the above-specified Wisconsin territory and (3) *livestock*, between points in the Towns of River Falls and Clifton, Pierce County, WI, and the Towns of Troy Kinnickinnic, St. Croix County, WI, and South St. Paul and Newport, MN. Representative: Jeffrey W. Deiss, R. R. #4, Box 31, River Falls, WI 54022, (715) 425–8395.

For the following, please direct status calls to Team 5 at 202–275–7289.

Volume No. OP5–FC–193

MC–FC 81390, By decision of April 15, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 1 approved the transfer to CYPRESS TRANSPORT CO., INC., of Hopewell (Perth Amboy NJ, of Permit No. 2428 Sub 34, issued June 29, 1981, Sub 35, issued April 28, 1981, Sub 36 and 37, issued June 16 1981, Sub 38 issued July 15, 1981, Sub 39, issued August 27, 1981, Sub 41, issued April 12, 1982 and Sub 40X, issued January 13, 1982 and the underlying authority thereto in the Lead and Sub 13, issued February 6, 1978, Sub 14, issued September 8, 1961, Sub 16, issued November 5, 1973, Sub 18, issued November 29, 1966, Sub 19, issued November 14, 1973, Sub 21, issued February 7, 1968, Sub 25, issued July 14, 1969, Sub 26, issued December 24, 1970, Sub 27, issued November 16, 1973, Sub 28, issued October 12, 1976, Sub 29, and 30, issued July 19, 1978, Sub 31, issued July 21, 1980, Sub 32, issued March 17, 1981 and Sub 33, issued March 2, 1982 to H. PRANG TRUCKING CO., INC., of Hopelawn (Perth Amboy) NJ, authorizing the transportation of specified commodities between points in the U.S. under continuing contract(s) with specific parties. Representative

Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048.

[FR Doc. 83-11440 Filed 4-28-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Audiovox Corp., 150 Marcus Blvd., Hauppauge, NY 11787.

2. Wholly owned subsidiary which will participate in the operations, and State of incorporation: Proud Transportation Corp., 150 Marcus Blvd., Hauppauge, NY 11787.

1. Parent corporation and address of principal office: C-Poultry Company Limited, P.O. Box 2225, Decatur, AL 35602.

2. Wholly owned subsidiary which will participate in the operations, and address of principal office: Lynn Transportation Company, Inc., 712 South 11th St., Oskaloosa, IA 52577.

1. Parent Corporation and address of principal office: Lancaster Colony Corporation, 37 West Broad Street, Columbus, Ohio 43215.

Included within the parent corporation are the following divisions:

a. E. O. Brody Company, P.O. Box 22180, Cleveland, Ohio 44122
b. Candle-lite Division, P.O. Box 86, Loveland, Ohio 45140
c. Enterprise Aluminum Company, P.O. Box 6358, Macon, Georgia 31213
d. Koneta Rubber Company, P.O. Box 150, Wapakoneta, Ohio 45895
e. Pitman-Dreitzer Division, 1115 Broadway, New York, New York 10010

2. Wholly owned subsidiaries which will participate in operations and addresses of their respective principal offices:

a. Allen Milk Company, P.O. Box 453, Columbus, Ohio 43216
b. August Barr, Inc., 620 Maple Avenue, Torrance, California 90503
c. Barr, Inc., 1531 First Street, Sandusky, Ohio 44870
d. Bartlett-Collins Company, P.O. Box 1288, Sapulpa, Oklahoma 74066
e. Colony Printing & Labeling, Inc., 600 E. Washington, Eaton, Indiana 47338
f. Indiana Glass Company, P.O. Box 118, Dunkirk, Indiana 47336
g. Jackson Corporation, South Bennett Avenue, Jackson, Ohio 45640
h. LaGrange Molded Products, Inc., P.O. Box 1707, LaGrange, Georgia 30241
i. Lancaster Colony Commercial Products, Inc., P.O. Box 630, Columbus, Ohio 43216
j. Lancaster Glass Corporation, P.O. Box 70, Lancaster, Ohio 43130
k. Loma Corp., P.O. Box 40350, Ft. Worth, Texas 76140
l. T. Marzetti Company, P.O. Box 29163, Columbus, Ohio 43229
m. National Glove, Inc., 29 Clark Street, Mt. Sterling, Ohio 43143
n. Nelson McCoy Pottery Company, 451 Gordon Street, Roseville, Ohio 43777
o. New York Frozen Foods, Inc., 25900 Fargo Avenue, Bedford Heights, Ohio 44146
p. Pfeiffer Foods, Inc., 685 Lake Street, Wilson, New York 14172
q. Pretty Products, Inc., 437 Cambridge Road, Coshocton, Ohio 43812
r. Quality Bakery Company, Inc., P.O. Box 29147, Columbus, Ohio 43229
s. Waycross Molded Products, Inc., P.O. Box 58, Waycross, Georgia 31501.

Parent Corporation and address of principal office: Masterline Corporation, 9940 Hamilton Road, Eden Prairie, MN 55344.

2. Wholly owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Mastercraft Casket Company, Ladysmith, WI 54848
(b) Law and Sons Casket Co., Inc., 3800-B Revere Street, Denver, CO 80239
(c) Indianapolis Casket Company, 521 West North Street, Indianapolis, IN. 46202.

1. Parent corporation and address of principal office: Morton Thiokol, Inc., 110 North Wacker Drive, Chicago, Illinois 60606.

2. Wholly-owned subsidiaries which will participate in the operations are:

(a) Friction Division, Thiokol Corporation (a Delaware corporation) North Enterprise Avenue, Trenton, New Jersey 08604
(b) Ventron Division, Thiokol Corporation (a Delaware corporation) 150 Andover Street, Danvers, Massachusetts 01923

1. Parent corporation and address of principal office: Philipp Holzmann AG, Postfach 110 933, 6000 Frankfurt/Main 11, Federal Republic of Germany

2. Wholly owned subsidiaries which will participate in the operations, and state(s) of incorporation:

A. J. A. Jones Construction Company, Inc., 6060 St. Albans Street, One South Executive Park, Charlotte NC 28287. (704) 553-3000, State of Incorporation: Delaware
B. Metric Constructors, Inc., 6135 Park Road, Two South Executive Park, Charlotte, NC 28210, (704) 554-1415, State of Incorporation: North Carolina
C. Chas. H. Tompkins Company, 311 First Street, NW., Washington, D.C. 20001, (202) 383-0770, State of Incorporation: District of Columbia
D. William L. Crow Construction Company, One Penn Plaza, New York, NY 10119, (212) 594-0860, State of Incorporation: New York
E. Rea Construction Company, 521 East Moorehead Street, Charlotte, NC 28201, (704) 373-1331, State of Incorporation: North Carolina
F. J. A. Jones Applied Research Company, 1300 Harris Boulevard, Charlotte, NC 28221, (704) 597-6100, State of Incorporation: North Carolina
G. Mansfield Mining Company, 6060 St. Albans Street, One South Executive Park, Charlotte, NC 28287, (704) 553-3000, State of Incorporation: North Carolina
H. Queens Properties, Inc., 6060 St. Albans Street, One South Executive Park, Charlotte, NC 28287, (704) 553-3293, State of Incorporation: North Carolina
I. Tiber Construction Company, 10530 Rosehaven Street, Suite 400, P.O. Box 3150, Fairfax, VA 22030, (703) 273-8200, State of Incorporation: Virginia
J. J. A. Jones Construction Services Company, 801 First Street, Richland, WA 99352, (509) 942-6707, State of Incorporation: North Carolina
K. Phillipp Holzmann USA, 6060 St. Albans St., One South Executive Park, Charlotte, NC 28287, (704) 553-3668, State of Incorporation: Delaware

1. Parent corporation and address of principal office: Phillips Petroleum Company, Bartlesville, OK 74004.

2. Wholly owned subsidiaries which will participate in the operations, and state(s) of incorporation:

(a) Phillips Driscopipe, Inc., a Delaware corporation
(b) American Fertilizer & Chemical Co., a Delaware corporation
(c) American Thermoplastics Corp., a Delaware corporation
(d) Phillips Fibers Corporation, a Delaware corporation
(e) H. P. Smith Paper Co, an Illinois corporation
(f) Phillips Uranium Corporation, a Delaware corporation
(g) Phillips Coal Company, a Nevada corporation
(h) Applied Automation, a Delaware corporation
(i) Phillips Pipe Line Co., a Delaware corporation

(j) Catalyst Resources, Inc., a Delaware corporation
(k) Pier 66 Company, a Delaware corporation

1. Parent corporation and address of principal office: Wakefern Food Corp., 600 York St., Elizabeth NJ 07207.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Food Haulers, Inc. (New Jersey)
(ii) ShopRite Supermarkets, Inc. (New Jersey)
(iii) ShopRite Beverages, Inc. (New Jersey)
(iv) National Transport Services Co., Inc. (New Jersey)
(v) Wakefern Finance Company, Inc. (New Jersey)
(vi) T.R.R. Carriers, Inc. (New York)
(vii) ShopRite Cigarettes of Connecticut, Inc. (New Jersey)

1. The parent corporation and the address of its principal office is: Washington Industries, Inc., 224 Second Avenue, North, Nashville, Tennessee 37202.

2. Wholly owned subsidiaries which will participate in the operations, and addresses of their respective principal offices are:

(a) Washington Manufacturing Company, 224 Second Avenue, North, Nashville, Tennessee 37202
(b First National Company, d.b.a. Ely & Walker, 823 East Holmes Road, Memphis, Tennessee 38116
(c) Marshall & Bruce Company, 689 Davidson Street, Nashville, Tennessee 37206
(d) William R. Moore, Inc., 183 Monroe Avenue, Memphis, Tennessee 38101
(e) Manufacturers Warehouse Company, #9 Cummins Station, Nashville, Tennessee 37201
(f) Jenkins & Darwin Bros., Inc., 3rd and Commerce, Nashville, Tennessee 37202
(g) National Stores Corporation, 3rd and Commerce, Nashville, Tennessee 37202.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-11439 Filed 4-28-83; 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., unresolveld 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.

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 in for a named shipper "under contract."

Please direct status inquiries to Team 3 at (202) 275-5223.

Volume No. OP3-175

Decided: April 21, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 475 (Sub-8), filed April 4, 1983. Applicant: WYMORE TRANSFER CO., a corporation, P.O. Box 448, Oregon City, OR 97045. Representative: Earle V. White, 2400 S. W. 4th Ave., Portland, OR 97201, (503) 226-6491. Transporting *sugar*, between Nampa, ID and Nyssa, OR, on the one hand, and, on the other, points in Walla Walla, Franklin, and Benton Counties, WA, and points in Lane, Linn, Benton, Lincoln, Polk, Marion, Clackamas, Yamhill, Tillamook, Washington, Multnomah, Columbia, and Clatsop Counties, OR.

MC 2934 (Sub-148), filed April 8, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 No. Michigan Rd., Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant), (317) 875-1142. Transporting *general commodities* (except classes A and B explosives, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Scientific-Atlanta, Inc. of Atlanta, GA.

MC 15735 (Sub-77), filed March 29, 1983. Applicant: ALLIED VAN LINES,

INC., 2120 S. 25th Ave., Broadview, IL 60153. Representative: Richard V. Merrill, P.O. Box 4403, Chicago, IL 60680, (312) 681–8378. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Anacomp, Inc. and its subsidiaries, of Indianapolis, IN.

MC 61614 (Sub-5), filed April 7, 1983. Applicant: TROWBRIDGE STORAGE COMPANY, 1513 Alum Creek Dr., Columbus, OH 43209. Representative: Earl N. Merwin, 85 E. Gay St., Columbus, OH 43215, (614) 224–3161. Transporting *household goods, furniture and fixtures*, between those points in the U.S. in and east of ND, SD, NE, CO, OK and TX.

MC 74674 (Sub-1), filed April 4, 1983. Applicant: EBB VAN LINES, INC., 155 Terminal Dr., Plainview, NY 11803. Representative: Ralph Pugliano (same address as applicant), (516) 294–9180. Transporting *household goods, furniture and fixtures*, between points in CT, DE, FL, GA, MA, MD, NJ, NY, NC, PA, RI, SC, VA and DC.

MC 94265 (Sub-376), filed March 30, 1983. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, VA 23487. Representative: K. Edward Wolcott, Atlanta Gas Light Towers, Suite 1200, 235 Peachtree St., N.E., Atlanta, GA 30303, (404) 522–2322. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 107605 (Sub-33), filed April 1, 1983. Applicant: ADVANCE-UNITED EXPRESSWAYS, INC., 2520 Broadway St., N.E., P.O. Box 1000, Minneapolis, MN 55440. Representative: Richard J. Overholser, P.O. Box 1000, Minneapolis, MN 55413, (612) 331–4040. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Dallas and Fort Worth, TX, on the one hand, and, on the other, points in the U.S. (except AK, HI, and TX).

MC 135074 (Sub-2), filed April 1, 1983. Applicant: SECURITY STORAGE CO., INC., P.O. Box 2005, Goldsboro, NC 27530. Representative: Archie W. Andrews, P.O. Box 1166, Eden, NC 27288, (919) 635–4711. Transporting *household goods*, between points in GA, NC, SC, and VA, on the one hand, and, on the other, points in the U.S. except AK, HI, and VT).

MC 141424 (Sub-10), filed April 4, 1983. Applicant: P-Y TRANSPORT, INC., 2393 W. Market St., York, PA 17404. Representative: Maxwell A. Howell, 2554 Mass. Ave., N.W., Washington, DC 20008, (202) 483–8633. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S.

MC 144094 (Sub-9), filed April 4, 1983. Applicant: ALADDIN, INC., 15 Scout Ave., South Kearny, NJ 07032. Representative: Edward F. Bowes, 7 Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068, (201) 992–2200. 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 continning contract(s) with R & T Factoring, Inc., of South Kearny, NJ.

MC 148275 (Sub-10), filed April 1, 1983. Applicant: J. L. McCoy, Inc., P.O. Box 520, Ravenswood, WV. Representative: Andrew P. Damis, 600 55th Street, Vienna, VA 26105, (304) 295–4834. Transporting *general commodities* (except household goods, classes A and B explosives, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with W. M. Industries, Incorporated of Atlanta, GA.

MC 148994 (Sub-5), filed March 31, 1983. Applicant: MICHAEL W. AMABILE, d.b.a., TRIPLE AAA TRUCKING, 29891 Red Arrow Hwy, Paw Paw, MI 49079. Representative: Nancy J. Amabile (same address as applicant), (616) 657–3400. Transporting *food and related products*, between points in AL, AR, GA, FL, IL, IN, KA, KS, KY, OK, LA, MI, MN, MO, MS, NC, OH, PA, SC, TN, TX, VA, WI, and WV.

MC 152714 (Sub-1), filed April 1, 1983. Applicant: DEERFIELD TRANSPORTATION, INC., South Main St., South Deerfield, MA 01373. Representative: James M. Burns 1365 Main St., Suite 403, Springfield, MA 01103, (413) 781–8205. 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 Total Distribution Services, Inc., of West Hartford, CT.

MC 152935 (Sub-12), filed April 4, 1983. Applicant: HILL-ROM COMPANY, INC., Highway 46, Batesville, IN 47006. Representative: Steve A. Oldham (same address as applicant), (812) 934–7169. Transporting *furniture and fixtures*, between points in the U.S. (except AK and HI), under continuing contract(s) with Peters Wholesale Furniture, Inc., of Louisville, KY.

MC 153314 (Sub-7), filed April 4, 1983. Applicant: M & D TRANSPORTATION, INC., P.O. Box 775, Glendale, AZ 85311. Representative: Michael S. Varda, 121 South Pinckney Street, Madison, WI 53703, (608) 255–8891. Transporting *food and related products*, between points in AZ, CA, NM and TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 156225, filed April 4, 1983. Applicant: LANIER TRANSPORTATION, INC., P.O. Box 993, Gainesville, GA 30503. Representative: Mark S. Gray 1006 South Tower, 225 Peachtree St., N.E., Atlanta, GA 30303, (404) 523–1717. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. in and east of WI, KY, TN and MS.

MC 157304 (Sub-1), filed April 7, 1983. Applicant: AZS CORPORATION, 762 Marietta Blvd., NW., Atlanta, GA 30318 Representative: J. L. Fant, P.O. Box 577, Jonesboro, GA 30237, (404) 477–1525. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Castellaw Transportation Consultants, Inc. of Jonesboro, GA.

MC 158675 (Sub-4), filed April 4, 1983. Applicant: REMICK TRUCKING, LTD., 215 E. 37th St., Boise, ID 83704. Representative: Timothy R. Stiver, P.O.B. 1576, Boise, ID 83701, (208) 343–3071. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. under continuing contract(s) with Transportation Systems, Inc., of Boise, ID.

MC 160225 (Sub-1), filed March 29, 1983. Applicant: KERMIT AUSTAD AND MARK AUSTAD, d.b.a. AUSTAD TRUCKING, 980 Carver Beach Rd., Chanhassen, MN 55317. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting (1) *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Minneapolis, MN, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2)(a) *clay, concrete, glass or stone products*, between points in Huntington County, IN, on the one hand, and, on the other, points in IN, IL, IA, KY, MI, MN, OH, and WI, and (b) between points in Calhoun County, MI, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 160994 (Sub-1), filed April 4, 1983. Applicant: MARSHALL FINCH, d.b.a. SKIPPY'S DISTRIBUTING CO., 1018 4th St., Santa Monica, CA 90403. Representative: Earl N. Miles, 3704

Candlewood Dr., Bakersfield, CA 93306, (805) 872–1106. Transporting *food and related products*, between points in AR, AZ, CA, CO, FL, GA, IA, IL, IN, KS, LA, MA, MD, MI, MN, MO, NE, NJ, NM, NY, NV, OH, OK, PA, OR, TN, TX, UT, WA, WI, and DC.

MC 164114 (Sub-3), filed April 7, 1983. Applicant: NORTH FLORIDA TRANSPORT SERVICE, Rt. 1, Box 595, Summerfield, FL 32691. Representative: J. L. Fant, P.O. Box 577, Jonesboro, GA 30237, (404) 477–1525. Transporting *food and related products*, between points in the U.S.

MC 166204 (Sub-1), filed March 31, 1983. Applicant: SOUTHERN TRANSPORTATION SERVICES, INC., d.b.a. S T S TRUCKING, 6969 Tidewater Drive, Norfolk, VA 23509. Representative: Frank L. Willard, Suite #1001, First & Merchants National Bank Bldg., Norfolk, VA 23510, (804) 627–0070. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 167224 , filed April 4, 1983. Applicant: WAYNE MORGAN, d.b.a. WAYNE MORGAN SAWMILL, Route #3, Box 422, Salisbury, NC 28144. Representative: Terrell Price, 800 Briar Creek Rd., Suite DD504, Charlotte, NC 28205, (704) 372–8212. Transporting *lumber and wood products*, (1) between points in NC, SC, and GA, and (2) between points in NC, SC, and GA, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, KS, AK, and LA.

MC 167244, filed April 5, 1983. Applicant: SCHISSLER ENTERPRISES INC., 8306 Parker Court, Omaha, NE 68114. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114, (402) 397–9900. Transporting (1) *food and related products*, between points in IL, OK, and TN, on the one hand, and, on the other, points in the U.S. (except AK and HI), (2) *machinery, rubber and plastic products, petroleum products and transportation equipment*, between points in CO, NE, KS, MN, IA, MO, IL, and KY, and (3) *machinery, rubber and plastic products, transportation equipment, and metal products*, between points in CA, CO, FL, GA, IL, IA, IN, MI, NE, NC, ND, NJ, NY, OK, OR, PA, SD, TN, and TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 167275, filed April 7, 1983. Applicant: RALPH SPRAGUE, d.b.a. RALPH SPRAGUE & SON TRUCKING CO., P.O. Box 86, Thompsonville, IL 62890. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting (1) *fertilizer, coal*, and *carbon dust*, between points in IL, IN, KY, and MO, (2) *volcanic ash*, between points in Franklin County, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (3) *grain bins* and *grain handling equipment*, between points in IA, IN, and IL.

Volume No. OP–179

Decided: April 22, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 28985 (Sub-16), filed March 28, 1983. Applicant: SEASHORE TRANSPORTATION COMPANY, 812 Broad St., New Bern, NC 28560. Representative: Lawrence E. Linderman, 4860 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703) 751–2441. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 28985 (Sub-16(a)), filed March 28, 1983. Applicant: SEASHORE TRANSPORTATION COMPANY, 812 Broad St., New Bern, NC 28560. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703) 751–2441. Over regular routes, transporting *passengers*, (1) between Charleston, SC, and Goldsboro, NC, from Charleston over US Hwy 17 to Wilmington, NC, then over US Hwy 117 to Goldsboro, and return over the same route, serving all intermediate points, (2) between Raleigh, NC and Goldsboro, NC, over US Hwy 70 and alternate US Hwy 70, serving all intermediate points.

Note.—Applicant seeks to provide regular route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B), and to tack this authority with its existing authority.

MC 28985 (Sub-16(b)), filed March 28, 1983. Applicant: SEASHORE TRANSPORTATION COMPANY, 812 Broad St., New Bern, NC 28560. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703) 751–2441. Transporting *shipments weighing 100 pounds or less* when transported in motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 157734 (Sub-1), filed April 11, 1983. Applicant: J & J LOGGING CO., INC., P.O. Box 588, Tonasket, WA 98855. Representative: Boyd Hartman, P.O. Box 3641, Bellevue, WA 98009, (206) 453–0312. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 167325, filed April 11, 1983. Applicant: ROBERT DAVID FOGG, 7 Pleasant St., Portland, ME 04101. Representative: Robert David Fogg, 1700 Broadway West, Apt. A–005, South Portland, ME 04106, (207) 774–2255. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 167384, filed April 11, 1983. Applicant: L & M TRANSPORTATION, INC., No. 38–730 Tabor, Golden, CO 80401. Representative: Stephen H. Loeb, Suite 4, 2777 Finley Rd., Downers Grove, IL 60515; (312) 935–0330. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 167394, filed April 12, 1983. Applicant: GIRISH PATEL, d.b.a. ILLINOIS METRO SHIPPERS, 538 N. York Rd., Bensenville, IL 60106. Representative: Girish Patel (same address as applicant), (312) 860–7930. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

For the following, please direct status calls to Team 4 at 202–275–7669.

Volume No. OP4–250

Decided: April 22, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 167446, filed April 15, 1983. Applicant: D & J SHIPPERS, 4525 S. Halsted St., Chicago, IL 60609. Representative: Hugh Delfield, 5914 S. Kedzie Ave., Chicago, IL 60629, (312) 434–3079. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 167447, filed April 15, 1983. Applicant: MICHAEL D. DWYN, d.b.a. TRANSPORTATION SERVICES, Rt. 1, Box 171, Edinburg, VA 22824. Representative: Barry Weintraub, 7700 Leesburg Pike, Suite 403, Falls Church, VA 22043, (703) 442–8330. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 167466, filed April 15, 1983. Applicant: PENNINSULA TRANSPORTATION, LTD., 1301 Redfern Ave., Far Rockaway, NY 11691. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048, (212) 466–0220. 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 167467, filed April 18, 1983. Applicant: GRIFFIS TRANSPORTATION SERVICE, INC., 17–J Forest Acres Dr., Bradford, MA 01830. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722–2848. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK anmd HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

For the following, please direct status calls to Team 5 at 202–275–7289.

Volume No. OP5–195

Decided: April 20, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 167309, filed April 8, 1983. Applicant: PHILIP W. KWAN & VIC W. KWAN, d.b.a. KWAN TRUCKING, Rt. No. 1, Box 399, Potosi, Mo 63664. Representative: Philip W. Kwan (same address as applicant), (314) 438–5424. 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 167319, filed April 11, 1983. Applicant: BRUNO HELIE INC., 3505 Port Royal, St.-Grégoire, Quebec, Canada G0X 2T0. Representative: Guy Poliquin, 580 East, Grande-Allee St., Suite 140, Quebec City, Quebec, Canada G1R 2K3, 1–418–522–5644. Transporting *passengers*, in special and charter operations, beginning and ending at ports of entry on the international boundary line between the United States and Canada in ME, NH, VT, NY, and MI, and extending to points in the U.S.

Note.–Applicant seeks to provide privately-funded charter and special transportation.

MC 167329, filed April 11, 1983. Applicant: BEN CHOJNICKI, d.b.a. MARGIN EXPRESS, 21 Baltic Rd., Worcester, MA 01613. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123, (212) 239–4610. Transporting *passengers*, in special and charter operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 167328, filed April 11, 1983. Applicant: JOSEPH ADRIANO, 242 South 11th Street, Kansas City, KS 66102. Representative: Marc Schwartz, 1100 Charterbank Center, Kansas City, MO 64105, (816) 221–6500. Transporting *passengers*, in charter and special operations, beginning and ending at Kansas City, MO, and extending to points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 167338, filed April 11, 1983. Applicant: FOUR WINDS, INC., 1050 Yuma St., Suite 302, Denver, CO 80204. Representative: Arny J. Long, 820 Zenobia St., Denver, CO 80204, (303) 825–1788. 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 167339, filed April 11, 1983. Applicant: JAMES C. SCHOENTHALER, 91 W. River Rd., Waterville, ME 04901. Representative: James C. Schoenthaler (same address as above), (207) 873–3825 and 873–2147. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S.

[FR Doc. 83–11442 Filed 4–28–83; 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 1106.19. 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 Commissions'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 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.

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 3 at (202) 275-5223.

Volume No. OP3-176

Decided: April 21, 1983.

By the Commission, Review Board No. 1, Members Parker Chandler, and Fortier.

MC 144855 (Sub-2 (B)), filed March 17, 1983, previously noticed in the **Federal Register** on April 14, 1983. Applicant: JAIRO A. LOPEZ, d.b.a. TRICENTENNIAL LIMO-BUS, 162 Temple St., New Haven, CT 06510. Representative: Jairo A. Lopez, 2 Knox St., West Haven, CT 06516, (203) 562-9555. Over *regular routes,* transporting *passengers* (1) Between New Haven, CT, and John F. Kennedy International Airport, New York, NY: From New Haven over Interstate Hwy 95 to the New York City line, then over city streets to the John F. Kennedy International Airport, and return over the same route, and (2) Between New Haven, CT, and (a) La Guardia International Airport, New York, NY, and (b) Newark International Airport, Newark, NJ: From New Haven over Interstate Hwy 95 to the New York City line, then over city streets to La Guardia International Airport, then over the George Washington Bridge to U.S. Hwy 46, then over U.S. Hwy 46 to the New Jersey Turnpike/Interstate Hwy 95, and then over the New Jersey Turnpike/Interstate Hwy 95 to Newark International Airport, and return over the same route, serving all intermediate points in (1) and (2)(a) and (b) above.

Note.—(1) Applicant seeks to provide regular-route service only in interstate or foreign commerce; and (2) This republication corrects the route description.

MC 167245, filed April 5, 1983. Applicant: GAME TIME, INC., P.O. Box 121, Ft. Payne, AL 35967. Representative: Terry P. Wilson, 428 South Lawrence St., Montgomery, AL 36104, (205) 262-2756. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 167254, filed April 4, 1983. Applicant: UNITED CONSOLIDATION, INC., 449 Silver St., Agawam, MA 01001. Representative: David M. Marshall, Sixth Floor, 95 State St., Springfield, MA 01103, (413) 732-1136. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 167355, filed April 11, 1983. Applicant: PAUL D. REQUE, d.b.a. NORDIC COACHES, 3530 West Capitol Dr., Appleton, WI 54915. Representative: Joseph M. Troy, 301 North Lynndale Dr., Appleton, WI 54914, (414) 739-7366. Transporting *passengers,* in charter operations, beginning and ending at points in Outagamie County, WI, and extending to points in IL, MI, MN, IA, OH, IN, KY, TN, GA, and FL.

Note.—Applicant seeks to provide privately funded-charter transportation.

Volume No. OP3-178

Decided: April 22, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 77424 (Sub-56), filed April 8, 1983. Applicant: WENHAM TRANSPORTATION, INC., 3200 E. 79th St., Cleveland, OH 44104. Representative: J. E. Wenham (same address as applicant), (216) 883-4600. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with The May Department Stores Company of St. Louis, MO.

MC 107515 (Sub-1429), filed April 11, 1983. Applicant: RTC TRANSPORTATION, INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Rd., N.E., Suite 520, Atlanta, GA 30326, (404) 262-7855. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with CPC International, Inc., of Englewood Cliffs, NJ.

MC 136155 (Sub-13), filed April 11, 1983. Applicant: GAY TRUCKING COMPANY, a corporation, P.O. Box 7179, Savannah, GA 31408. Representative: Herbert Alan Dubin, 818 Connecticut Ave., N.W., Washington, DC 20006, (202) 331-3700. Transporting (1) *pulp, paper and related products,* (2) *construction materials,* (3) *machinery,* (4) *metal products,* (5) *rubber and plastic* products, and (6) *equipment and supplies* used in the manufacture of trailers, between points in IL, IN, OH, and PA, on the one hand, and, on the other, points in AL, AR, DE, FL, GA, IL, IN, KY, LA, MD, MS, NC, OH, OK, PA, SC, TN, TX, VA, WV, and DC.

MC 141614 (Sub-8), filed April 13, 1983. Applicant: J. D. AND BILLY HINES TRUCKING, INC., 1110½ West First Pl., Prescott, AR 71857. Representative: Barry Barber, 122 East Second St., P.O. Box 599, Prescott, AR 71857. Transporting *general commodities* (except classes A and B explosives, household goods), between points in the U.S. (except AK and HI).

MC 144145 (Sub-8), filed April 11, 1983. Applicant: GILBERT & HOGLE TRUCKLINES, INC., 4491 W. Cleveland Hwy., Perrinton, MI 48871. Representative: James R. Davis, Tenth Fl., Michigan National Tower, Lansing, MI 48933, (517) 482-5800. Transporting *farm products and animal food and related products,* between points in MI, IN, OH, IL, WI and KY.

MC 144964 (Sub-15), filed April 11, 1983. Applicant: LINEHAUL EXPRESS, INC., 1200 Hammondville Rd., P.O. Box 1205, Pompano Beach, FL 33061. Representative: Michael J. Diaz (same address as applicant), (305) 785-5112. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the US. (except AK and HI.)

MC 146075 (Sub-15), filed April 13, 1983. Applicant: TEXAS INTERMOUNTAIN TRANSPORTATION, INC., 6161 West 29th Pl., Wheatridge, CO 80214. Representative: Delbert Ewing (same address as applicant), (203) 429-4065. Transporting *general commodities* (classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 159795 (Sub-1), filed April 8, 1983. Applicant: TWIN PORTS TRUCKING COMPANY, INC., 1230 Poplar Ave., Superior, WI 54880. Representative: Michael F. Morrone, 1150 17th St., NW., Suite 1000, Washington, DC 20036, (202) 457-1124. Transporting *food and related products,* between points in the U.S. (except AK and HI), under continuing

contract(s) with Geo. A Hormel & Co., of Austin, MN

MC 160885 (Sub-2), filed April 12, 1983. Applicant: PONY EXPRESS, INC., P.O. Box 280, Camden, DE 19934. Representative: Lester R. Gutman, 1919 Pennsylvania Ave., NW., Suite 500, Washington, DC 20006, (202) 828–5017. Transporting *food and related products*, between points in DE, MD, PA, NJ, NY, and VA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 166474 (Sub-1), filed April 8, 1983. Applicant: THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, One Park Central, 1111 Fifteenth St., Denver, CO 80202. Representative: W. D. Braucher, P.O. Box 5482, Denver, CO 80217, (303) 595–2353. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 167324, filed April 11, 1983. Applicant: YOUR TOWN TRANSPORT, INC., P.O. Box 97, Union Center, WI 53062. Representative: Ronald E. Laitsch, 108 S. Second St., Watertown, WI 53094, (414) 261–9725. 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). Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(a), or submit an affidavit stating why Commission approval is unnecessary, or submit a petition of exemption to the Secretary's Office. In order to expedite issuance of any authority please submit a copy of the affidavit or petition or proof of filing the application(s) for common control to Team 3, Room 2158.

Volume No. OP3–180

Decided: April 14, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 167164, filed March 30, 1983. Applicant: PETER M. LOUX, d.b.a. LOUX LEASING COMPANY, 225 Emeral Pl., Stratford, CT 06497. Representative: Mark Perry, 5030 N. 35th St., Arlington, VA 22207, (703) 534–1823. Transporting *general commodities* (except classes A and B explosives and household goods), between points in ME, NH, CT, MA, NJ, MD, WV, VT, NY, RI, PA, DE, VA and TN, under continuing contract(s) with Derby Feed Company, of Derby, CT.

Volume No. OP3–182

Decided: April 21, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 161045 (Sub-1), filed April 4, 1983. Applicant: COLUMBIA INLAND TRUCKING CO., P.O. Box 325, Gladstone, OR 92707. Representative: Earle V. White, 2400 S.W. 4th Avenue, Portland, OR 97201, (503) 226–6491. Transporting *food and related products*, between Nampa, ID and Nyssa, OR, on the one hand, and, on the other, points in AZ, AR, CA, CO, ID, IL, IA, KS, LA, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, and WY.

For the following, please direct status calls to Team 4 at 202–275–7669.

Volume No. OP4–249

Decided: April 22, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 35906 (Sub-4), filed April 15, 1983. Applicant: JOHN LESTICIAN TRUCKING, INC., 500 Breunig Ave., Trenton, NJ 08635. Representative: Raymond A. Thistle, Jr., 426 Cottman St., Jenkintown, PA 19046, (215) 576–0131. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CT, DE, MD, NJ, NY, PA, VA and DC.

MC 37896 (Sub-65), filed April 15, 1983. Applicant: YOUNGBLOOD TRANSPORTATION SYSTEMS, INC., d.b.a YOUNGBLOOD TRUCK LINES, P.O. Box 1048, Fletcher, NC 28732. Representative: Henry A. Badgett (same address as applicant), (704) 684–5321. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with American Home Products Corporation of New York, NY, and its subsidiaries.

MC 42866 (Sub-24), filed April 14, 1983. Applicant: NATIONAL VAN LINES, INC., 2800 Roosevelt Rd., Broadview, IL 60153. Representatiive: John P. Torpats (same address as applicant), (312) 450–2900. Transporting *plastic products*, between points in the U.S., under continuing contract(s) with Illinois Tool Works, Inc., of Des Plaines, IL.

MC 52657 (Sub-763), filed April 14, 1983. Applicant: ARCO AUTO CARRIERS, INC., 18 W. 151 Shore Court, Burr Ridge, IL 60521. Representative: Anthony E. Young, 29 S. LaSalle St., Suite 350, Chicago, IL 60603, (312) 782–8880. Transporting *transportation equipment*, between points in the U.S., under continuing contract(s) with The Fruehauf Corporation, of Detroit, MI.

MC 138387 (Sub-5), filed April 13, 1983. Applicant: FOOSE TRANSPORT, INC., P.O. Box 566, Mahwah, NJ 07430. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048, 201–529–4048. Transporting *such commodities* as are dealt in or used by food business houses, between points in the U.S. (except AK and HI), under continuing contract(s) with Scheps Cheese Corp., of Haledon, NJ.

MC 143127 (Sub-87), filed April 18, 1983. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Rd., Victor, NY 14564. Representative: Catherine Jablonski (same address as applicant), (716) 924–9951. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 144047 (Sub-2), filed April 15, 1983. Applicant: BROOKSIDE TRANSPORT, LTD., P.O. Box 2091, Brooks, Alberta, Canada T0J 0J0. Representative: Dale E. Isley, 50 South Steel St., Suite 330, Denver, CO 80209, (303) 320–6100. In foreign commerce only, transporting *meat*, between the ports of entry on the International Boundary line between U.S. and Canada at points in Boundary County, ID, Toole County, MT, Burke and Pembina Counties, ND, and Chippewa County, MI, on the one hand, and, on the other, points in CA, CO, KS, OH, OK, OR, and UT.

MC 154026 (Sub-5), filed April 18, 1983. Applicant: ADVANCE EXPRESS, INCORPORATED, P.O. Box 358, Girard, OH 44420. Representative: Edmund P. Riek (same address as applicant), (216) 759–7102. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 158096 (Sub-3), filed April 18, 1983. Applicant: BEST WAYS EXPRESS, INC., 129 176th St., S. Suite 6, Spanaway, WA 98387. Representative: Kenneth R. Mitchell, 2320A Milwaukee Way, Tacoma, WA 98421, (206) 383–3998. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except HI), under continuing contract(s) with (1) All Points Transportation Service, of Denver, Co; (2) Front Range Pipe Co., of Loveland, CO; (3) Shelby Property Brokers, Inc., of Birmingham, AL, and (4) J. A. Tucker Co., of Westville, NJ.

MC 157047 (Sub-2), filed March 28, 1983. Applicant: BENDER TRANSPORTATION CO., 529 Evans

Drive, Reno, NV 89512. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701, (702) 882–5649. Transporting *general commodities* (except classes A and B explosives and household goods), between points in NV, CA, OR, WA, AZ, ID, UT, CO, and NM.

MC 161476 (Sub-1), filed April 14, 1983. Applicant: LONNIE KNUTSON, 1520 Ashley Lake Rd., Kalispell, MT 59901. Representative: Lonnie Knutson (same address as applicant), (406) 755–4635. Transporting *forest products*, and *Lumber and wood products*, between points in AZ, CA, CO, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, ND, OH, OK, OR, SD, TX, UT, WA, WI, and WY.

MC 161476 (Sub-2), filed April 14, 1983. Applicant: LONNIE KNUTSON, 1520 Ashley Lake Rd., Kalispell, MT 59901. Representative: Lonnie Knutson (same address as applicant), (406) 755–4635. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 167327, filed April 11, 1983. Applicant: J. M. TRUCKING INC., P. O. Box 9046, Lester, PA 19113. Representative: Joseph A. Meo, Three Neshaminy Interplex, Suite 213, Trevose, PA 19047, (215) 245–1400. Transporting *general commodities* (except classes A & B explosives, household goods and commodities in bulk), between Philadelphia, PA, on the one hand, and, on the other between points in the U.S. (except AK and HI.)

MC 167397, filed April 13, 1983. Applicant: RAY PARKE, ROY PARKE, WAYNE PARKE, d.b.a. PARKE BROS. TRUCKING, 29044 189th Place, SE., Kent, WA 98031. Representative: Jim Pitzer, P. O. Box 895, Renton, WA 98057, (206) 235–1111. 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 167456, filed April 15, 1983. Applicant: A. M. CASTLE & CO., 3400 N. Wolf Rd., Franklin Park, IL 60131. Representative: Scott Bertrand (same address as applicant), (312) 455–7111. Transporting *metal products*, between points in the U.S. (except AK and HI.)

For the following, please direct status calls to Team 5 at 202–275–7289.

Volume No. OP5–194

Decided: April 20, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 31389 (Sub-342), filed March 15, 1983. Applicant: McLEAN TRUCKING COMPANY, 1920 West First Street, Winston-Salem, NC 27104. Representative: Daniel R. Simmons (same address as applicant), 919–721–2000. Transporting *general commodities* (except classes A & B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Bell and Howell Company, of Chicago, IL, Bell and Howell Company, of Lincolnwood, IL, and Micro Design, a Division of Bell and Howell Company, of Hartford, WI.

MC 146438 (Sub-21), filed April 11, 1983. Applicant: ETV, INC., P.O. Box 393, Comstock Park, MI 49321. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49685–0801, (616) 941–5313. Transporting *chemicals and related products*, between points in the U.S. (except AK and HI).

MC 157458 (Sub-1), filed April 11, 1983. Applicant: CLARENCE KRESSIN, d.b.a. KRESSIN TRUCKING, Route 1: Box 116, Jim Falls, WI 54748. Representative: Nancy J. Johnson, 103 East Washington Street, Box 218, Crandon, WI 54520, (715) 478–3341. Transporting *commodities in bulk*, between points in Chippewa County, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 158419 (Sub-11), filed April 11, 1983. Applicant: ON TIME FREIGHT SYSTEMS, INC., P.O. Box 37722, Omaha, NE 68137. Representative: John T. Wirth, 717–17th St., Suite 2600, Denver CO 80202–3357, (303) 892–6700. Transporting *such commodities* as are dealt in by retail and wholesale grocery and food business houses, between points in the U.S. (except AK and HI).

MC 165618, filed March 25, 1983. Applicant: EUGENE D. EVERINGHAM, d.b.a. R & L SALVAGE, 8037 E. Carson City Rd., Rte. 1, Carson City, MI 48811. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933, (517) 482–2400. Transporting *such commodities* as are dealt in by grocery stores, between points in MI, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, MO, OK, and TX.

MC 167138, filed April 11, 1983. Applicant: TOM PLAGGEMEYER, d.b.a. Western Pacific Trucking, P.O.B. 7068, Missoula, MT 59807. Representative: Tom Plaggemeyer (same address as applicant), (406) 549–6218. Transporting (1) *such commodities* as are dealt in or used by lumber yards, between points in WA, CA, OR, ID, WI, IL, and MT, on the one hand, and, on the other, those points in the United States in and west of WI, IL, MO, AR and TX (except AK and HI), and (2) *paper and paper products, machinery and metal products*, between points in WA, OR, ID, and MT.

MC 167289, filed April 8, 1983. Applicant: JOHN GOLDSMITH, d.b.a. GOLDSMITH TRUCK LINE, 4200 Floyd, Sioux City, IA 51108. Representative: Mark Perry, 236 Massachusetts Ave., NE., Washington, D.C. 20002, (202) 546–2298. Transporting *food and related products, paper products, automotive equipment, windows, and petroleum, natural gas, and their products*, between points in IA, NE, ND, SD, KS, OK, MN, MO, AR, LA, MI, WI, IL, IN, KY, TN, MS, OH, AL, FL, GA, ME, VT, NH, MA, CT, NY, NJ, PA, MD, DE, WV, NC, SC, and RI.

MC 167318, filed April 11, 1983. Applicant: MO-KAN DISTRIBUTION SERVICE, INC., 1330 West 8th Street, Kansas City, MO 64101. Representative: Alex M. Lewandowski, 1221 Baltimore Ave., Ste. 600, Kansas City, MO 64105, (816) 221–1464. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in MO, KS, NE, and IA.

MC 164789, filed April 11, 1983. Applicant: KEN SELLERS, d.b.a. KEN SELLERS TRUCKING, 5916 Bertha Lane, Fort Worth, TX 76117. Representative: Billy R. Reid, 1721 Carl St., Fort Worth, TX 76103, (817) 332–4718. Transporting (1) *metal products*, (2) *lumber and wood products*, and (3) *transportation equipment*, between points in TX, on the one hand, and, on the other, points in AL, AR, AZ, CA, CO, FL, GA, IA, IL, IN, KS, LA, MO, MI, MN, MS, NM, OH, OK, TN, TX, UT, and WI.

[FR Doc. 83-11443 Filed 4-28-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52 (Sub-19)]

Rail Carriers; Atchison, Topeka & Santa Fe Railway Co.; Abandonment in Woods, Woodward & Harper Counties, OK; Findings

The Commission has found that the public convenience and necessity requires or permits the Atchison, Topeka & Santa Fe Railway Company to abandon its rail line between Waynoka (milepost 1.17) and Buffalo (milepost 52.23) in Woods, Woodward and Harper Counties, OK. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person

has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Mr. Louis Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 11438 Filed 4-28-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19 (Sub-59)]

Rail Carriers; Dayton and Union Railroad Co.; Abandonment and Discontinuance of Service by Baltimore & Ohio Railroad Co. in Darke County, OH; Findings

The Commission has issued a certificate permitting Dayton and Union's abandonment of, and B&O's discontinuance of service, on a portion of Dayton and Union's line of railroad known as B&O's Dayton and Union Subdivision, between Valuation Station 1384+60, at or near Arcanum, and Valuation Station 1489+58 at end of line at or near Greenville, a distance of approximately 8.81 miles, in Darke County, OH. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicants, with copies to Mr. Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be emade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-11441 Filed 4-28-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Bureau of labor Statistics

Business Research Advisory Council Committees; Notice of Meetings and Agenda

The regular spring meetings of committees of the Business Research Advisory Council will be held on May 10 and 11, 1983.

The committee will meet in the following locations:

Economic Growth Committee, Room 7216 Bicentennial Building, 600 E Street, NW., Washington, D.C., Occupational Safety and Health, Room S-4215, Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington D.C., and the Committee on Price Indexes, Room 2740, General Accounting Office Building, 441 G Street, N.W., Washington, D.C.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda of the meetings are as follows:

Tuesday, May 10: 9:30 a.m.—Committee on Economic Growth
1. Review of the work in progress
2. Detailed discussion of new projections—1990 and 1995
3. Other Business

Tuesday, May 10: 10:00 a.m.—Committee on Occupational Safety and Health
1. Election of Vice Chairperson
2. Discussion of quality assurance program
3. Annual survey update
4. Discusion of Work Injury Reports
5. Other Business

Tuesday, May 10: 1:30 p.m.—Committee on Price Indexes
1. Review of the Consumer Price Index Revision Plans:
a. Technical Studies
b. Area Sample
c. Other
2. Service sector
3. Other Business

The meetings are open to the public. It is suggested that persons planning to attend these meetings as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on Area Code (202) 272-5241.

Signed at Washington, D.C. this 22 day of April 1983.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 83-11539 Filed 4-28-83; 8:45 am]

BILLING CODE 4510-24-M

Business Research Advisory Council; Meeting

The regular spring meeting of the Business Research Advisory Council will be held at 9:30 a.m., May 11, 1983, in Room N-5437 of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry. The agenda for the meeting is as follows:

1. Chairman's Opening Remarks—Warren H. Bacon;
2. Commissioner's Remarks—Janet L. Norwood;
3. Committee Reports:
(a) Occupational Safety and Health (Update on Annual Survey, Quality Assurance Program);
(b) Economic Growth (Work in Progress Review, Projections 1990 and 1995);
(c) Price Indexes (CPI Revision Plans, Service Industries Coverage);
4. Other Business;
5. Chairman's Closing Remarks.

This meeting is open to the public. It is suggested that persons planning to attend as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on Area Code (202) 272-5241.

Signed at Washington, D.C. this 22 day of April 1983.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 83-11540 Filed 4-28-83; 8:45 am]

BILLING CODE 45210-24-M

Employment and Training Administration

Job Training Partnership Act; Proposed Fiscal Year (FY) 1984 Allotments for Programs Under Title II, Part B; Training Services for the Disadvantaged; Youth Programs and Title III; Dislocated Worker Program

AGENCY: Employment and Training Administration, Labor.

SUMMARY: This notice sets forth the proposed FY 1984 allotments to States for programs under Titles II-B and III of

the Job Training Partnership Act (JTPA) (Pub. L. 97-300).

SUPPLEMENTARY INFORMATION: Attached are proposed FY 1984 annual allotments to States for programs funded under Titles II-B and III of the JTPA. The proposed allotments for Title II-B are based on the President's January budget request for JTPA, the statutory formula contained in the Act and the latest data available to the Secretary. The proposed allotments for Title III are based on the April amendment to the President's January budget request, the statutory formula and the latest available data.

These proposed allotments are subject to change as a result of any differences between the final FY 1984 JTPA appropriation and the President's budget request for FY 1984 upon which these allotments are based.

These Title II-B proposed allotments may also be updated based on the most recent unemployment data available at the time the final allotments are issued. The Department is prepared to update the proposed allotments based on such data. However, the Department is soliciting comments on whether these proposed allotments should be updated when released as final allotments on the basis of the most recent data available at that time, or whether the final allotments should be based on the same data as are used for these proposed allotments. In this latter case, it would mean that these proposed allotments would change only if there is a difference between the final level appropriated for Title II-B and the President's January budget request. Any decision to update based on the most recent data available would apply to all future JTPA allotments. The proposed Title III allotments will be updated based on the most recent unemployment data available at the time the final allotments are issued, except that long-term unemployment data cannot be updated this year.

The Attachment shows in Column 1 a total proposed allotment of $711,372,489 for Title II-B. This amount represents over 98 percent of the funds requested for the Title II-B program. The remaining funds are for Native American summer programs. This amount is composed entirely of FY 1984 formula new obligational authority (NOA) funds. No matching is required for these funds. These funds support summer youth activities. Except for Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas, the data used in developing these proposed allotments were based on data for both areas of substantial unemployment and the number of excess unemployed individuals and are averages for the 12-month period, November 1981 through October 1982. The data on economically disadvantaged persons are from the 1980 Census.

The allocations for the specifically listed areas above are based on the percentage of funds those areas received for summer youth activities during 1983.

Title III Proposed Allotments

The Attachment in Column 2 shows a total proposed allotment of $167,250,000. this amount represents 75 percent of the funds requested for the title III program. This amount is composed entirely of FY 1984 formula NOA funds. These funds are subject to the matching requirements contained in Section 304 of JTPA. These funds support dislocated worker program activities.

Except for the areas specifically listed above, the data used for determining these proposed allotments, relative numbers of unemployed and relative numbers of excess unemployed, are annual averages for the period February 1982 through January 1983. The long-term unemployed data are averages for calendar year 1982. Data for relative number of unemployed and relative number of excess unemployed will be updated at the time the final allotments are issued. Long-term unemployment data cannot be updated this year. Proposed allotments for Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Marianas are based on the proportion these jurisdictions received of the title II-A funds and are subject to final decisions regarding the title II-A distribution formula.

Title III Matching Requirements

The Attachment in Column 3 shows a total amount of $115,069,317. This represents the matching amount each State must provide in accordance with section 304 of the Act in order to be eligible for the Federal allotment listed for the State in Column 2.

Total Title III Resources

The Attachment in Column 4 shows a total amount of $282,319,317. This represents the total resources available for the Title III dislocated worker program, except for $55,750,000 in discretionary funds. Information on applying for Title III discretionary funds will be provided at a later date.

Comment

The Title II-B proposed allotments will be updated to reflect differences between the final FY 1984 JTPA appropriation and the President's January budget request for FY 1984 upon which these proposed allotments are based. The Department is soliciting comments through this notice on whether it is the preference of the States that we update the allotments based on unemployment data available at the time of the final appropriations, or use the same data as were used in these proposed allotments.

DATE: Comments on the proposal to update the Title II-B allotments based on the most recent unemployment data at the time of the final FY 1984 JTPA appropriation must be submitted on or before May 31, 1983.

ADDRESS: Comments should be addressed to Robert N. Colombo, Acting Director, Office of Employment and Training Programs, 601 D Street, NW., Room 6402, Washington, D.C. 20213

Signed this 21st day of April 1983.

Joyce Kaiser,

Associate Assistant Secretary for Employment and Training.

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS, FY 1984 JIPA ALLOTMENTS TO STATES

	Title II-B	Title III		
		Allotment	State match	Total
Alabama	16,421,712	4,217,931	0	4,217,931
Alaska	1,775,415	293,023	234,418	527,441
Arizona	8,095,493	1,899,975	1,519,980	3,419,955
Arkansas	7,580,996	1,377,593	1,377,593	2,755,186
California	74,435,716	18,152,555	14,522,044	32,674,599
Colorado	6,353,916	1,061,039	1,601,039	3,202,078
Connecticut	8,311,427	1,447,941	1,447,941	2,895,882
Delaware	1,775,415	329,930	329,930	659,860
Dist of Columbia	6,746,288	530,795	424,636	955,431
Florida	24,862,483	5,192,242	5,192,242	10,384,484
Georgia	14,198,317	2,697,667	2,697,667	5,395,334
Hawaii	2,279,027	370,457	370,457	740,914
Idaho	2,891,878	610,291	610,291	1,220,582
Illinois	37,446,233	10,637,770	6,382,662	17,020,432
Indiana	16,721,548	5,205,152	3,123,091	8,328,243
Iowa	7,370,776	1,905,291	1,905,291	3,810,582
Kansas	4,465,938	942,753	942,753	1,885,506

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS, FY 1984 JIPA ALLOTMENTS TO STATES—Continued

	Title II-B	Title III		
		Allotment	State match	Total
Kentucky	12,436,833	2,636,933	2,109,546	4,746,479
Louisiana	14,129,815	2,720,050	2,176,040	4,896,090
Maine	3,282,930	619,957	619,957	1,239,914
Maryland	11,168,391	2,652,933	2,652,933	5,305,866
Massachusetts	16,839,184	3,325,988	3,325,988	6,651,976
Michigan	39,790,185	11,970,901	0	11,970,901
Minnesota	8,933,306	2,409,675	2,409,675	4,819,350
Mississippi	9,191,353	1,836,397	1,101,838	2,938,235
Missouri	13,959,367	3,194,111	2,194,111	6,388,222
Montana	2,307,940	471,353	471,353	942,706
Nebraska	3,147,874	594,112	594,112	1,188,224
Nevada	2,478,769	764,329	611,463	1,375,792
New Hampshire	1,897,425	460,570	460,570	921,140
New Jersey	21,762,233	4,792,990	4,792,990	9,585,980
New Mexico	4,094,721	758,704	758,704	1,517,408
New York	50,848,855	10,214,448	10,214,448	20,428,896
North Carolina	16,692,131	3,841,712	3,841,712	7,683,424
North Dakota	1,775,415	182,027	182,027	364,054
Ohio	37,824,854	11,506,278	4,603,311	16,111,589
Oklahoma	6,268,877	873,307	873,307	1,746,614
Oregon	9,331,452	2,539,642	1,523,785	4,063,427
Pennsylvania	36,145,686	10,147,395	6,088,437	16,235,832
Puerto Rico	24,571,154	3,594,090	0	3,594,090
Rhode Island	3,140,596	747,706	598,165	1,345,871
South Carolina	10,783,650	2,493,599	1,994,879	4,488,478
South Dakota	1,775,415	203,934	203,934	407,868
Tennessee	16,062,794	3,957,234	2,374,340	6,331,574
Texas	30,783,825	5,649,341	5,649,341	11,298,682
Utah	3,352,162	682,361	682,361	1,364,722
Vermont	1,775,415	228,725	228,725	457,450
Virginia	12,625,007	2,758,089	2,758,089	5,516,178
Washington	14,810,668	4,073,485	1,629,394	5,702,879
West Virginia	6,725,220	1,955,054	0	1,955,054
Wisconsin	13,944,687	4,365,277	3,492,222	7,857,499
Wyoming	1,775,415	169,525	169,525	339,050
American Samoa	55,003	34,486	0	34,486
Guam	670,630	143,575	0	143,575
Northern Marianas	25,730	11,450	0	11,450
Trust Territories	74,374	78,297	0	78,297
Virgin Islands	380,370	175,555	0	175,555
National total	711,372,489	167,250,000	115,069,317	282,319,317

[FR Doc. 83-11182 Filed 4-28-83; 8:45 am]
BILLING CODE 4510-30-M

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new forms, revisions, extensions (burden change), extensions (no change), or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.
The title of the form.
The Agency form number, if applicable.
How often the form must be filled out.
Who will be required to or asked to report.
Whether small business or organizations are affected.
The standard industrial classification (SIC) codes, referring to specific respondent groups that are affected.
An estimate of the number of responses.
An estimate of the total number of hours needed to fill out the form.
The number of forms in the request for approval.
An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration

Governor's Coordination and Special Services Plan
ETA-RC53
Biennially
State Governments
SIC: 944
57 responses; 570 hours

The Governor's Coordination and Special Services Plan, required by Section 121(a)(2) of the Job Training Partnership Act (JTPA), will provide the Department with a general description of each State's plans for the operation of its JTPA program and the utilization of its JTPA resources.

Employment and Training Administration

Service Delivery Area Appeal
ETA-RC54
On occasion
Local governments
SIC: 944
20 responses; 40 hours

The information collected will be used to determine whether JTPA recipients' denial of designation of entities as service delivery areas is in conformance with the Job Training Partnership Act.

Employment and Training Administration

The Secretary's Performance Standards & Reporting & Recordkeeping Requirements (JTPA Titles II & III)
ETA 8580
Annually
State Governments
SIC: 944
57 responses; 501,140 hours; 1 form

Reporting requirements are necessary for the Secretary to complete his responsibility specified at sec. 106 of JTPA to set performance standards and parameters within which Governors may vary such standards.

Revision

Employment and Training Administration

Review of Federal Supplemental Compensation Program (FSC) Amendments
ETA-RC51
On Occasion
State and local governments
SIC: 944
53 responses; 530 hours; 1 form

Review and assess the State agencies performance in implementing the amendments made to the Federal Supplemental Compensation Act of 1982 (Pub. L. 97-248) by Part A of the Social Security Amendments of 1983 (H.R. 1900)

Signed at Washington, D.C. this 22nd day of April, 1983.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 83-11193 Filed 4-28-83; 8:45 am]

BILLING CODE 4510-30-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), consider comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new forms, revisions, extensions (burden change), extensions (no change), or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in. Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The Agency form number, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small business or organizations are affected.

The standard industrial classification (SIC) codes, referring to specific respondent groups that are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Reinstatement

Bureau of Labor Statistics
Work Injury Report
BLS—98
Nonrecurring
Individuals or Households
3,000 responses; 500 hours; one form

The work injury report examines selected types of work accidents to develop in-depth information based on the data needs of the Occupational Safety and Health Administration. The surveys are used to assist in the development of safety standards, compliance strategy and training programs.

Signed at Washington, D.C. this 26th day of April 1983.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 83-11538 Filed 4-28-83; 8:45 am]

BILLING CODE 4510-24-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 83-37]

Government-owned Inventions; Availability for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly foreign licensing.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.00 each ($10.00 outside North Amercian Contintnent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: Date published in the **Federal Register**

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, John G. Mannix, Director of Patent Licensing, Code GP-4, Washington, D.C. 20546, telephone (202) 755-3954.

SUPPLEMENTARY INFORMATION:

Patent application 207,135: Particle Analyzing Method and Apparatus; filed November 17, 1980.

Patent application 210,405: Optical Fiber Tactile Sensor; filed November 25, 1980.

Patent application 219,968: Electrontic System for High Power Load Control; filed December 24, 1980.

Patent application 457,991: Electronic Coscanning Spacecraft Communicaiton System; filed January 14, 1981.

Patent application 258,623: Distributed Multiport Memory Architecture; filed April 29, 1981.

Patent application 314,702: Contactless Pellet Fabrication filed October 26, 1981.

Patent application 411,896: Method of Preparing Radially Homogeneous Mercury Cadium Telluride Cystals; filed November 15, 1982.

Patent application 448,441: Beam Forming Network; filed December 7, 1982.

Patent application 450,319: Three-Phase Power Factor Controller with Induced EMF Sensing; filed December 16, 1982.

Patent application 450,166: Phase Detector for Three-Phase Power Factor Controller; filed December 16, 1982.

Patent application 451,896: Production of Utrapure Amorphous Metals Utilizing Acoustic Cooling; filed December 21, 1982.

Patent application 452,466: Fire Blocking Systems for Aircraft Seat Cushions; filed December 23, 1982.

Patent application 456,460: Coating With Overlay Metallic-Cermet Alloy Systems; filed January 7, 1983.

Patent application 456,929: Multiple Plate Hydrostatic Viscous Damper; filed January 10, 1983.
Patent application 456,915: Pumped Vortex; filed January 10, 1983.
Patent application 457,990: Shuttle Car Loading System filed; January 14, 1983.
Patent application 457,992: Trace Water Sensor; filed January 14, 1983.
Patent application 459,842: Three-Dimensional and Tomographic Imaging Device for X-Ray and Gamma-Ray Emitting Objects; filed January 21, 1983.
Patent application 460,511: Apparatus and Method for Tracking the Fundamental Frequency of an Analogy input Signal; filed January 24, 1983.
Patent application 460,733: Automatic Weld Torch Guidance Control System; filed January 25, 1983.
Patent application 461,714: Fluid Driven Sump; filed January 28, 1983.
Patent application 462,497: Method and apparatus for Mapping the Distribution of Chemical Elements in an Extended Medium; filed January 31, 1983.
Patent application 462,508: Temperature Averaging Thermal Probe; filed Janaury 31, 1983.
Patent application 465,364: Screen Printed Interdigitated Back Contact Solar Cell; filed February 10, 1983.
Patent application 465,367: Absorbable-Susceptor Joining of Ceramic Surfaces; filed February 10, 1983.
Patent application 465,369: Method of Making Macrocrystalline or Single Crystal Semi-Conductive Material and Products; filed February 10, 1983.
Patent application 465,365: Method for Apparatus for Contour Mapping Using Synthetic Aperture Radar; filed February 10, 1983.
Patent application 469,864: Joint for Deployable Structures; filed February 25, 1983.
Patent application 469,866: Polyphenylene Ethers with Imide Linking Groups; filed February 25, 1983.
Patent application 470,114: Stablilized Lanthanum Sulphur compounds; filed February 28, 1983.
Patent application 470,113: A single Frequency Multitransmitter Telemetry System; filed February 28, 1983.
Patent application 473,499: Optical Stereo Video Signal Processor; filed March 9, 1983.
Patent application 473,827: Apparatus and Method for Inspecting a Bearing Ball; filed March 9, 1983.
Patent application 478,130: Optical System, filed March 23, 1983.
Patent application 481,086: Coupling An Induction Motor Type Generator to A-C Power Lines; filed March 31, 1983.

Dated: April 22, 1983.

S. Neil Hosenball,

General Counsel.

[FR Doc. 83-11488 Filed 4-28-83; 8:45 am]

BILLING CODE 7510-01-M

[Docket No. 82-36]

Intent To Grant An Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Lixi, Inc. of Downers Grove, Illinois, a limited, exclusive, royalty-bearing, revocable license to practice the invention described in British Patent No. 1,604,101 for a "Low Intensity X-Ray and Gamma-Ray Imaging Device" which issued on February 27, 1979, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by June 28, 1983.

ADDRESS: National Aeronautics and Space Administration, Code GP-4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 755-3954.

Dated: April 22, 1983.

S. Neil Hosenball,

General Counsel.

[FR Doc. 83-11487 Filed 4-28-83; 8:45 am]

BILLING CODE 7510-01-M

[Notice 82-35]

Intent To Grant An Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Lixi, Inc. of Downers Grove, Illinois, a limited, exclusive, royalty-bearing, revocable license to practice the invention described in Canadian Patent No. 1,112,773 for a "Low Intensity X-Ray and Gamma-Ray Imaging Device" which issued on February 27, 1979, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives writtten objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by June 28, 1983.

ADDRESS: National Aeronautics and Space Administration, Code GP-4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 755-3954.

Dated: April 22, 1983.

S. Neil Hosenball,

General Counsel.

[FR Doc. 83-11486 Filed 4-28-83; 8:45 am]

BILLING CODE 7510-01-M

[Notice 82-34]

Intent To Grant An Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to T. Wang and D. Elleman of Pasadena, California, a limited, exclusive royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 4,344,787 for a "Method and Apparatus for Producing Gas-Filled Hollow Spheres" which issued on August 17, 1982, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited

number of years and will contain appropriate terms and conditions to be negotiated in accordance with NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by June 28, 1983.

ADDRESS: National Aeronautics and Space Administration, Code GP–4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 755–3954.

Dated: April 22, 1983.

S. Neil Hosenball,

General Counsel.

[FR Doc. 83–11485 Filed 4–28–83; 8:45 am]

BILLING CODE 7510–01–M

[Notice 83–39]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Actr, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council.

Date and Time: May 18, 1983, 9 a.m. to 4:30 p.m., and May 19, 1983, 8:30 a.m. to 3:30 p.m.

Address: NASA Headquarters, Room 7002, 400 Maryland Avenue SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code LB–4, National Aeronautics and Space Administration, Washington, DC 20546; (202/755–8383).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Daniel J. Fink and is composed of twenty-six members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, life sciences, space applications, space an earth science, space systems and technology, and history, as they relate to NASA's activities.

The meeting will be closed to the public from 8:30 a.m. to 10:30 a.m. on May 19, 1983, because the Council will consider the qualifications of candidates for membership. Because this session will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that this session should be closed to the public.

For the open sessions, visitors will be admitted to the meeting room up to its capacity, which is approximately 60 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open—except for the closed session as noted in the following agenda.

Agenda

May 18, 1983
- 9 a.m.—Introductory Remarks.
- 9:15 a.m.—Task Forces Reports.
- 11 a.m.—Committee Reports.
- 1:30 p.m.—Review of Agricultural Remote Sensing.
- 2:30 p.m.—Space Station: Status and Plans.
- 4:30 p.m.—Adjourn.

May 19, 1983
- 8:30 a.m.—Discussion of Candidates for Membership (Closed Session).
- 10:30 a.m.—Review of Life Sciences Program.
- 1:30 p.m.—Council Discussion and Planning.
- 3:30 p.m.—Adjourn.

Ann P. Bradley,

Acting Associate Administrator for Management.

April 22, 1983.

[FR Doc. 83–11490 Filed 4–28–83; 8:45 am]

BILLING CODE 7510–01–M

[Notice 83–38]

NASA Advisory Council, Space Systems and Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Informal Advisory Subcommittee on Materials and Structures.

DATE AND TIME: May 17, 1983, 12:30 p.m. to 5 p.m.; May 18, 1983, 8:30 a.m. to 5 p.m.; May 19, 1983, 9 a.m. to 12 noon.

ADDRESS: National Aeronautics and Space Administration, Room 625, 600 Independence Ave., SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel L. Venneri, National Aeronautics and Space Administration, Code RTM–6, Washington, D.C. 20546; (202/755–3277).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Materials and Structures was established to assist the NASA in assessing the current adequacy of Materials, Structures, and Structural Dynamics Technology for Space Research and to recommend actions to reduce deficiencies through modification of the planned NASA research and technology program. The Subcommittee, chaired by Dr. John Hedgepeth, is comprised of eleven members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the Subcommittee members and participants).

Type of Meeting: Open.

Agenda

May 17, 1983
- 12:30 p.m.—Introduction.
- 12:45 p.m.—Long Range Strategic Plan.
- 2 p.m.—Ad Hoc Structures/Controls Subcommittee Report.
- 3 p.m.—NASA Mission Model.
- 4 p.m.—Discussion.
- 5 p.m.—Adjourn.

May 18, 1983
- 8:30 a.m.—Review of Minutes of Previous Meeting.
- 9 a.m.—Materials and Structures Long Range Plans—Impact of Space Station Technology Recommendations.
- 5 p.m.—Adjourn.

May 19, 1983
- 9 a.m.—Subcommittee Discussion.
- 12 noon—Adjourn.

Ann P. Bradley,

Acting Associate Administrator for Management, Office of Management.

April 20, 1983.

[FR Doc. 83–11489 Filed 4–28–83; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Physiology, Cellular and Molecular Biology Advisory Panel; Subpanel on Cellular Physiology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463. The National Science Foundation announces the following meeting:

Name: Subpanel on Cellular Physiology of the Advisory Panel for Physiology, Cellular and Molecular Biology.

Date and Time: May 16, 17, 18, 1983—Starting at 8:30 a.m. to 5:00 p.m.

Place: Room 523, National Science Foundation, 1800 G street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Judith H. Willis, Director, Cellular Physiology Program, Room 332 National Science Foundation, Washington, DC 20550: Tel (202) 357–7377.

Purpose of Subpanel: To provide advice and recommendations concerning support for research in Cellular Physiology.

Agenda: To review and evaluate research proposals as part of the selection process of awards.

Reasoning for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: Financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c). Government in the Sunshine Act.

Authority to Close: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Managment Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: April 26, 1983.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 83-11478 Filed 4-28-83; 8:45 am]

BILLING CODE 7555-01-M

Subpanel on Developmental Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting.

Name: Subpanel on Developmental Biology of the Advisory Panel for Physiology, Cellular and Molecular Biology:

Date and Time: May 18, 19, 20, 1983, starting at 9 a.m. to 5 p.m.

Place: Room 643, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Clifton A. Poodry, Program Director, Developmental Biology Program, Room 332–H, National Science Foundation, Washington, D.C. 20550, telephone 202/357–7989.

Purpose of Subpanel: To provide advice and recommendations concerning support of research in developmental biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidental nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within the exemptions (4) and (6) of U.S.C. 522(c), Government in the Sunshine Act.

Authority to Close: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF July 6, 1979.

Dated: April 26, 1983.

M. Rebecca Winkler,

Committee Management Coodinator.

[FR Doc. 82-11532 Filed 4-28-83; 8:45 am]

BILLING CODE 7555-01-M

Subpanel on Molecular Biology, Group A, of the Advisory Panel for Physiology, Cellular, and Molecular Biology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting.

Name: Subpanel on Biophysics/Biochemistry Programs, Group A of the Advisory Panel for Physiology, Cellular, and Molecular Biology.

Date and Time: May 16 and 17, 1983, 9 a.m. to 5 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G St,. N.W., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Kin-Ping Wong, Program Director, Biophysics Program, Room 329, National Science Foundation, Washington, D.C. 20550.

Purpose of Subpanel: To provide advice and recommendations concerning support for research in Biophysics/Biochemistry Programs.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidental nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are with exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: April 26, 1983.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 83-11477 Filed 4-28-83; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Import/Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following applications for import/export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 2055, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear material or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 22nd day of April at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

FEDERAL REGISTER (EXPORT/IMPORT)

Name of applicant, date of application, date received, application No.	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., Mar. 31, 1983–Apr. 11, 1983, ISNM83006.	1.10 percent enriched uranium.	18,000	198	Feed Material USE/SD/002; however will ultimately be used as fuel in Maine Yankee Reactor.	FM France.

FEDERAL REGISTER (EXPORT/IMPORT)—Continued

Name of applicant, date of application, date received, application No.	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., Apr. 13, 1983–Apr. 13, 1983, ISNM83007.	0.8 percent enriched uranium	17,000	136	Feed Material UES/EU/028	FM France.
Mitsubishi Int'l., Mar. 30, 1983–Apr. 8, 1983, XSNM02038.	2.65 percent enriched uranium.	15,545	412	Reload of fuel for Region 13, Mihama 2	Japan.
Mitsubishi Int'l., Mar. 31, 1983–Apr. 11, 1983, XSNM02039.	2.85 percent enriched uranium.	26,910	824	Routine reload of fuel for Region 11, Takahama Unit 2	Japan.
Westinghouse Elec. Corp., Apr. 4, 1983–Apr. 8, 1983, XSNM01045.				Amend to add ENUSA as intermediate consignee	Spain.

[FR Doc. 83-11547 Filed 4-28-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 40-4492]

Federal-American Partners; Negative Declaration Regarding Issuance of an Amendment To License SUA-667 for Operation of the Federal-American Partners Uranium Mill in the Gas Hills, Wyoming

The U.S. Nuclear Regulatory Commission (the Commission) is issuing a license amendment authorizing a plan for reclamation of Tailings Pond No. 2 at the Federal-American Partners uranium mill in the Gas Hills, Wyoming.

The Commission's Uranium Recovery Field Office (URFO) has prepared an environmental impact appraisal for the proposed action. On the basis of this appraisal, URFO has concluded that an environmental impact statement for this particular action is not warranted for there will be no additional environmental impact attributable to the action. The action would rather serve to mitigate existing impacts. The environmental impact appraisal is available for public inspection and copying at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

Dated at Silver Spring, Maryland, this 11th day of April 1983.

For the Nuclear Regulatory Commission.

John J. Linehan,

Branch Chief, Licensing Branch I, Uranium Recovery Field Office, Region IV.

[FR Doc. 83-11548 Filed 4-28-83; 8:45 am]
BILLING CODE 7590-01-M

Long Range Research Plan; Issuance and Availability

The Nuclear Regulatory Commission has issued NUREG–0961, "Long Range Research Plan: FY 1984–FY 1988." The plan is being distributed broadly for review and comment. It will be updated next year to reflect completed tasks, to identify new regulatory and research needs, and to incorporate comments on the plan now being issued. This is the third 5-year research plan published by the NRC.

The primary purpose of the plan is to provide a basis for establishing agreement on basic research directions, that is, to identify the principal areas or questions that require research in their resolution and to provide insights as to the level of future resource requirements.

This year's plan is structured so that each research element shows:

1. The strategy planned to accomplish the research (including resources required),

2. The major research product expected, and

3. The fiscal year of delivery of the product.

Although comments and suggestions on the Commission's research program are encouraged at all times, comments and suggestions on this Long Range Research Plan will be particularly useful to the Commission if they are received by June 30, 1983. Comments should be sent to Mr. Edward M. Podolak, Chief, Program and Administrative Services Branch, Office of Nuclear Regulatory Research, Washington, D.C. 20555.

NUREG–0961 is available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Single copies may be obtained, to the extent that supplies last, by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Additional copies may be purchased from the GPO Sales Program, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.
(5 U. S.C. 552(a))

Dated at Silver Spring, Maryland this 21st day of April 1983.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 83-11549 Filed 4-28-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-142-OL (Proposed Renewal of Facility License)]

The Regents of the University of California (UCLA Research Reactor); Order Scheduling Hearing on Contention II Before Alternate Board Member

April 22, 1983.

Pursuant to appointment as an Alternate Atomic Safety and Licensing Board Member on April 22, 1983, Administrative Law Judge James A. Laurenson will preside at a hearing concerning Contention II—Class of License—which hearing will commence at 9:30 o'clock a.m. on May 24, 1983 at Customs Courtroom, Eighth Floor, the Federal Building, 300 North Los Angeles Street, Los Angeles, California.

It is ordered that the parties are directed to complete the following prehearing requirements on or before May 6, 1983:

1. Confer (by telephone or otherwise) to discuss the possibility of agreeing to proceed with Contention II in some fashion other than an adjudicatory hearing. Such possible alternatives may include stipulated documents, affidavits of witnesses, and arguments and briefs of counsel. If oral testimony is believed to be necessary, the scope of such testimony may be stipulated and the reminder of the case may be submitted in writing as set forth above. Of course, these are only suggestions and the parties are free to agree upon any other technique to expedite this matter.

2. Whether or not the parties agree to a procedure as discussed in the preceding paragraph, they shall also discuss and determine the factural issues in dispute and stipulate the

following: (a) The material facts that are not in dispute; (b) the exhibits that may be received in evidence; and (c) the issues of fact and law that will require a hearing and recommended decision.

3. Exchange a list of witnesses and a summary of the facts expected to be proved by each witness. The summary should contain specific facts, issues, and exhibits the party expects to prove. A general subject matter summary will not be sufficient.

4. Exchange lists of proposed exhibits and, at the request of any party, produce exhibits to such party with the opportunity to examine and copy them.

It is further ordered that on or before May 13, 1983 all parties shall file with me the following:

(a) The proposed witness and exhibit lists and the summary of the testimony expected of the witnesses;

(b) Stipulations reached as to the following: (1) An alternate method of resolving Contention II; (2) the issues; (3) facts; and (4) proposed exhibits; and

(c) The party's best estimate of the length of time necessary to present its case at the hearing.

Failure of any party to comply with the above requirements will subject that party to a show cause order and possible default decision.

Dated: April 22, 1983.

Atomic Safety and Licensing Board.

James A. Laurenson,

Administrative Law Judge, Alternate Board Member.

[FR Doc. 83-11550 Filed 4-28-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-361]

Southern California Edison Company, et al; Issuance of Amendment Facility Operating License No. NPF-10

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 16 to Facility Operating License No. NPF-10, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and The City of Anaheim, California (licensees) for the San Onofre Nuclear Generating Station, Unit 2 (the facility) located in San Diego County, California. This amendment becomes effective on May 16, 1983.

Amendment No. 16 modifies the San Onofre Unit 2 Technical Specifications to eliminate non-plant specific differences between the Unit 2 and Unit 3 Technical Specifications.

Issuance of this amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter 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) Southern California Edison Company's letters dated September 3, October 21, and December 1, 1982 and February 4, 1983, (2) Amendment No. 16 to Facility Operating License No. NPF-10, and (3) the Commission's related Safety Evaluation.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and the San Clemente library, 242 Avenida Del Mar, San Clemente, California 92672. A copy of 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 25th day of April 1983.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 83-11552 Filed 4-28-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-395]

South Carolina Electric and Gas Co. South Carolina Public Service Authority; Granting of Relief From Certain Requirements of ASME Code Section XI Inservice (Testing) Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules and Inservice Inspection of Nuclear Power Plant Components" to the South Carolina Electric and Gas Company and South Carolina Public Service Authority. The relief relates to the preservice hydrostatic tests for the Virgil C. Summer Station, Unit 1 (the facility) located in Fairfield County, South Carolina. 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 ts date of issuance.

The relief relates to certain preservice examination requirements, pursuant to the Commission's regulations in 10 CFR 50.55a(g)(6)(i). In lieu of hydrostatic tests, the licensees will perform nondestructive examinations consisting of radiography, ultrasonic testing, and surface examination of the welds.

The requests for relief comply 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 related Safety Evaluation Report and letter to the licensee.

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 licensees' letter dated February 18, 1983, (2) the Commission's letter to the licensees dated April 22, 1983, and, (3) the Commission's related Safety Evaluation Report. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180. 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 22nd day of April 1983.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 83-11551 Filed 4-28-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-389]

St. Lucie Plant, Unit 2, Florida Power & Light Company, et al.; Issuance of Amendment to Facilty Operating License NPF-16

Notice is hereby given that the U.S. Nuclerar Regulatory Commission (the Commission), has issued Amendment No. 1 to Facility Operating License No. NPF-16, issued to Florida Power & Light Company, Orlando Utilities Commission of the City of Orlando and Florida Municipal Power Agency (licensees) for the St. Lucie Plant, Unit 2 (facility) located at the licensees' site on Huthcinson Island in St. Lucie County, Florida. This amendment is effective as of the date of issuance.

Amendment No. 1 changes the channel functional test surveillance requirements for the Wide Range Logarithmic Neutron Flux Monitor. The preparation of detector plateau curves, which are presently required, cannot be accomplished and are not needed with the installed equipment.

Issuance of the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission 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 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) Florida Power & Light Company's letter dated April 20, 1983; (2) Amendment No. 1 to Facility Operating License No. NPF-16; and (3) the Commission's Safety Evaluation. These items are available for public inspection at the Commision's Public Document Room, 1717 H Street, N.W., Washington, D.C., and the Indian River Community college Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450. 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, the 22nd day of April 1983.

For the Nuclear Regulatory Commission.

Bart Buckley,

Acting Branch Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 83-11553 Filed 4-28-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-395]

Virgil C. Summer Nuclear Station, Unit No. 1; Issuance of Amendment To Facility Operating License No. NPF-12

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 14 to Facility Operating License No. NPF-12, issued to South Carolina Electric & Gas Company and South Carolina Public Service Authority (the licensees) for the Virgil C. Summer Nuclear Station, Unit No. 1 (the facility) located in Fairfield County, South Carolina. The amendment changes the Technical Specifications to delete the surveillance requirement to demonstrate the emergency power supply for the pressurizer heaters operable by manually transferring power from the normal to the emergency power supply and energizing the heaters. The amendment was effective as of its date of issuance.

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 regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards considerations.

The Commission has determined that the issuance of this amendment will not result in any significant evnironmental 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) South Carolina Electric & Gas Company letter, dated October 8, 1982, (2) Amendment No. 14 to Facility Operating License No. NPF-12 with Appendix A Technical Specification page change, and (3) the Commission's related Safety Evaluation.

All of these items are available for public inspection at the Commission's Public Document Room, 1717, H Street, N.W., Washington, D.C. 20555 and the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180. A copy of Amendment No. 14 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 19th day of April 1983.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 83-11554 Filed 4-28-83; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Proposed Revision of Form For OMB Review

AGENCY: Office of Personnel Management

ACTION: Notice of proposed revision of form submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, this notice announces a proposed revision to a form which collects information from the public. Standard Form 15, Application for 10-Point Veteran Preference, is completed by any individual applying for Federal jobs who wishes to apply for an additional 10 points of examination credit based on his/her military service or that of a spouse or child. OPM examining offices and agency appointing officials use the information provided to adjudicate the individual's claim in accordance with the Veteran's Preference Act or 1944, as amended. For copies of this proposal, call John P. Weld, Agency Clearance Officer, on (202) 632-7720.

DATES: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESS: Send or deliver comments to:

John P. Weld, Agency Clearance Officer, U.S. Office of personnel Management, 1900 E Street, N.W., Room 6669, Washington, D.C. 20415; and

Frank Reeder, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: John P. Weld, (202) 632-7720, Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 83-11564 Filed 4-28-83; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Cincinnati Stock Exchange; Application for Unlisted Trading Privileges and of Opportunity for Hearing

April 25, 1983.

In the matter of application of the Cincinnati stock Exchange for unlisted trading privileges in certain Securities Securities Exchange Act of 1934.

The above named national securities exchange has filed an application with the securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stick of:

Financial Corp. of America
Common Stock, $.50 Par Value (file No. 7-6584)

This security is listed and registered on one of more other national securities exchange and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 16, 1983 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection if investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-11456 Filed 4-28-83; 8:45 am]

BILLING CODE 8010-01-M

Applications for Unlisted Trading Privileges and of Opportunity for Hearing

April 22, 1983.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Gulfstream Aerospace Corporation
Common Stock, $.10 Par Value (File No. 7-6851)
Pay N Pak Stores, Inc.
Common Stock, $.10 Par Value (File No. 7-6582)
Trans World Airlines, Inc.
Common Stock, $5 Par Value (File No. 7-6583)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 13, 1983 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-11459 Filed 4-28-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 854; 803-23]

ML Venture Partners I, L.P., et al.; Application Filing

April 22, 1983.

In the matter of: ML VENTURE PARTNERS, I, L.P.; Merrill Lynch Venture Capital Co., L.P., 165 Broadway, New York, NY 10080; Filing of application for an order pursuant to Section 206A of the Act exempting applicants from Section 205(1) of the Act.

Notice is hereby given that ML Venture Partners I, L.P. (the "Partnership") and Merrill Lynch Venture Capital Co., L.P. (the "Managing General Partner") (collectively, the "Applicants") filed an application on June 23, 1982, and an amendment thereto on September 16, 1982, for an order of the Commission pursuant to Section 206A of the Investment Advisers Act of 1940 (the "Advisers Act") exempting Applicants from Section 205(1) of the Advisers Act, to the extent necessary to permit the Managing General Partner of the Partnership to receive, under certain circumstances, a performance fee on the basis of unrealized capital gains upon the Partnership's portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of pertinent provisions of the Act.

Applicants state that the Partnership is a registered business development company organized as a Delaware limited partnership on February 16, 1982, pursuant to a Certificate and Agreement of Limited Partnership dated February 12, 1982. The Partnership is currently operating under the terms of an Amended and Restated Certificate and Agreement of Limited Partnership (the "partnership agreement") which was included as an exhibit to this application. The investment objective of the Partnership is to seek long-term capital appreciation by making venture capital investments. A registration statement under the Securities Act of 1933 on Form N-2 with respect to the public offering by the Partnership of up to 12,000 units of limited partnership interests ("units") was declared effective by the Commission on June 18, 1982. Applicants state that the proceeds of the offering will be invested in 25 to 50 venture capital investments over a period of up to three to four years, and that each of these investments will be liquidated once it reaches a state of maturity when disposition can be considered, which typically will be four to seven years from the date of investment. The proceeds of such liquidations will not be reinvested except in limited circumstances, but will be distributed to the partners. Since the Partnership will terminate not later than December 31, 1992, absent an extension until December 31, 1996, as permitted by the partnership agreement, the Partnership will be an investment vehicle of limited duration which will have definite stages of development.

Applicants state that the Managing General Partner is a limited partnership controlled by Merrill Lynch Venture Capital, Inc. (the "Management Company"), which will perform the management and administrative services necessary for the operation of the Partnership pursuant to a management agreement. The Managing General Partner and the Management Company will be registered investment advisers under the Advisers Act. The Management Company is an indirect subsidiary of Merrill Lynch & Co., Inc., the parent of Merrill, Lynch, Pierce, Fenner and Smith, Incorporated ("Merrill Lynch"), which is the selling

agent of the units on a "best efforts" basis.

Applicants state that the general partners of the Partnership consist of Individual General Partners (partners who are natural persons) and the Managing General Partner. A majority of the general partners are Independent General Partners (defined to be individuals who are not "interested persons" of the Partnership within the meaning of Section 2(a)(19) of the Investment Company Act of 1940 ("Investment Company Act"). The Partnership is managed solely by the Individual General Partners, except that the Managing General Partner, subject to the guidance and supervision of the Individual General Partners, is responsible for the management of the Partnership's venture capital investments and the admission of additional or assignee limited partners to the Partnership. The Individual General Partners otherwise act by majority vote. The Individual General Partners perform all duties imposed on the directors of business development companies under the Investment Company Act.

Applicants state that the partnership agreement provides that the Managing General Partner may be removed either: (i) By a majority of the Independent General Partner; (ii) by failure to be re-elected by the limited partners; or (iii) with the consent of a majority in interest of the limited partners. The limited partners have no right to control the Partnership's business, but may exercise certain rights and powers of a limited partner under the partnership agreement, including voting rights and the giving of consents and approvals provided for in the partnership agreement.

Applicants state that, as remuneration for their respective services, the Managing General Partner will receive performance compensation of 20 percent of net realized capital gains, described in detail below, and the Management Company will receive an annual management fee of 2 percent of the Partnership's net assets. Applicants submit that this compensation formula compares favorably with the compensation arrangements of private venture captial partnerships. Applicants state that the company does not have an executive compensation plan described in Section 61(a)(3)(B) of the Investment Company Act or a profit-sharing plan as described in Section 57(n) of that Act.

According to the application, the partnership agreement provides that the profits and losses of the Partnership shall be determined and allocated as of the end of each calendar year. The partnership agreement further provides that the Managing General Partner shall be allocated the Partnership's net realized capital gains or losses, as the case may be, for such year until it has received

(i) 20 percent of the Partnership's net capital gains calculated on a cumulative basis over the life of the Partnership through such year, if the Partnership has generated net realized capital gains on such cumulative basis through such year, or

(ii) 10 percent of the Partnership's net capital losses calculated on a cumulative basis over the life of the Partnership through such year, if the Partnership has generated net realized capital losses on such cumulative basis through such year.

Such allocation is referred to herein as the "Managing General Partner's allocation." The partnership agreement provides that the Partnership's net realized capital gains or losses in excess of the Managing General Partner's allocation shall be allocated among all the partners (including the Managing General Partner) in proportion to their capital contributions. Pursuant to the partnership agreement, all other profits and losses, including interest or other income on funds not invested in venture capital investments, shall be allocated among all the partners (including the Managing General Partner) in proportion to their capital contributions.

Applicants state that the Individual General Partners expect to distribute not less frequently than annually all net investment income as well as the proceeds from the liquidation of venture capital investments not reinvested. The Managing General Partner does not expect to reinvest such proceeds except in connection with follow-on investments or to reduce borrowings incurred to make follow-on investments. Distributions to the Managing General Partner shall not be made to the extent that and so long as the net realized gains allocated to the Managing General Partner are offset by an amount equal to 20 percent of the net unrealized losses of the Partnership determined as of the end of the fiscal year for which such distributions are made. The Partnership will terminate not later than December 31, 1996, assuming the Individual General Partners extend its duration to the extent permissible. As soon after the date of termination as possible, the partners will receive a liquidating distribution of the remaining assets of the Partnership based upon their allocable share thereof.

Applicants state that the partnership agreement provides that in the event of the involuntary removal of the Managing General Partner and the continuation of the Partnership, the venture capital investments of the Partnership at the time of removal will be appraised by two independent appraisers, one selected by the removed Managing General Partner and one selected by the Independent General Partners. The cost of the appraisal conducted by the appraiser selected by the removed Managing General Partner will be borne by the removed Managing General Partner, and the cost of the appraisal conducted by the appraiser selected by the Independent General Partners will be borne by the Partnership. In the event that the two appraisers are unable to agree on the value of the Partnership's venture capital investment portfolio, they will jointly appoint a third independent appraiser whose determination shall be final and binding. The cost of the appraisal conducted by the third appraiser, should one be selected, will be divided equally between the Partnership and the removed Managing General Partner. All unrealized capital gains and losses of the Partnership will be deemed realized at that time solely for purposes of making a final allocation to the removed Managing General Partner. The removed Managing General Partner will receive a final allocation of profits and losses equal to the profits and losses that it would have been allocated pursuant to the partnership agreement if all unrealized capital gains and losses of the Partnership were deemed realized, an allocation of profits and losses were made at such time, and such time were deemed to be the end of a fiscal year. The interest of the removed Managing General Partner shall convert to that of a limited partner.

Applicants state that they believe the proposed performance compensation contained in the Managing General Partner's allocation conforms with the purpose of Section 205(l) of the Advisers Act dealing with advisory compensation from a business development company in that it provides for 20 percent of net realized capital gains calculated on a cumulative basis over the life of the Partnership, and since distributions cannot be made with respect thereto to the extent that the net realized capital gains are reduced by net unrealized losses. There is also conformity in that the Partnership will not have an executive compensation plan or a profit sharing plan of the types referred to in the statute. However, Section 205(l) permits such performance compensation only with respect to realized gains and it does not contemplate the procedures set forth in the partnership agreement

whereby unrealized gains or losses will be deemed to be realized under certain conditions for purposes of the proposed performance compensation formula.

Applicants represent that the proposed formula has been so structured because of the special nature of the Partnership. The venture capital investments will be made in the early years of the Partnership. According to Applicants, the nature of venture capital investing is such that bad investments typically surface earlier than successful investments, and the ultimate success of the Partnership may be dependent upon realizing substantial gains in a relatively small number of the investments. The value of these successful investments cannot be realized until relatively late in the life of the Partnership when portfolio companies can be taken public or acquired by another company

Applicants state that the Managing General Partner will bear 10 percent of any net realized losses. If the Managing General Partner is removed prior to the termination of the Partnership, and it were not able to receive performance compensation with respect to any unrealized gains, it would be deprived of compensation with respect to those venture capital investments it had made for the Partnership which were still held by the Partnership. By the same token, the Managing General Partner would not bear 10 percent of any net unrealized losses with respect to such investments. Therefore, if the Managing General Partner is removed for poor performance, the Partnership would benefit under Applicants' proposal as a result of the deemed realization of losses. At the same time, the Managing General Partner would receive protection from being removed in the middle years of the Partnership in order to deprive it of the benefit of successful investments which will be most likely realized in the later years. If the capital account of the removed Managing General Partner has a positive balance after its final allocation of profits and losses, the Managing General Partner will receive a promissory note of the Partnership which is payable only from available cash. On the other hand, the Managing General Partner must contribute cash to cover any negative balance in its capital account.

It is also proposed by Applicants that all unrealized gains and losses on securities distributed in kind to the partners upon termination of the Partnership, as well as during the life of the Partnership, be deemed realized at that time. Applicants state that deeming unrealized gains and losses to be realized when Partnership securities are distributed to the Partners, both during the life of the Partnership and upon termination of the Partnership, will treat such events as a disposition of investments by the Partnership and, in the latter instance, will reflect the fact that the Partnership has a limited duration, which is not contemplated by Section 205(1) of the Advisers Act. Such treatment will enable the Managing General Partner to receive compensation or bear losses, as the case may be, with respect to such investments.

Applicants state that there are strong justifications for permitting a performance fee based on securities distributed in kind during the life of the Partnership. Such distributions will give the Partnership's investors flexibility in the timing of gains and losses upon the distributed securities with resulting tax advantages to the investors. Applicants assert that it would not be in the best interests of investors in the Partnership to deprive the Managing General Partner of a performance fee based on the gains that have been produced upon those securities. Applicants state that for the above reasons there are also strong justifications for permitting a performance fee on the basis of distributions in kind made upon termination of the Partnership. Applicants further state that those distributions may also be necessary where the portfolio securities so distributed are not yet "ripe" for realization.

Applicants state that an independent appraisal will be made of the value of securities distributed in kind to the partners during the life of the Partnership that are valued other than on the basis of either: (i) Available market quotations of (ii) third party transactions involving actual transactions or actual firm offers by independent investors. The term "independent investors," as used herein, refers to investors who are not "affiliated persons," within the meaning of the Investment Company Act, of the Partnership, the Managing General Partner or Merrill Lynch & Co., Inc., or its subsidiaries.

Applicants further state that distributions in kind made upon termination of the Partnership will be such that if the securities so distributed exceed ten percent of the capital contributions to the Partnership (the total amount of money contributed to the Partnership by all the partners), an appraisal will be made of the value of the securities so distributed which are not valued on the basis of available market quotations or on the basis of third party transactions involving actual transactions or actual firm offers by independent investors. Any appraisal required as a result of in-kind distributions will be conducted in accordance with the procedures described above with respect to removal of the Managing General Partner.

Section 206A of the Advisers Act provides that the Commission may issue exemptive orders "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of (the Advisers Act)." Applicants submit that such statutory standards are satisfied for the reasons stated herein and, accordingly, they request that an exemptive order be issued to permit the Managing General Partner to receive the Managing General Partner's allocation as described herein.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 17, 1963, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-11458 Filed 4-25-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22919; 70-6859]

Ohio Power Co.; First Mortgage Bonds

April 22, 1983.

In the matter of: Ohio Power Company, 301 Cleveland Avenue, S.W., Canton, Ohio 44701; proposed issuance and sale of first mortgage bonds.

Ohio Power Company ("Ohio Power"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed an application with this Commission

pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder.

Ohio Power proposes to issue and sell at competitive bidding up to $130 million in principal amount of its mortgage bonds ("Bonds") in one or more series from time to time through than December 31, 1983. The interest rate of each series of the Bonds will be a multiple of ⅛th of 1%. The price to Ohio Power, exclusive of accrued interest, shall be in a range between 99% and 102¾% of the principal amount. The Bonds will be issued under a supplemental indenture to Ohio Power's Mortgage and Deed of Trust. Each series of Bonds will mature on a date from five to thirty years from the issuance date. The terms of the Bonds will preclude Ohio Power from redeeming such bonds at the regular redemption price for a period of five years with funds borrowed at a lower effective interest cost than the respective series of Bonds.

Ohio Power will issue and sell the Bonds by competitive bidding and may employ alternative procedures authorized in the Commission's Statement of Policy Concerning Application of Rule 50 (HCAR No. 22623; September 2, 1982).

The proceeds from the sale of the Bonds will be used to repay unsecured short-term indebtedness of Ohio Power consisting of short-term notes and commercial paper, to repay maturing long-term debt, to reimburse the Ohio Power's treasury for expenditures incurred in connection with its construction program, and for other corporate purposes. At December 31, 1982, Ohio Power had approximately $98,150,000 aggregate principal amount of such unsecured short-term debt outstanding. On the issuance date, Ohio Power expects to have at least $130 million of such short-term debt outstanding, part of which was incurred to finance construction expenditures. Ohio Power estimates that its consolidated construction costs during 1983 will be approximately $88 million.

The application 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 May 16, 1983, to the Secretary, Securities, and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-11457 Filed 4-28-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19697; File No. SR-Amex-83-8]

Filing and Immediate Effectiveness of Proposed Rule Change By the American Stock Exchange, Inc.

April 22, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 7, 1983, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Amex rule change requires options specialists to ensure that stop orders elected by the opening sale be filled at the opening price in an execution simultaneous with the opening sale but printed as a separate trade. The procedure is also to apply to stop limit orders, although, as with any limit order at the opening where the limit price and the opening price are the same, the order may not be completely filled.

The new rule modifies the past practice under which the stop or stop limit orders were not executed until the completion of the opening rotation, and so their execution sometimes occured at a price different from the opening sale price. Amex believes this rule change comports with Section 6(b)(5) of the Act which provides that Exchange rules should promote just and equitable principles of trade and protect the public interest.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and Subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR-Amex-83-8.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-11455 Filed 4-28-83; 8:45 am]

BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

[OMB No. 3240-0012]

Information Collection; Final Report; Registration/Federal Student Aid Survey

Pursuant to OMB approval (with the action date of 03/14/83) for information collection entitled "Registration/Federal Student Aid Survey" (OMB NO. 3240-0012), a survey was conducted to determine how many registrants may request a duplicate acknowledgement letter in order to document their eligibility for student loans. The survey contacted the homes of 500 registrants (100 from year groups 1960, 1961, 1962, 1963 and 1964). However, as a large portion of those contacted were parents of the registrant and not the registrants themselves, a second survey was conducted where only registrants were contacted.

The percentage of registrants who planned to request a duplicate acknowledgement letter according to the

first survey was 21.4%; by the second survey, 26.9%.

The survey was conducted by phone using a sample selected at random. A total of 982 registrant homes were contacted.

Attached is the notice of approval from OMB.

Dated: April 22, 1983.

David A. Cox,

Associate Director, Office of Information Systems.

Notice of Office of Management and Budget Action

Action Date: March 14, 1983.
To: Clarence E. Boston, National Headquarters, 1023 31st St., NW., 3rd Floor, Washington, D.C. 20435, Selective Service System

On March 11, 1983, you requested approval of the following information collection:

Title: Registration/Federal Student Aid Survey.

Agency Form Nos.:

In accordance with the Paperwork Reduction Act, we have taken the following action on this information collection:

Approved for use through June 30, 1983.
OMB No. 3240-0012.

This number and expiration date must appear in the upper right-hand corner of the first page of the report form or the first page on the regulation, manual, or other document incorporating the information collection unless other instructions are in "remarks" below.

	Responses	Reporting hours
Effect on burden:		
Previous status	0	0
New status	500	125
Difference	500	125
Explanation of Difference:		
Adjustments		
Correction—Error	0	0
Correction—Reestimate	0	0
Change in use	0	0
Program changes		
Increase	500	125
Decrease	0	0

Remarks:

This Fiscal year you have submitted 2 requests for approval which were not included in your *information collection budget.*

Abstract:

Impending legal activities (injunction against requiring proof of registration as a pre-requisite to receiving certain financial aid) makes it imperative that we begin this survey immediately. One issue central to the legal contest is the contention that the selective service system cannot respond in a timely fashion to requests for evidence of registration by those registrants seeking financial aid.

Allowance letter: No, Function: Defense-related activities
On Plan: No, Exceed budget: No, 3504(H): N/A
No. of forms: 1, Use: Public, Request: New
Respondents: 500, Responses: 500, Hours: 125
Affected public: IND/HHLD
Small Business: No, Activity type:
Purpose: Application
Frequency: SNGL
Collection method: Mail S/A
Retention: Collection agent: RQSTNG DPT/AGCY, Confidentiality: Yes
Compulsory status: Voluntary
Federal cost: Public cost:
Reviewer: Federal education Data Acquisition council
Action, Authorizing Official, Title: Deputy Administrator
Approved by: /S/Nathaniel Scurry for Office of Information and Regulatory Affairs
Date March 14, 1983.

Important: Because this information collection has been approved, please send to the O.M.B. as soon as available: One copy of the final printed (or otherwise reproduced) report form, or reporting or recordkeeping requirement, transmittal letter, instructions, and any document being sent to each respondent.

[FR Doc. 83-11342 Filed 4-28-83; 8:45 am]

BILLING CODE 6015-01-M

DEPARTMENT OF STATE

[Public Notice 860]

Applications for Permits To Fish in the United States Fishery Conservation Zone

The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) requires all foreign vessels fishing in the U.S. fishery conservation zone to have a permit. Section 204 of the Magnuson Act requires the Secretary of State to publish a summary of applications received.

Individual vessel applications for fishing in 1983 have been received from the Governments of the Union of Soviet Socialist Republics, Japan and Portugal.

If additional information regarding any application is desired, it may be obtained from: Fees, Permits, and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, (Telephone: (202) 634-7432).

Dated: April 20, 1983.

James A. Storer,

Director, Office of Fisheries Affairs.

Fishery Codes and Designation of Regional Councils Which Review Applications for Individual Fisheries Are As Follows

Code	Fishery	Regional council
ABS	Atlantic Billfishes and Sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands Trawl, Longline and Herring Gillnet.	North Pacific.
CRB	Crab (Bering Sea)	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic	New England, Mid-Atlantic.
SMT	Seamount Groundfish (Pacific Ocean).	Western Pacific.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Washington, Oregon, California Trawl.	Pacific.
PBS	Pacific Billfish and Sharks	Western Pacific.

Activity Codes Specify Categories of Fishing Operations Applied for Are As Follows

Activity code	Fishing operations
1	Catching, processing, and other support.
2	Processing and other support only.
3	Other support only.

Nation/vessel name/vessel type	Application No.	Fishery	Activity
Japan:			
SAPPORO MARU, cargo/transport vessel	JA-83-0565	BSA, GOA, SNA, SMT, NWA	3
SINGAPORE FONTAINE, cargo/transport vessel	JA-83-0566	NWA, BSA, GOA, SMT	3
HAKKO FONTAINE, cargo/transport vessel	JA-83-0567	NWA, BSA, GOA, SMT	3
WORLD FONTAINE, cargo/transport vessel	JA-83-0568	NWA, BSA, GOA, SMT	3
EBISU FONTAINE, cargo/transport vessel	JA-83-0569	NWA, BSA, GOA, SMT	3
SANWA FONTAINE, cargo/transport vessel	JA-83-0590	NWA, BSA, GOA, SMT	3
BANSHU MARU NO. 3, large stern trawler	JA-83-0372	NWA	1,2
TOMI MARU NO. 21, longline fishing vessel	JA-83-1476	ABS	1
SHOSHIN MARU NO. 82, longline fishing vessel	JA-83-1308	ABS	1
KOTOSHIRO MARU NO. 11, longline fishing vessel	JA-83-1339	ABS	1
RYUHO MARU NO. 18, longline fishing vessel	JA-83-3142	ABS	1
EIKYU MARU NO. 86, medium stern trawler	JA-83-1186	BSA	1,2
KOHSHO MARU, cargo/transport vessel	JA-83-0579	BSA, GOA, NWA, SNA, SMT	3
OKUSHIRI, cargo/transport vessel	JA-83-0580	BSA, GOA, NWA, SMT, SNA	3
YAGISHIRI, cargo/transport vessel	JA-83-0581	BSA, GOA, NWA, SMT, SNA	3
HARUSHIO MARU, cargo/transport vessel	JA-83-0582	BSA, GOA, NWA, SMT, SNA	3
TENRYU MARU, cargo/transport vessel	JA-83-1104	NWA, BSA, GOA, SMT	3

Nation/vessel name/vessel type	Application No.	Fishery	Activity
SEIYOH MARU, cargo/transport vessel	JA-83-0583	BSA, GOA, NWA, SMT, SNA	3
JAMES, cargo/transport vessel	JA-83-0584	NWA, BSA, GOA, SMT	3
U.S.S.R:			
LUCHEZARNYI, cargo/transport vessel	UR-83-0760	BSA, GOA	3
ASBEST, cargo/transport vessel	UR-83-0759	BSA, GOA, WOC	3
Portugal:			
VIMIEIRO, stern trawler	PO-83-0013	NWA, GOA	1
S. RAFAEL, stern trawler	PO-83-0002	GOA	1
HORIZONTE, stern trawler	PO-83-0019	NWA	1, 2
TROPICAL, stern trawler	PO-83-0020	NWA	1, 2
Joint ventures			
Portugal:			
SANTA MARIA MANUELA, gill netter	PO-83-0016	NWA	2
Empresa De Pesca Ribau of Portugal and Robert Metafora, 600 Pleasant Street, Watertown, Massachusetts 02172, have applied to engage in a joint venture fishery aimed at producing 1,500 metric tons of Squid-Loligo. Also a small amount of incidental bycatch is expected of no more than 5 metric tons of Butterfish with a minimal of Crabs and Skate, during the months of June, July and August and possible including September, 1983.			
Japan:			
TOKACHI MARU large stern trawler	JA-83-0360	NWA	2
Nippon Suisan Kaisha, Ltd., of Japan and Mr. Warren Lund, President, Lund's Fisheries, Inc., 997 Ocean Drive, Cape May, New Jersey 08204, have applied to engage in a joint venture fishery aimed at processing Loligo and Illex during the months of June to September, 1983. During the months of November 1983 and March 1984, the above parties will engage in a joint venture fishery aimed at producing 1,000 metric tons of Butterfish, 300 m.t. of Loligo and 300 m.t. of Mackerel.			
RYUSHO MARU NO. 18 longliner processing	JA-83-0620	GOA	1, 2
Nihon Hogei Co., Ltd., of Japan and George Matsuo, 700 H Street, Suite 9, Anchorage, Alaska 98501, Phone Number: (O) 907/277-0654 and (H) 907/277-4339, have applied to engage in a joint venture fishery aimed at producing 400 metric tons of Black Cod and other incidental bycatch during the month of August, 1983.			
U.S.S.R:			
SVETLAJA, large stern trawler	UR-83-0080	BSA	2, 3
TURKUL, large stern trawler	UR-83-0172	BSA	2, 3
MYS EGOROVA, large stern trawler	UR-83-0097	BSA	2, 3
TIGIL, large stern trawler	UR-83-0162	BSA	2, 3
KORENGA, large stern trawler	UR-83-0215	BSA	2, 3
KONTAIKA, large stern trawler	UR-83-0076	BSA	2, 3
Korsakovskaja Baza Okeanicheskogo Rybolovstva of the U.S.S.R., and the Marine Resources Co., (MRC), 192 Nickerson, Suite 307, Seattle, Washington 98109, have applied to engage in a joint venture fishery aimed at producing 10,000 metric tons of Herring and 1,000 m.t. of bycatch during the months of September 1983 through March 1984.			

[FR Doc. 83-11306 Filed 4-28-83; 8:45 am]

BILLING CODE 4710-09-M

[Public Notice CM-8/626]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Meeting

The Panel on Bulk Cargoes under the Safety of Life at Sea (SOLAS) Subcommittee Working Group on Containers and Cargoes will conduct an open meeting on May 17, 1983, at 10:00 A.M., in Room 3201 of the Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593.

The purpose of the meeting is to discuss the Working Papers and other matters resulting from the 24th Session on Containers and Cargoes held at the International Maritime Organization (IMO) Headquarters in London on February 21–25, 1983. Particular comments will be directed toward the proposed Emergency Procedures for Appendix B entries and the Angles of Repose of solid bulk cargoes.

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. John F. McAnulty, U.S. Coast Guard (G-MTH-3), Washington, D.C. 20593. Telephone: (202) 426–1577; or Captain S. Fraser Sammis, National Cargo Bureau, Inc. Suite 2757, One World Trade Center, New York, New York 10048. Telephone: (202) 432–1280.

Dated: April 19, 1983.

Gordon S. Brown,

Chairman, Shipping Coordinating Committee.

[FR Doc. 83-11446 Filed 4-28-83; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 83-102]

Change of Practice Relating To Tariff Classification of Certain Tubular Textile Braided Line

AGENCY: U.S. Customs Service, Treasury.

ACTION: Change of practice.

SUMMARY: This document gives notice of a change of an established and uniform practice of classifying certain tubular textile braided lines containing, and in chief value of, lead cores, which are currently classified under the provision for articles of lead, not coated or plated with precious metal, valued over 13½ cents per pound, in item 657.75, Tariff Schedules of the United States (TSUS). This change of practice will result in the classification of these articles, which are used to weigh down fish nets, under the *eo nomine* provision for tubular braids with a nonelastic core, not suitable for making or ornamenting headwear, in item 348.00, TSUS, when imported in the piece (material lengths). However, when imported in specific lengths of 300, 330, 600, 660, 900, and 990 feet, they will be classified under the provision for other articles not specially provided for, of textile materials, in item 389.70, TSUS, if in chief value of lead.

EFFECTIVE DATE: July 28, 1983.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, D.C. 20229; (202–566–8181).

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1981, a notice was published in the **Federal Register** (46 FR 51698) advising that Customs was reviewing its current established and uniform practice of classifying tubular textile braided lines with a nonelastic lead core under the provision for articles of lead, not coated or plated with precious metal valued over 13½ cents per pound, in item 657.75, (TSUS) (19 U.S.C. 1202). Pursuant to section 315(d), Tariff Act of 1930, as amended, (19 U.S.C. 1315(d)), and section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)), Customs requested comments on its proposal to reclassify these articles, which are used to weigh down fish nets, under the *eo nomine*

provision for tubular braids with a nonelastic core, not suitable for making or ornamenting headwear, in item 348.00, (TSUS). Comments were to have been received on or before December 21, 1981. However, pursuant to a request to extend the time for the submission of comments, Customs published a notice in the **Federal Register** (46 FR 62600), extending the time period to January 21, 1982.

As indicated in the notice, item 348.00, TSUS, is an *eo nomine* provision that neither requires the merchandise to be in chief value of any particular material, nor does it require the articles to be of textile materials. Further, even if there were a requirement that the braids had to be "of textile materials," the term "textile materials" is defined in Headnote 2(a)(v), Schedule 3, TSUS, as including "braids." The word "braids" is defined in Subpart (f) of the same headnote as including all braids of any contruction, with or without cores.

An *eo nomine* provision for an article, such as the provision for tubular braids with a nonelastic core, not suitable for making or ornamenting headwear, without limitations or shown contrary legislative intent, judicial decision, or administrative practice to the contrary, and without proof of commerical designation, will include all forms of such an article. *Nootka Packing Co.*, v. *United States*, 22 C.C.P.A. 464, T.D. 47464 (1935). In view of this principle and in light of the definitions of "textile materials" and "braids" enunciated above, Customs proposed that the subject articles be reclassified under item 348.00, TSUS.

Analysis of Comments

Five comments were received in response to the notice. Two commenters were in favor of the proposal and three commenters were opposed. Two of the three commenters opposed to it were concerned with the economic impact which would result from the change and the fact that the articles are not used as a textile. However, neither of these factors is relevant in determining the proper statutory tariff classification of the articles.

The primary issues raised by the remaining commenter opposed to the reclassification and Customs response to these issues is as follows:

1. The question is raised as to whether the articles, which are chiefly used for weighing down fish neting, is a "braid" since the lead core is not a central straud.

The definition from *Webster's Third New International Dictionary*, 1966, of the word "braid", describes the manufacturing process used to produce a braid. The description states that three or more strands are formed into a cord or ribbon by repeatedly crossing a left and then a right strand over a central strand and under the oppsite strand. It does not appear that the strands described in that definition are meant to include a central core. The cited definition does not contain anything contradictory to the conclusion that the articles are a braid. In this connection, see *Sol Kahaner & Bro.* v. *United States*, 71 Cust. Ct. 97, C.D. 4480 (1973), aff'd 62 CCPA 35, C.A.D. 1141 (1975), which held that the term "braids" for tariff purposes includes only braids formed by a special "maypole" type construction in which three or more lengths are diagonally intertwined.

2. It is contended that the provisions in the Tariff Act of 1930, as amended, from which the provision for tubular braids with nonelastic core, item 348.000 TSUS, was derived, all provided for tubing wholly or in chief value of textile materials. Accordingly, it is argued that the article is required to be in chief value of textile materials to be classified in item 348.00, TSUS.

It is cardinal rule of statutory construction that where doubt or ambiguity exists as to the meaning or scope of a statute, it is proper to consult the legislative history of that statue to ascertain congressional intent and that such intent governs the interpretation of the statute. However, in this instance, we believe that the wording is clear and unambiguous.

Headnote 2(a)(v), Schedule, 3, TSUS, defines the term "textile materials" as including braids as defined in Headnote 2(f). That headnote defines the term "braids" when used in connection with textile materials or textile articles, as including *all* braids in the piece of any construction, with or without cores. There is no requirement that the braids classifiable in Schedule 3, TSUS, be in chief value of textiles. The language used in the definition of "braids" refers to textile materials and textile articles, not to articles of textile materials. The word "of" is defined for tariff purposes in General Headnote 9(f)(i), TSUS, as meaning that the article is wholly or in chief value of the named material. The definition of "braids" does require that the braided portion, as opposed to the core, consist of material which would otherwise be considered textile materials. There is not similar limitation in the definition concerning the composition of any core in a braid. Therefore, in determining whether a braid with a core is within the purview of "textile materials," the composition of the core is not a consideration.

Even if it could be argued that the definition of braids was ambiguous, the legislative history is clear. As explained in the Tariff Classification Study, Explanatory Materials, published as C.I.E. ⅛₄, dated January 2, 1964, under the Tariff ACt of 1930, the practice of Customs was to exclude from the meaning of the term "braids" so-called cords which consisted of a braided sheath surrounding an inner core.

This later practice is not reflected in the proposed definition which would include all braids in the piece whether with or without cores. The proposed definition also includes such braids whether they have been braided from fibers, filaments (including tinsel wire and lame), yarns, cordage, textile fabrics, or any combination thereof. It is believed that this definition properly reflects the trade conception of braid. Volume 1 at pg. 227.

In addition, as can be seen from Part IIB, Tariff Classification Study Submitting Report, also published in Volume 1, C.I.E. ⅛₄, in converting from the Tariff Act of 1930, as amended, to the TSUS, the TSUS resulted in numerous rate changes. Further, the court noted in *Sol Kahaner & Bros.* v. *United States*, *supra*, that the statutory language in the TSUS in regard to the classification of braids differs from the language in the Tariff Act of 1930, as amended, and the change is sufficient to establish that the coverage under the TSUS differs from that which existed previously.

3. The position is advanced that the statutory language of Headnote 2(f), Scheduled 3, TSUS, applies only to textile materials and textile articles and does not apply to textile braids which are in chief value of the lead core.

Customs does not read Headnote 2(f) in that manner. In the TSUS, the word "of" is defined in General Headnote 9(f)(i), TSUS, and is the designated word used in the TSUS as requiring that an article be in chief value of the named material. The work "of" does not appear in Headnote 2(f). Further, submission by an American manufacturer of similar articles is persuasive that the subject articles are known in the trade and commerce of this country as a textile material or a textile article.

4. The position is advanced that these articles are not classifiable in item 348.00, TSUS, because that provision encompasses only braids imported in material lengths, and a substantial amount of the braided lead lines is actually imported cut to predetermined sizes for use on specific size nets.

Customs has confirmed this position. Braided lead lines are used in certain designated lengths ranging from 300 feet to 990 feet and when imported in those

designated lengths, they are seldom cut. Customs has continuously held that merchandise which is imported cut to specific sizes for specific uses, and which will not be further cut after importation, is not considered to be in material lengths. See C.S.D. 79-115, published in the Customs Bulletin of April 25, 1979, in response to Internal Advice Request No. 43/78, which held that mountain climbing ropes in lengths of 120, 150, and 165 feet were not imported in material lengths and, therefore, were separate and distinguishable articles of commerce classifiable as sporting equipment.

Since braids with cores imported in material lengths are "textile materials," it follows that articles which are in chief value of such braids are, unless more specifically provided for elsewhere, classifiable as articles of textile materials.

Change of Practice

After careful analysis of the comments received, Customs proposal to classify braided lead lines under item 348.00, TSUS, is adopted, with the addition that if imported in specific lengths of 300, 330, 600, 660, 900, and 990 feet, they are classifiable under the provision for other articles not specially provided for, of textile materials, in item 389.70, TSUS, if in chief value of lead.

E.O. 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

This document is not subject to the provisions of sections 603 and 604 Title 5, United States Code (as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act").

Drafting Information

The principal author of this document was Jesse V. Vitello, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Rabb,

Commissioner of Customs.

Approved: April 13, 1983.

Robert E. Powis,

Acting Assistant Secretary of the Treasury.

[FR Doc. 83-11498 Filed 4-28-83; 8:45 am]

BILLING CODE 4820-02-M

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Polypropylene Ropes

AGENCY: Customs Service, Treasury.

ACTION: Notice of receipt of domestic interested party petition.

SUMMARY: Customs has received a petition from a domestic interested party requesting the reclassification of certain imported polypropylene ropes. Imported polypropylene ropes are currently classified for duty purposes as other articles of plastics, not specially provided for. However, if these ropes are products of a beneficiary developing coutry, they are accorded duty-free entry under the Generalized System of Preferences (GSP). The petitioner contends that these ropes should be classified under the tariff provision for cordage of man-made fibers subject to a higher rate of duty and not eligible for duty-free entry under the GSP even if imported from a beneficiary developing country. This document invities comments with regard to the correctness of the current classification.

DATE: Comments (preferably in triplicate) must be received on or before June 28, 1983.

ADDRESS: Comments may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229; (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

A petition dated November 9, 1982, was filed with the Customs Service under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), by the Sunshine Cordage Corporation, an American manufacturer of synthetic twines, ropes, and cordage. The petitioner contends that certain imported polypropylene ropes made from "plexiform filaments", which are currently classified by Customs under the provision for other articles of plastics, not specially provided for, in item 774.55, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), are more appropriately classified under the provision for cordage of man-made fibers in items 316.55 and 316.58, TSUS, depending on diameter. The current rate of duty for items classified under item 774.55, TSUS, is 6.9 percent ad valorem and the current rate of duty for items classified under items 316.55 and 316.58, TSUS, is 8 cents per pound plus 12.7 percent ad valorem and 12.5 cents per pound plus 15 percent ad valorem, respectively. The petitioner correctly notes that articles classified under item 774.55, TSUS, can be entered free of duty under the Generalized System of Preferences ("GSP") (see sections 10.171-10.178, Customs Regulations (19 CFR 10.171-10.178)), if imported directly from a beneficiary developing country, whereas articles classified under items 316.55 and 316.58, TSUS, cannot be entered free of duty under the GSP.

An amended petition, dated December 14, 1982, was submitted by the Sunshine Cordage Corporation and filed with Customs to support its original petition and set forth further arguments as to why the classification of polypropylene rope should be changed. The polypropylene ropes which are the subject of both the petition and the amended petition, are composed of man-made plexiform filaments in a folded, twisted, or crimped condition.

The petitioner's claim for reclassification is based on its interpretation of the terms "plexiform filaments" and "strips" as defined in headnotes 3(c) and 3(d), Subpart E, Part 1, Schedule 3, TSUS. For the purposes of Subpart E, the term plexiform filaments "embraces flexible filaments each of which consists of a network or plexus of fine fibers and which are suitable for the manufacture of textiles."

The term strips "embraces strips (including strips of laminated construction), whether or not folded lengthwise, twisted, or crimped, which in unfolded, untwisted, and uncrimped condition are over 0.06 inch but not over one inch in width and are not over 0.01 inch in thickness."

The petitioner maintains that according to the above definitions, "strips" which are in an unfolded condition must meet the dimensional requirement, whereas "plexiform filaments" which are in a folded, twisted, or crimped condition need not meet any dimensional requirement. Thus, it claims that these plexiform filaments which are in a folded, twisted, or crimped condition could be of any length or width suitable for the manufacture of textiles.

The petitioner also relies on its interpretation of the term "cordage" as defined in headnote 1(a) of Part 2, Schedule 3, TSUS, which provides that for the purpose of this part, the term cordage "means assemblages of textile fibers or yarns, in approximately cylindrical form and of continuous length, whether or not bleached, colored, or treated, designed and chiefly

used as an end product, and comprising cable, rope, cord, and twine, * * *"

The petitioner asserts that a polypropylene rope, which consists of plexiform filaments in a folded, twisted, or crimped condition, is a cordage product. It states that the plexiform filaments, of which the polypropylene rope is composed, would have to be unfolded to be excluded from the definition of cordage. However, plexiform filaments in a polypropylene rope are not unfolded but are in a folded, twisted, or crimped condition and cannot be excluded from the definition of cordage.

Thus, the petitioner concludes that polypropylene ropes, composed of plexiform filaments in a folded, twisted, or crimped condition, are cordage products, and need not meet any dimensional requirements. Accordingly, they must be properly classified under the provision for cordage of man-made fibers in items 316.55 and 316.58, TSUS, and not under the provision for other articles of plastics, not specially provided for, in item 774.55, TSUS.

Comments

Pursuant to §175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on the petition and the correctness of Customs classification of these articles.

The domestic interested party petition and the amended petition, as well as all comments received in response to this notice, will be available for public inspection in acordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. to 4:30 p.m. on normal business days, at the Regulations Control Branch, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority: This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal author of this document was James S. Demb, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: April 25, 1983.

John P. Simpson,

Director, Office of Regulations and Rulings.

[FR Doc. 83-11490 Filed 4-28-83; 8:45 am]

BILLING CODE 0983-62-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 84
Friday, April 29, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD

[M-380, Apr. 26, 1983]

TIME AND DATE: 9:30 a.m., May 3, 1983.

PLACE: Room 1027 (open), room 1012 (closed), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of Items Adopted by Notation.
2. H.R. 1464—A bill to authorize reduced-rate air transportation to the United States for certain persons who have been or will be adopted by a resident of the United States. (Memo 1812, OGC)
3. Dockets EAS-549, 552 and 553, Petition of Metroflight, Inc. (Metro) for review of Order 83-2-34. (Memo 080-H, BDA)
4. Delta Development Corp. d.b.a. Western Yukon Air, continuing fitness. (Memo 1822, BDA, OGC)
5. Docket 41280, Application of Southern Air Transport, Inc. for unused authority. (Memo 1818, BDA)
6. Docket 41281, Application of Caribbean Air Services, Inc. for unsued authority. (Memo 1821, BDA)
7. Substantial change in key personnel of Midway (Southwest). (Memo 1827, BDA)
8. Docket 41069, Application of Prinair for unused authority. (Memo 1814, BDA)
9. Docket 41007, In the Matter of Air National Aircraft Sales and Service, Inc. (BDA, OGC)
10. Docket 40274, Notice of Republic Airlines to terminate service at Thief River Falls, MN. (BDA, OCCCA, OC)
11. Docket 40875, Essential air service at Temple, Texas. (BDA, OCCCA, OC)
12. Docket EAS-755, Service proposals for essential air service at Waycross, Georgia, a 419(b) point. (BDA OCCCA)
13. Dockets 39289 and 39480, Second year subsidy rate for AAA Air Enterprises' service at Norfolk, Nebraska, and Yankton, South Dakota, and Docket 41020, Carrier Selection at Columbus, Nebraska. (BDA, OCCCA)
14. Commuter carrier fitness determination of Airways of New Mexico, Inc. (Memo 1816, BDA)
15. Commuter carrier fitness determination of AmericAir, Inc. d.b.a. Air Lind Commuter. (Memo 1813, BDA)
16. Docket 35634, Agreement C.A.B. 28986, IATA agreement proposing revised Los Angeles/San Francisco-United Kingdom cargo rates. (BIA)
17. Docket 38623, Agreement C.A.B. 28960 and 28981, IATA agreements proposing fare structures to/from Israel, the Middle East and Africa. (BIA)
18. Cancellation of the foreign air carrier permits issued to certain indirect foreign air carriers. Docket 38487, Application of Deutsches Reiseburo GmbH (Germany) d.b.a. Der Travel Service. (Memo 1817, BIA, OGC BALJ)
19. Docket 41232, Application of Trans World Airlines, Inc. for renewal of its experimental certificate of public convenience and necessity for Route 219 (Miami-London Backup authority). (BIA, OGC)
20. Report on Canadian Fuel Tax. (BIA)
21. Report on Israel. (BIA)
22. Report on United Kingdom. (BIA)

STATUS: 1-19 open, 20-22 closed.

PERSON TO CONTACT FOR MORE INFORMATION: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-615-83 Filed 4-27-83; 3:30 pm]

BILLING CODE 6320-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (eastern time), Tuesday, May 3, 1983.

PLACE: Commission Conference Room No. 200, second floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Ratification of Notation Vote/s.
2. A Report on Commission Operations (Optional).
3. Freedom of Information Act Appeal No. 83-2-FOIA-20-CH, concerning a request for confidential witness statements from a charge file.
4. Freedom of Information Act Appeal No. 83-2-FOIA-13-NO, concerning a request for the contents of an open Title VII charge file.
5. Freedom of Information Act Appeal No. 83-3-FOIA-25-SL, concerning a request for two documents from an age discrimination case file.
6. Freedom of Information Act Appeal No. 83-2-FOIA-23-SL, concerning a request for an ADEA file in closed status.
7. Freedom of Information Act Appeal No. 83-2-FOIA-20-CL, concerning a request for deliberative memoranda and confidential witness names from a charge file.
8. Amendment to the Procedure for Processing Charges Against 706 Agencies.
9. Pilot Program on Decisions from the Bench.

Closed:

1. Litigation Authorization; General Counsel Recommendations.
2. Proposed Withdrawal of Certain Charges.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provided recorded announcements a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634-6748.

This Notice Issued April 26, 1983.

[S-606-83 Filed 4-27-83; 10:49 am]

BILLING CODE 6750-06-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2 p.m. on Monday, April 25, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of Hang Seng Bank Ltd., Hong Kong, for Federal deposit insurance of deposits received at and recorded for the accounts of its proposed federally-licensed

branch located at 27 East Broadway, New York, New York.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

The Board further determined, on motion of Chairman William M. Isaac, seconded by Director C. T. Conover (Comptroller of the Currency), concurred in by Director Irvine H. Sprague (Appointive), that Corporation business required the withdrawal from the agenda for consideration in open session and the addition to the agenda for consideration at the Board's closed meeting held at 2:30 p.m. the same day, of the following matter:

Application of BancOne of Connecticut, Bridgeport, Connecticut, for consent to convert into a non-FDIC insured institution.

In voting to move this matter from open session to closed session, the Board further determined, by the same majority vote, that the public interest did not require consideration of the matter in a meeting open to public observation; that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii); and that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: April 15, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[S-613-83 Filed 4-27-83; 1:36 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, April 25, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of The Howard Savings Bank, Newark, New Jersey, for consent to establish a branch in the Highland Shopping Center, East Ridgewood and Highland Avenues, Paramus, New Jersey.

Recommendations regarding the Corporation's assistance agreements involving insured banks pursuant to section 13(c) of the Federal Deposit Insurance Act.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: United American Bank in Knoxville, Knoxville, Tennessee

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: April 25, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[S-612-83 Filed 4-27-83; 1:36 pm]

BILLING CODE 6714-01-M

5

FEDERAL ELECTION COMMISSION

Federal Register No. 604

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 5, 1983, at 10 a.m.

CHANGE IN MEETING: The following matters have been added to the open meeting for this date—

FEC Speakers' Program

Explanation and Justification of Regulations Governing Collecting Agents and Joint Fundraising

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer; Telephone 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[S-609-83 Filed 4-27-83; 12:30 am]

BILLING CODE 6715-01-M

6

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 17691, April 25, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., April 27, 1983.

CHANGE IN THE MEETING: The following item has been added to the agenda:

Item No., Docket No., and Company

CAG–49: RP78–62–000, Panhandle Eastern Pipe Line Company

Kenneth F. Plumb,

Secretary.

[S-610-83 Filed 4-27-83; 1:14 pm]

BILLING CODE 6717-02-M

7

FOREIGN CLAIMS SETTLEMENT COMMISSION

[Meeting Notice No. 5–83]

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Thursday, May 12, 1983 at 10:30 a.m.

Consideration of decisions involving claims against the Government of the Czechoslovak Socialist Republic and decisions involving claims for Vietnam prisoner of war compensation.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, D.C. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street, NW., Room 409, Washington, DC 20579. Telephone: (202) 653–6155.

Dated at Washington, D.C. on April 26, 1983.

Judith H. Lock,

Administrative Officer.

[S-614-83 Filed 4-27-83; 2:49 pm]

BILLING CODE 4410-01-M

8

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (48 FR 15999, APRIL 13, 1983)

STATUS: Closed meeting.

PLACE: 450 5th Street NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, April 8, 1983.

CHANGES IN THE MEETING: Rescheduling and deletion. The following closed item scheduled for Friday, April 22, 1983, following the 9:30 a.m. open meeting has been rescheduled for Tuesday, April 26, 1983, at 10 a.m.:

Settlement of injunctive action.

The following item was not considered at a closed meeting scheduled for Friday, April 22, 1983, following the 9:30 a.m. open meeting:

Settlement of administrative proceedings of an enforcement nature.

The following item was considered at a closed meeting scheduled for Friday, April 22, 1983, following the 9:30 a.m. open meeting:

Access to investigative files by Federal, State, or Self-regulatory authorities.

Chairman Shad and Commissioners Evans, Longstreth and Treadway determined that Commission business required the above changes and that no earlier notice thereof was possible.

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: Diane Klinke at (202) 272-2014.

April 26, 1983.

[S-611-83 Filed 4-27-83; 1:14 pm]
BILLING CODE 8010-01-M

federal register

Friday
April 29, 1983

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Office of the Secretary

Procedures for Predetermination of Wage Rates

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Office of the Secretary

29 CFR Part 1

Procedures for Predetermination of Wage Rates

AGENCY: Employment Standards Administration, Wage and Hour Division, Labor.

ACTION: Implementation of final rule.

SUMMARY: This document provides for implementation of regulations, 29 CFR Part 1, which sets forth the procedures for the predetermination of prevailing wage rates under the Davis-Bacon and Related Acts. This is the final regulation previously published in the **Federal Register** (47 FR 23644) on May 28, 1982, to the extent that its implementation is permitted by the terms of a permanent injunction issued by the U.S. District Court for the District of Columbia on December 23, 1982. The enjoined provisions in the May 1982 final rule continue to be deferred.

DATES: Effective date: June 28, 1983. See **SUPPLEMENTARY INFORMATION** for dates of applicability.

FOR FURTHER INFORMATION CONTACT: William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone: 202–523–8305.

SUPPLEMENTARY INFORMATION: On August 14, 1981, a proposal was published in the **Federal Register** (46 FR 41444) to make revisions to 29 CFR Part 1, Procedures for Predetermination of Wage Rates under the Davis-Bacon and Related Acts, allowing 60 days for public comment.

On May 28, 1982, these regulations were published in the **Federal Register** (47 FR 23644) as a final rule with a scheduled effective date of July 27, 1982. However, on July 22, 1982, the U.S. District Court for the District of Columbia issued a preliminary injunction enjoining implementation of certain provisions of these regulations as a result of a suit filed against the Department (*Building and Construction Trades Department, AFL–CIO, et al.*, v. *Raymond J. Donovan, et al.*, 543 F. Supp. 1282). On July 26, 1982, the Department published a notice in the **Federal Register** (47 FR 32070) deferring the effective date of these regulations in their entirety until further notice in order to comply with the preliminary injunction issued by the Court. On December 23, 1982, the Court issued a permanent injunction which, as modified by its order of January 17, 1983, enjoined §§ 1.3(d) (exclusion of Davis-Bacon construction in wage determinations), 1.7(b) (exclusion of metropolitan data in wage determinations) and 1.7(d) (helpers) of these regulations. This injunction has been appealed.

The document published today implements those provisions of the final rule published in the **Federal Register** on May 28, 1982 (47 FR 23644), which have not been enjoined by the court, including the revised definition of the term "prevailing," on which the preliminary injunction has been lifted. The effective date of the enjoined provisions is deferred, by separate notice in today's **Federal Register**, pending final determination of the validity of those provisions. If the Department prevails on appeal, the deferred provisions (§§ 1.3(d), 1.7 (b) and (d)) will then be implemented.

As described more fully below, the court order necessitated corresponding deletions of sections or portions of sections in the text of the regulations now being implemented. To avoid confusion, the text of the entire rule as implemented at this time is set forth herein.

The following is a description of the changes made in the text of regulations which were published on May 28, 1982 (47 FR 23644) in order to comport with the Court's decision and order, pending final disposition of the appeal.

Section 1.3(d)—Consideration of Davis-Bacon Rates in Wage Surveys.

This enjoined subsection would have provided that wages paid on projects subject to the Davis-Bacon Act would not be considered in developing wage determinations for "building" and "residential" construction projects unless the Department finds that there is not sufficient data from privately financed projects of a character similar to determine prevailing wages. This subsection is deleted from the text.

Section 1.7(b)—Scope of Consideration.

This enjoined subsection would have prohibited the use of wage data from projects in metropolitan areas in making wage determinations in rural areas, and vice versa. That prohibition is deleted from the text.

Section 1.7(d)—Helpers.

Under the terms of this enjoined subsection, the Department would have issued wage determinations containing rates for semi-skilled classifications of helpers when such classifications are "identifiable" in the area. This subsection is deleted from the text.

In addition to the above, necessary typographical and minor editorial corrections have been made in §§ 1.1(a), 1.6, 1.7(b) and Appendix A paragraph 10.

The document being published today is not a major rule since it is simply a republication and implementation of provisions previously published. A full Final Regulatory Impact and Regulatory Flexibility Analysis was prepared in connection with the May 28, 1982 publication of these regulations and a summary was published therein. See 47 FR 23648. Because of the Court injunction, the alternatives selected cannot be fully implemented at this time. The savings effectuated by the regulations being implemented today are estimated to be $120 million per year.

As discussed above, this document is only a republication and implementation of regulations previously published for notice and comment to the extent implementation is permitted by the court's injunction. Accordingly, additional notice and comment is impracticable, unnecessary and contrary to the public interest.

Dates of Applicability

The provisions of this part shall be applicable only as to wage surveys completed on or after June 28, 1983, except for § 1.6, which shall be applicable only to contracts entered into pursuant to invitations for bids issued or negotiations concluded on or after June 28, 1983. None of the revisions herein shall be applicable to any contract entered into prior to June 28, 1983.

This document was prepared under the direction and control of William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 1

Administrative practice and procedures, Government contracts, Labor, Minimum wages, Wages.

Accordingly, 29 CFR Part 1 as issued on May 28, 1982 with the necessary textual changes discussed above is herein implemented as set forth below.

Signed at Washington, D.C., on this 22d day of April 1983.

Raymond J. Donovan,

Secretary of Labor.

Robert B. Collyer,

Deputy Under Secretary for Employment Standards.

William M. Otter,

Administrator, Wage and Hour Division.

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

Sec.

1.1 Purpose and scope.
1.2 Definitions.
1.3 Obtaining and compiling wage rate information.
1.4 Outline of agency construction programs.
1.5 Procedure for requesting wage determinations.
1.6 Use and effectiveness of wage determinations.
1.7 Scope of consideration.
1.8 Reconsideration by the Administrator.
1.9 Review by Wage Appeals Board.
Appendix A.
Appendix B.

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C. 276a—276a–7; 40 U.S.C. 276c; and the laws listed in Appendix A of this Part.

§ 1.1 Purpose and scope.

(a) The procedural rules in this part apply under the Davis-Bacon Act (946 Stat. 1494, as amended; 40 U.S.C. 276a—276a–7) and other statutes listed in Appendix A to this part which provide for the payment of minimum wages, including fringe benefits, to laborers and mechanics engaged in construction activity under contracts entered into or financed by or with the assistance of agencies of the United States or the District of Columbia, based on determinations by the Secretary of Labor of the wage rates and fringe benefits prevailing for the corresponding classes of laborers and mechanics employed on projects similar to the contract work in the local areas where such work is to be performed. Functions of the Secretary of Labor under these statutes and under Reorganization Plan No. 14 of 1950 (64 Stat. 1267, 5 U.S.C. Appendix), except those assigned to the Wage Appeals Board (see 29 CFR Part 7), have been delegated to the Deputy Under Secretary of Labor for Employment Standards who in turn has delegated the functions to the Administrator of the Wage and Hour Division, and authorized representatives.

(b) The regulations in this part set forth the procedures for making and applying such determinations of prevailing wage rates and fringe benefits pursuant to the Davis-Bacon Act, each of the other statutes listed in Appendix A, and any other Federal statute providing for determinations of such wages by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act.

(c) Procedures set forth in this part are applicable, unless otherwise indicated, both to general wage determinations published in the **Federal Register** for contracts in specified localities, and to project wage determinations for use on contract work to be performed on a specific project.

§ 1.2 Definitions.[1]

(a)(1) The "prevailing wage" shall be the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the "prevailing wage" shall be the average of the wages paid, weighted by the total employed in the classification.

(2) In determining the "prevailing wages" at the time of issuance of a wage determination, the Administrator will be guided by paragraph (a)(1) of this section and will consider the types of information listed in § 1.3 of this part.

(b) The term "area" in determining wage rates under the Davis-Bacon Act and the prevailing wage provisions of the other statutes listed in Appendix A shall mean the city, town, village, county or other civil subdivision of the State in which the work is to be performed.

(c) The term "Administrator" shall mean the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division is designated to act for the Administrator under this part. Except as otherwise provided in this part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator for the performance of functions relating to the making of wage determinations.

(d) The term "agency" shall mean the Federal agency, State highway department under 23 U.S.C. 113, or recipient State or local government under Title 1 of the State and Local Fiscal Assistance Act of 1972.

[1] These definitions are not intended to restrict the meaning of the terms as used in the applicable statutes.

§ 1.3 Obtaining and compiling wage rate information.

For the purpose of making wage determinations, the Administrator will conduct a continuing program for the obtaining and compiling of wage rate information.

(a) The Administrator will encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area. The Administrator may also obtain data from agencies on wage rates paid on construction projects under their jurisdiction. The information submitted should reflect not only the wage rates paid a particular classification in an area, but also the type or types of construction on which such rate or rates are paid, and whether or not such rates were paid on Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements.

(b) The following types of information may be considered in making wage rate determinations:

(1) Statements showing wage rates paid on projects. Such statements should include the names and addresses of contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, whether or not the projects are Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements, the number of workers employed in each classification on each project, and the respective wage rates paid such workers.

(2) Signed collective bargaining agreements. The Administrator may request the parties to an agreement to submit statements certifying to its scope and application.

(3) Wage rates determined for public construction by State and local officials pursuant to State and local prevailing wage legislation.

(4) In making wage rate determinations pursuant to 23 U.S.C. 113, the highway department of the State in which a project in the Federal-Aid highway system is to be performed shall be consulted. Before making a determination of wage rates for such a project the Administrator shall give due regard to the information thus obtained.

(5) Wage rate data submitted to the Department of Labor by contracting agencies pursuant to 29 CFR 5.5(a)(1)(ii).

(6) Any other information pertinent to the determination of prevailing wage rates.

(c) The Administrator may initially obtain or supplement such information obtained on a voluntary basis by such means, including the holding of hearings, and from any sources determined to be necessary. All information of the types described in § 1.3(b) of this part, pertinent to the determination of the wages prevailing at the time of issuance of the wage determination, will be evaluated in the light of § 1.2(a) of this Part.

§ 1.4 Outline of agency construction programs.

To the extent practicable, at the beginning of each fiscal year each agency using wage determinations under any of the various statutes listed in Appendix A will furnish the Administrator with a general outline of its proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction. During the fiscal year, each agency will notify the Administrator of any significant changes in its proposed construction programs, as outlined at the beginning of the fiscal year. This report has been cleared in accordance with FPMR 101–11.11 and assigned interagency report control number 1671–DOL–AN.

§ 1.5 Procedure for requesting wage determinations.

(a)(1) Except as provided in paragraph (b) of this section, the Federal agency shall initially request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting Standard Form 308 to the Department of Labor at this address:

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Wage Determinations, Washington, D.C. 20210.

The agency shall check only those classifications on the applicable form which will be needed in the performance of the work. Inserting a note such as "entire schedule" or "all applicable classifications" is not sufficient. Additional classifications needed which are not on the form may be typed in the blank spaces or on a separate list and attached to the form.

(2) In completing SF–308, the agency shall furnish:

(i) A sufficiently detailed description of the work to indicate the type of construction involved. Additional description or separate attachment, if necessary for identification of type of project, shall be furnished.

(ii) The county (or other civil subdivision) and State in which the proposed project is located.

(3) Such request for a wage determination shall be accompanied by any pertinent wage payment information which may be available. When the requesting agency is a State highway department under the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, such agency shall also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the area.

(b) Whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for such a type of construction, the Administrator, upon the request of a Federal agency or in his/her discretion, may publish a general wage determination in the **Federal Register** when, after consideration of the facts and circumstances involved, the Administrator finds that the applicable statutory standards and those of this part will be met. If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor, *provided*, that questions concerning its use shall be referred to the Department of Labor in accordance with § 1.6(b).

(c) The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. An agency should anticipate that such processing in the Department of Labor will take at least 30 days.

§ 1.6 Use and effectiveness of wage determinations.

(a)(1) Project wage determinations initially issued shall be effective for 180 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness it is void. Accordingly, if it appears that a wage determination may expire between bid opening and contract award (or between initial endorsement under the National Housing Act or the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937, and the start of construction) the agency shall request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award but after bid opening (or before the start of construction, but after initial endorsement under the National Housing Act, or before the start of construction but after the execution of an agreement to enter into a housing assistance payments contract under Section 8 of the U.S. Housing Act of 1937), the head of the agency or his or her designee may request the Administrator to extend the expiration date of the wage determination in the bid specifications instead of issuing a new wage determination. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension of the expiration date of the determination is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all of the circumstances, including an examination to determine if the previously issued rates remain prevailing. If the request for extension is denied, the Administrator will proceed to issue a new wage determination for the project.

(2) General wage determinations issued pursuant to § 1.5(b) and which are published in the **Federal Register**, shall contain no expiration date.

(b) Contracting agencies are responsible for insuring that only the appropriate wage determination(s) are incorporated in bid solicitations and contract specifications and for designating specifically the work to which such wage determinations will apply. Any question regarding application of wage rate schedules shall be referred to the Administrator, who shall give foremost consideration to area practice in resolving the question.

(c)(1) Project and general wage determinations may be modified from time to time to keep them current. A modification may specify only the items being changed, or may be in the form of a supersedeas wage determination, which replaces the entire wage determination. Such actions are distinguished from a determination by the Administrator under paragraphs (d), (e) and (f) of this section that an erroneous wage determination has been issued or that the wrong wage determination or wage rate schedule has been utilized by the agency.

(2)(i) All actions modifying a project wage determination received by the agency before contract award (or the start of construction where there is no contract award) shall be effective except as follows:

(A) In the case of contracts entered into pursuant to competitive bidding procedures, modifications received by the agency less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening, to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is received after bid opening.

(B) In the case of projects assisted under the National Housing Act, modifications shall be effective if received prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(C) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, modifications shall be effective if received prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is executed, whichever occurs first.

(ii) Modifications to project wage determinations and supersedeas wage determinations shall not be effective after contract award (or after the beginning of construction where there is no contract award).

(iii) Actual written notice of a modification shall constitute receipt.

(3) All actions modifying a general wage determination shall be effective with respect to any project to which the determination applies, if published before contract award (or the start of construction where there is no contract award), except as follows:

(i) In the case of contracts entered into pursuant to competitive bidding procedures, modifications published less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is published after bid opening.

(ii) In the case of projects assisted under the National Housing Act, modifications shall be effective if published prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(iii) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, modifications shall be effective if published prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is signed, whichever occurs first.

(iv) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 90 days after bid opening, or if under paragraph (c)(3) (ii) or (iii) of this section construction has not begun within 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modifications published in the **Federal Register** prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

(v) A modification to a general wage determination is "published" within the meaning of this section on the date of publication in the **Federal Register**, or on the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first.

(vi) Modifications or supersedeas wage determinations to an applicable general wage determination published after contract award (or after the beginning of construction where there is no contract award) shall not be effective.

(d) Upon his/her own initiative or at the request of an agency, the Administrator may correct any wage determination, without regard to paragraph (c) of this section, whenever the Administrator finds such a wage determination contains clerical errors. Such corrections shall be included in any bid specifications containing the wage determination, or in any on-going contract containing the wage determination in question, retroactively to the start of construction.

(e) Written notification by the Department of Labor prior to the award of a contract (or the start of construction under the National Housing Act, under section 8 of the U.S. Housing Act of 1937, or where there is no contract award) that (1) there is included in the bidding documents or solicitation the wrong wage determination or the wrong schedule or that (2) a wage determination is withdrawn by the Department of Labor as a result of a decision by the Wage Appeals Board, shall be effective immediately without regard to paragraph (c) of this section.

(f) The Administrator may issue a wage determination after contract award or after the beginning of construction if the agency has failed to incorporate a wage determination in a contract required to contain prevailing wage rates determined in accordance with the Davis-Bacon Act, or has used a wage determination which by its terms or the provisions of this part clearly does not apply to the contract. Further, the Administrator may issue a wage determination which shall be applicable to a contract after contract award or after the beginning of construction when it is found that the wrong wage determination has been incorporated in the contract because of an inaccurate description of the project or its location in the agency's request for the wage determination. Under any of the above circumstances, the agency shall either terminate and resolicit the contract with the valid wage determination, or incorporate the valid wage determination retroactive to the beginning of construction through supplemental agreement or through change order, *provided* that the contractor is compensated for any increases in wages resulting from such change. The method of incorporation of the valid wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable procurement law.

(g) If Federal funding or assistance under a statute requiring payment of wages determined in accordance with the Davis-Bacon Act is not approved prior to contract award (or the beginning of construction where there is no contract award), the agency shall request a wage determination prior to approval of such funds. Such a wage determination shall be issued based upon the wages and fringe benefits found to be prevailing on the date of award or the beginning of construction (under the National Housing Act, under section 8 of the U.S. Housing Act of 1937 or where there is no contract award), as appropriate, and shall be incorporated in the contract specifications retroactively to that date, *provided*, that upon the request of the head of the agency in individual cases the Administrator may issue such a wage determination to be effective on the date

of approval of Federal funds or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent injustice or undue hardship, *provided further* that the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or the start of construction, as appropriate.

§ 1.7 Scope of consideration.

(a) In making a wage determination, the "area" will normally be the county unless sufficient current wage data (data on wages paid on current projects or, where necessary, projects under construction no more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate) is unavailable to make a wage determination.

(b) If there has not been sufficient similar construction within the area in the past year to make a wage determination, wages paid on similar construction in surrounding counties may be considered.

(c) If there has not been sufficient similar construction in surrounding counties or in the State in the past year, wages paid on projects completed more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate, may be considered.

§ 1.8 Reconsideration by the Administrator.

Any interested person may seek reconsideration of a wage determination issued under this part or of a decision of the Administrator regarding application of a wage determination. Such a request for reconsideration shall be in writing accompanied by a full statement of the interested person's views and any supporting wage data or other pertinent information. The Administrator will respond within 30 days of receipt thereof, or will notify the requestor within the 30 day period that additional time is necessary.

§ 1.9 Review by Wage Appeals Board.

Any interested person may appeal to the Wage Appeals Board for a review of a wage determination or its application made under this part, after reconsideration by the Administrator has been sought pursuant to § 1.8 and denied. Any such appeal may, in the discretion of the Wage Appeals Board, be received, accepted, and decided in accordance with the provisions of 29 CFR Part 7 and such other procedures as the Board may establish.

Appendix A

Statutes Related to the Davis-Bacon Act at Rates Predetermined by the Secretary of Labor

1. The Davis-Bacon Act (secs. 1–7, 46 Stat. 1494, as amended: Pub. L. 74–403, 40 U.S.C. 276a–276a–7).

2. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).

3. Housing Act of 1950 (college Housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).

4. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86–372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).

5. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).

6. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).

7. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).

8. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

9. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91–230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92–318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

10. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub. L. 97–424).

11. Indians Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).

12. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

13. Rehabilitation Act of 1973 (sec. 306(b)(5), 87 Stat. 384, 29 U.S.C. 776(b)(5)).

14. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 83 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

15. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

16. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

17. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

18. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

19. National Visitors Center Facilities Act of 1968 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

20. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

21. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 306(h)(2) thereof, 83 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

22. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

23. Health Professions Education Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2256; 42 U.S.C. 293a(c)(7)).

24. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 364; 42 U.S.C. 296a(b)(5)).

25. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

26. Safe Drinking Water Act (sec. 2(a), see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j–9(e)).

27. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300c–3(b)(1)(H)).

28. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

29. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

30. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

31. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

32. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c–3).

33. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

34. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

35. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

36. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

37. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

38. Older Americans Act of 1965 (sec. 502, Pub. L. 89–73, as amended by sec. 501, Pub. L. 93–29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

39. Public Works and Economic Development Act of 1965 (sec. 712, 79 Stat. 575 as amended; 42 U.S.C. 3222).

40. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

41. New Communities Act of 1968 (sec. 410.82 Stat. 516; 42 U.S.C. 3909).

42. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

43. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

44. Housing and Community Development Act of 1974 (secs. 110, 802(g), 83 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

45. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

46. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

47. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

48. Energy Conservation and Production Act (sec. 45(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

49. Solid Waste Disposal Act (sec. 2, 90 Stat. 2828; 42 U.S.C. 6979).

50. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

51. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

52. Highway speed ground transportation study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

53. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

54. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281(i)).

55. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat; 40 U.S.C. 682(b)(4)).

Note.—Repealed Dec. 9, 1969 and labor standards incorporated in sec. 1–1431 of the District of Columbia Code.

56. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89–694, but not in the United States Code).

57. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87–328) (considered a statute for purposes of this part but not in the United States Code).

58. Energy Security Act (Sec. 175(c), Pub. L. 96–294, 94 Stat. 611; 42 U.S.C. 8701 note).

Appendix B

Boston Region

For the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, JFK Federal Building, Government Center, Room 1612C, Boston, Massachusetts 02203 (telephone: 617–223–5565).

New York Region

For the States of New Jersey and New York and for the Canal Zone, Puerto Rico, and the Virgin Islands:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1515 Broadway, Room 3300, New York, New York 10036 (telephone: 212–399–5443).

Philadelphia Region

For the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, and the District of Columbia:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Gateway Building, Room 15220, 3535 Market Street, Philadelphia, Pennsylvania 19104 (telephone: 215–596–1193).

Atlanta Region

For the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1371 Peachtree Street, N.E., Room 305, Atlanta, Georgia 30309 (telephone: 404–881–4801).

Chicago Region

For the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 230 South Dearborn Street, 8th Floor, Chicago, Illinois 60604 (telephone: 312–353–7249).

Dallas Region

For the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 555 Griffin Square Building, Young and Griffin Streets, Dallas, Texas 75202 (telephone: 214–767–6891).

Kansas City Region

For the States of Iowa, Kansas, Missouri, and Nebraska:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 2000, 911 Walnut Street, Kansas City, Missouri 64106 (telephone: 816–374–5386).

Denver Region

For the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 1440, 1961 Stout Street, Denver, Colorado 80294 (telephone: 304–837–4613).

San Francisco Region

For the States of Arizona, California, Hawaii, and Nevada:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 450 Golden Gate Avenue, Room 10353, San Francisco, California 94102 (telephone: 415–556–3592).

Seattle Region

For the States of Alaska, Idaho, Oregon, and Washington:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 4141, 909 First Avenue, Seattle, Washington 98174 (telephone: 206–442–1916).

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Friday
April 29, 1983

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division
Office of the Secretary

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Office of the Secretary

29 CFR Part 5

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Implementation of final rule.

SUMMARY: This document provides for implementation of regulations, 29 CFR Part 5, Subpart A, previously published in the **Federal Register** on May 28, 1982 (47 FR 23658), on labor standards applicable to contracts for federally financed and assisted construction subject to the Davis-Bacon and Related Acts and contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA), to the extent that its implementation is permitted by the permanent injunction issued by the U.S. District Court for the District of Columbia on December 23, 1982. The enjoined provisions of the May 1982 final rule continue to be deferred.

DATES: Effective date: June 28, 1983. See **SUPPLEMENTARY INFORMATION** below for dates of applicability.

FOR FURTHER INFORMATION CONTACT: William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: 202–523–8305.

SUPPLEMENTARY INFORMATION: On August 14, 1981, a proposal was published in the **Federal Register** (46 FR 41456) to make revisions to Subpart A of Regulations, 29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act), allowing 60 days for public comment.

On May 28, 1982, the regulation was published in the **Federal Register** (47 FR 23658) as a final rule with a scheduled effective date of July 27, 1982. However, on June 11, 1982, a suit was filed against the Department of Labor in U.S. District Court for the District of Columbia seeking to prevent the implementation of the revised regulations. On July 22, 1982, the Court issued a preliminary injunction enjoining the Department from implementing certain provisions of the revised regulations pending final disposition of the suit *(Building and Construction Trades Department, AFL-CIO, et al.,* v. *Raymond J. Donovan, et al.,* 543 F. Supp. 1282). The Department published a notice in the **Federal Register** on July 26, 1982 (47 FR 32070), deferring the implementation of this regulation in its entirety until further notice.

On December 23, 1982, the Court issued a permanent injunction which, as modified by its order of January 17, 1983, enjoined §§ 5.2(n)(4) (helpers), 5.5(a)(1)(ii)(A) (helpers), 5.5(a)(4)(iv) (helpers), 5.5(a)(3)(ii) (Copeland Act requirements), and 5.6(a) (2) and (3) (Copeland Act requirements) of this regulation. The Department has appealed this ruling.

The document published today implements those provisions of the final rule published in the **Federal Register** on May 28, 1982 (47 FR 23658) which have not been enjoined by the court. The effective date of the enjoined provisions is deferred, by separate notice in today's **Federal Register**, pending final determination of the validity of those provisions. If the Department prevails on appeal, the deferred provisions (§§ 5.2(n)(4), 5.5(a)(1)(ii)(A), 5.5(a)(3) (ii) and (iii), 5.5(a)(4)(iv), and 5.6(a) (2) and (3)) will then be implemented.

As described more fully below, the court order necessitated corresponding deletions of sections or portions of sections in the text of the regulations now being implemented; in addition, since the court enjoined the new rule's elimination of the requirement for weekly submission of certified payrolls, that requirement from § 5.5(a)(3)(ii) of the previous regulations is incorporated in the text. To avoid confusion, the text of the entire rule as implemented at this time is set forth herein.

The following is a description of the changes made to the May 28, 1982 regulations in order to comport with the Court's decision and order, pending final disposition of the appeal.

Sections 5.2(n)(4) and 5.5(a)(4)(iv)—Helpers.

The enjoined definition of "helper" in § 5.2(n)(4), as well as the conditions governing the use of helpers contained in enjoined § 5.5(a)(4)(iv), are deleted from the text.

Section 5.5(a)(1)(ii)(A)—Conformance Procedures.

This section as enjoined provided that helper rates could be conformed without regard to the requirement applicable to all other conformance actions that the work to be performed by the conformed class is not work performed by a class already listed in the wage determination. The separate treatment of helpers in the conformance of wage rates has been deleted from the text.

Sections 5.5(a)(3) (ii) and (iii) and 5.6(a) (2) and (3)—Submission of Wage Payment Information.

These sections would have eliminated the requirement that contractors submit weekly a copy of payrolls and instead would have required only a weekly submission certifying compliance with the Davis-Bacon and Copeland Acts. The regulations would have required contractors to submit payrolls upon request of contracting agencies or the Department of Labor, but such requests would be made only in conjunction with specific compliance checks or enforcement actions. Because of the injunction, the weekly payroll submission requirement in the previous regulation has been added to the text, with language clarifying that copies of regular payrolls containing all of the required information (in any form desired by the contractor) are sufficient to satisfy the requirements. Furthermore, Optional Form WH–347 is available for the purpose of reporting payroll information if the contractor so chooses, but it is not mandatory that this form be used.

In addition to the textual changes described above, the following necessary changes have been made.

The definition of "construction" in § 5.2(j) is amended to delete the reference to "initial construction" contained in section 113 of Title 23, U.S.C., in order to comport with a legislative amendment effective on January 6, 1983, as part of the Surface Transportation Assistance Act of 1982, Pub. L. 97–424. (See also § 5.1(a) 12.)

An editorial change is made in the text of the conformance procedures contained in § 5.5(a)(1)(ii) (B) and (C) to clarify that the contracting officer must concur with a proposed classification and wage rate conformance action before submitting the matter to DOL for review or else it will be considered a dispute to be resolved by DOL, and to provide further that the contracting officer will be notified of the Wage and Hour Administrator's decision on all proposed conformance actions.

Section 5.15 is amended to include in paragraph (d)(4) the variation from the overtime requirements of the Contract Work Hours and Safety Standards Act for pilots and copilots of fixed-wing and rotary-wing aircraft employed on contracts for fire fighting or suppression and related services, which was published as a final rule in the **Federal Register** of July 2, 1982 (47 FR 28916).

Minor editorial changes and necessary typographical corrections have also been made in the following sections: Table of Contents at §§ 5.11; 5.1(a); 5.2(h); 5.2(j); 5.2(n); 5.5(a)(4); 5.7(d); 5.8(b); 5.11; and 5.12(d)(4).

The document being published today is not a major rule since it is simply a republication and implementation of provisions previously published. A full Final Regulatory Impact and Regulatory Flexibility Analysis was prepared in connection with the May 28, 1982 publication of the regulations and a summary was published therein. See 47 FR 23661. Because of the Court injunction, the alternatives selected cannot be fully implemented at this time.

As discussed above, this document is only a republication and implementation of regulations previously published for notice and comment to the extent implementation is permitted by the court's injunction. Other changes are only editorial in nature. Accordingly, additional notice and comment is impracticable, unnecessary and contrary to the public interest.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the reporting and recordkeeping provisions included in this rule were submitted for approval to the Office of Management and Budget (OMB). Subsequent to the May 28 publication of this rule, the information collection requirements contained in this regulation (see §§ 5.5(a)(1)(ii), 5.5(a)(1)(iv), 5.5(a)(3)(i), 5.5(a)(3)(ii), 5.5(c), 5.15(d)(1), 5.15(d)(3), and 5.15(d)(4)) were approved by OMB under the provisions of 44 U.S.C. 3507 and have been assigned OMB Control Numbers 1215–0140, 1215–0149 and 1215–0017.

Dates of Applicability

The provisions of §§ 5.2 and 5.5 of this part shall be applicable only as to contracts entered into pursuant to invitations for bids issued or negotiations concluded on or after June 28, 1983.

This document was prepared under the direction and control of William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 5

Administrative practice and procedures, Government contracts, Investigations, Labor, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

Accordingly, 29 CFR Part 5, Subpart A, as issued on May 28, 1982 with the necessary textual changes discussed above is herein implemented, as fully set forth below.

Signed at Washington, D.C., on this 22d day of April 1983.

Raymond J. Donovan,

Secretary of Labor.

Robert B. Collyer,

Deputy Under Secretary for Employment Standards.

William M. Otter,

Administrator, Wage and Hour Division

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

Sec.

5.1 Purpose and scope.
5.2 Definitions.
5.3 [Reserved]
5.4 [Reserved]
5.5 Contract provisions and related matters.
5.6 Enforcement.
5.7 Reports to the Secretary of Labor.
5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.
5.9 Suspension of funds.
5.10 Restitution, criminal action.
5.11 Disputes concerning payment of wages.
5.12 Debarment proceedings.
5.13 Rulings and interpretations.
5.14 Variations, tolerances, and exemptions from Parts 1 and 3 of this subtitle and this part.
5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.
5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.
5.17 Withdrawal of approval of a training program.

Authority: 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; and the statutes listed in section 5.1(a) of this part.

§ 5.1 Purpose and scope.

(a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950:

1. The Davis-Bacon Act (sec. 1–7, 46 Stat. 1949, as amended; Pub. L. 74–403, 40 U.S.C. 276a–276a–7).
2. Copeland Act (40 U.S.C. 276c).
3. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332).
4. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).
5. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).
6. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86–372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).
7. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).
8. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).
9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).
10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).
11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91–230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92–318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.
12. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub. L. 97–424).
13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).
14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).
15. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).
16. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

21. National Visitors Center Facilities Act of 1966 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

22. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).

26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 384; 42 U.S.C. 296a(b)(5)).

27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

28. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j–9(e)).

29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o–3(b)(1)(H)).

30. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

32. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c–3).

35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

38. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

39. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

40. Older Americans Act of 1965 (sec. 502, Pub. L. 89–73, as amended by sec. 501, Pub. L. 93–29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).

42. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).

44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

48. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

49. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

50. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

51. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979).

52. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

53. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

54. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

55. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

56. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).

57. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4). **Note.**—Repealed December 9, 1969, and labor standards incorporated in sec. 1–1431 of the District of Columbia Code).

58. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89–694, but not in the United States Code).

59. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87–328) (considered a statute for purposes of the plan but not in the United States Code).

60. Energy Security Act (sec. 175(c), Pub. L. 96–294, 94 Stat. 611; 42 U.S.C. 8701 note).

(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

§ 5.2 Definitions.

(a) The term "Secretary" includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.

(b) The term "Administrator" means the Administrator of the Wage and Hour Division or the authorized representative as set forth in this part. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division, is designated to act for the Administrator under this Part. Except as otherwise provided in this Part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator in the administration of the statutes listed in § 5.1.

(c) The term "Federal agency" means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in § 5.1.

(d) The term "Agency Head" means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term "Contracting Officer" means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

(f) The term "labor standards" as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in § 5.1, and the regulations in Parts 1 and 3 of this subtitle and this part.

(g) The term "United States or the District of Columbia" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities.

(h) The term "contract" means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in § 5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

(i) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms "construction", "prosecution", "completion", or "repair" mean all types of work done on a particular building or work at the site thereof (or, under the United States Housing Act of 1937 and the Housing Act of 1949), all work done in the construction or development of the project, including without limitation, altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project), by persons employed by the contractor or subcontractor.

(k) The term "public building" or "public work" includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term "site of the work" is defined as follows:

(1) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in paragraph (l)(2) of this section, other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site".

(2) Except as provided in paragraph (l)(3) of this section, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of the work" provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

(3) Not included in the "site of the work" are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work". Such permanent, previously established facilities are not a part of the "site of the work", even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(m) The term "laborer" or "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in Part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of Part 541, are laborers and mechanics for the time so spent.

(n) The terms apprentice and trainee are defined as follows:

(1) "Apprentice" means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(3) These provisions do not apply to "apprentices" and "trainees" employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is "employed" regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term "wages" means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon

Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term "wage determination" includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of § 1.6 of this title.

§§ 5.3–5.4 [Reserved]

§ 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(*1*) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(*2*) The classification is utilized in the area by the construction industry; and

(*3*) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215–0140.)

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215–0140.)

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of

Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB control number 1215–0140.)

(2) *Withholding.* The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB control numbers 1215–0140 and 1215–0017.)

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate Federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under § 5.5(a)(3)(i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH–347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029–005–00014–1), U.S. Government Printing Office, Washington, D.C. 20402.The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB control number 1215–0149.)

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(*1*) That the payroll for the payroll period contains the information required to be maintained under § 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;

(*2*) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(*3*) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and Trainees*—(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship

program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5 5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of Eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of Part 4 of this title. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment

of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day or which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job. (Approved by the Office of Management and Budget under OMB control numbers 1215–0140 and 1215–0017.)

§ 5.6 Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by § 5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in § 5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of § 5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that the clauses required by § 5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of § 5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(2) Payrolls and Statements of Compliance submitted pursuant to § 5.5(a)(3)(ii) shall be preserved by the Federal agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.

(3) The Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by § 5.5 and the applicable statutes listed in § 5.1. Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone

other than Federal officials without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR Part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in § 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in § 5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation, including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total $1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

§ 5.7 Reports to the Secretary of Labor.

(a) *Enforcement reports.* (1) Where underpayments by a contractor or subcontractor total less than $1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act that the contractor has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as "letters of notice"), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under § 5.8.

(2) Where underpayments by a contractor or subcontractor total $1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

(b) *Semi-annual enforcement reports.* To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101–11.11 and assigned interagency report control number 1482–DOL–SA.

(c) *Additional information.* Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(d) *Contract termination.* Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in § 5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

§ 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) The Contract Work Hours and Safety Standards Act requires that laborers or mechanics shall be paid wages at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or forty hours in any workweek. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of $10 for each calendar day or workweek in which such individual was required or permitted to work without payment of required overtime wages. Any contractor or subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory or District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

(b) *Findings and recommendations of the Agency Head.* The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administrator shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of $500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.

(c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the

recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to Part 7 of this title, and the Wage Appeals Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to Part 8 of this title, and the Board of Service Contract Appeals in its discretion reviews such decision and order.

(d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is $500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

§ 5.9 Suspension of funds.

In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

§ 5.10 Restitution, criminal action.

(a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor shall request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.

(b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the matter shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator shall be informed simultaneously of the action taken.

§ 5.11 Disputes concerning payment of wages.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to § 5.5(a)(9), or upon request of the contractor or subcontractor(s).

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Davis-Bacon Act or § 5.12(a)(1), the letter will so indicate.

(2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute and the reasons therefor, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR Part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under § 5.12, the Administrator shall notify the contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings, and shall issue a ruling on any issues of law known to be in dispute.

(2)(i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) shall so advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor and subcontractor(s) (if any) accordingly.

(3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor and/or subcontractor(s) shall file a petition for review thereof with the Wage Appeals Board within 30 days of the date of the ruling, with a copy thereof the Administrator. The petition for review shall be filed in accordance with Part 7 of this title.

(d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings and/or ruling shall be final, except that with respect to debarment under the Davis-Bacon Act, the Administrator shall advise the Comptroller General of the Administrator's recommendation in accordance with § 5.12(a)(1). If a timely response or petition for review is filed, the findings and/or ruling of the

Administrator shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Wage Appeals Board.

§ 5.12 Debarment proceedings.

(a)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in § 5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in § 5.1.

(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in § 5.1.

(b)(1) In addition to cases under which debarment action is initiated pursuant to § 5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in § 5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the Administrator shall notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding. The Administrator shall afford such contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a)(1) of this section or section 3(a) of the Davis-Bacon Act. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter postmarked within 30 days of the date of the letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in § 5.1 other than the Davis-Bacon Act, the Administrative Law Judge shall issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge shall issue a recommendation as to whether the contractor or subcontractor should be debarred under section 3(a) of the Act.

(2) Hearings under this section shall be conducted in accordance with 29 CFR Part 6. If no hearing is requested within 30 days of receipt of the letter from the Administrator, the Administrator's findings shall be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) Any person or firm debarred under § 5.12(a)(1) may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, and shall contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in § 5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards provisions applicable to Federal contracts and Federally assisted construction work subject to any of the applicable statutes listed in § 5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Wage Appeals Board pursuant to 29 CFR Part 7.

(d)(1) Section 3(a) of the Davis-Bacon Act provides that for a period of three years from date of publication on the ineligible list, no contract shall be awarded to any persons or firms placed on the list as a result of a finding by the Comptroller General that such persons or firms have disregarded obligations to employees and subcontractors under that Act, and further, that no contract shall be awarded to "any firm, corporation, partnership, or association in which such persons or firms have an interest." Paragraph (a)(1) of this section similarly provides that for a period not to exceed three years from date of publication on the ineligible list, no contract subject to any of the statutes listed in § 5.1 shall be awarded to any contractor or subcontractor on the ineligible list pursuant to that paragraph, or to "any firm, corporation, partnership, or association" in which such contractor or subcontractor has a "substantial interest." A finding as to whether persons or firms whose names appear on the ineligible list have an interest (or a substantial interest, as appropriate) in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.

(2)(i) The Administrator, on his/her own motion or after receipt of a request for a determination pursuant to paragraph (d)(3) of this section may make a finding on the issue of interest (or substantial interest, as appropriate).

(ii) If the Administrator determines that there may be an interest (or substantial interest, as appropriate), but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d)(4) of this section.

(iii) If the Administrator finds that no interest (or substantial interest, as appropriate) exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(iv)(A) If the Administrator finds that an interest (or substantial interest, as appropriate) exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address), which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue.

(B) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(C) If no hearing is requested within the time mentioned in paragraph (d)(2)(iv)(B) of this section, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the ruling of the Administrator shall be inoperative unless and until the administrative law judge or the Wage Appeals Board issues an order that there is an interest (or substantial interest, as appropriate).

(3)(i) A request for a determination of interest (or substantial interest, as appropriate), may be made by any interested party, including contractors or prospective contractors and associations of contractor's representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards.

(ii) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has an interest (or a substantial interest, as appropriate) in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia, or which is subject to any of the statutes listed in § 5.1. No particular form is prescribed for the submission of a request under this section.

(4) *Referral to the Chief Administrative Law Judge.* The Administrator, on his/her own motion under paragraph (d)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceedings shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(5) *Referral to the Wage Appeals Board.* If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Wage Appeals Board to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 7.

§ 5.13 Rulings and interpretations.

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to Part 1 of this subtitle, of the rules contained in this part and in Parts 1 and 3, and of the labor standards provisions of any of the statutes listed in § 5.1 shall be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

§ 5.14 Variations, tolerances, and exemptions from Parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of Parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in § 5.1 unless the statute specifically provides such authority.

§ 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

(a) *General.* Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) *Exemptions.* Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Contracts of $2,000.00 or less.

(2) Purchases and contracts other than construction contracts in the aggregate amount of $2,500.00 or less. In arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising.

(3) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam;

Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(4) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(5) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) *Tolerances.* (1) The "basic rate of pay" under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in Part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and § 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the "regular rate" under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the "basic rate" under the Contract Work Hours and Safety Standards Act.

(3) See § 5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling $500 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.

(ii) The apprentice or trainee comes within the definition contained in § 5.2(n).

(iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.

(d) *Variations.* (1) In order to prevent undue hardship, a workday consisting of a fixed and recurring 24-hour period commencing at the same time on each calendar day may be used in lieu of the calendar day in applying the daily overtime provisions of the Act to the employment of firefighters or fireguards, under the following conditions: (i) Where such employment is under a platoon system requiring such employees to remain at or within the confines of their post of duty in excess of 8 hours per day in a standby or on-call status; and (ii) if the use of such alternate 24-hour day has been agreed upon between the employer and such employees or their authorized representatives before performance of the work; and (iii) provided that, in determining the daily and the weekly overtime requirements of the Act in any particular workweek of any such employee whose established workweek begins at an hour of the calendar day different from the hour when such agreed 24-hour day commences, the hours worked in excess of 8 hours in any such 24-hour day shall be counted in the established workweek (of 168 hours commencing at the same time each week) in which such hours are actually worked. (Approved by the Office of Management and Budget under OMB control numbers 1215–0140 and 1215–0017.)

(2) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(3) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of Section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 8 hours in any calendar day or 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1½ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended. (Approved by the Office of Management and Budget under OMB control numbers 1215–0140 and 1215–0017.)

(4) Any contractor or subcontractor performing on a government contract the principal purpose of which is the furnishing of fire fighting or suppression and related services, shall not be deemed to be in violation of Section 102 of the Contract Work Hour and Safety Standards Act for failing to pay the overtime compensation required by Section 102 of the Act in accordance with the basic rate of pay as defined in subsection (c)(1) of this section, to any pilot or copilot of a fixed-wing or rotary-wing aircraft employed on such contract if:

(i) Pursuant to a written employment agreement between the contractor and the employee which is arrived at before performance of the work,

(A) The employee receives gross wages of not less than $300 per week regardless of the total number of hours worked in any workweek, and

(B) Within any workweek the total wages which an employee receives are not less than the wages to which the employee would have been entitled in that workweek if the employee were paid the minimum hourly wage required under the contract pursuant to the provisions of the Service Contract Act of 1965 and any applicable wage determination issued thereunder for all hours worked, plus an additional premium payment of one-half times such minimum hourly wage for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek;

(ii) The contractor maintains accurate records of the total daily and weekly hours of work performed by such employee on the government contract. In the event these conditions for the exemption are not met, the requirements of section 102 of the Contract Work Hours and Safety Standards Act shall be applicable to the contract from the date the contractor or subcontractor fails to satisfy the conditions until completion of the contract. (Approved by the Office of Management and

Budget under OMB control number 1215–0017.)

§ 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

(a) Notwithstanding the provisions of § 5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor shall be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable shall be submitted to the Employment and Training Administration, which shall certify such prior approval or recognition of the program. In every other respect, the provisions of § 5.5(a)(4)(ii)—including those relating to registration of trainees, permissible ratios, and wage rates to be paid—shall apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with Employment and Training Administration procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by ETA pursuant to this section, or approved and certified by ETA pursuant to § 5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Employment and Training Administration before they may be placed into effect.

§ 5.17 Withdrawal of approval of a training program.

If at any time the Employment and Training Administration determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved.

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Part IV

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California: CA82-5118	Aug. 20, 1982.
Colorado: CO82-5107	Apr. 9, 1982.
Michigan:	
MI83-2009	Feb. 11, 1983.
MI83-2020	Mar. 18, 1983.
MI83-2007	Feb. 11, 1983.
MI83-2015	Mar. 11, 1983.
MI83-2018	Do.
MI83-2021	Mar. 18, 1983.
Massachusetts:	
MA81-3050	Aug. 28, 1981.
MA81-3054	Sept. 4, 1981.
Nebraska: NE83-4023	Mar. 18, 1983.
North Carolina: NC83-1013	Mar. 11, 1983.
Nevada:	
NV83-5103	Mar. 18, 1983.
NV82-5113	Aug. 6, 1982.
NV82-5114	Do.
Nebraska: NE83-4025	Apr. 1, 1983.
Oregon: OR83-5100	Feb. 18, 1983.
West Virginia: WV82-3002	Oct. 29, 1982.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisionss being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being modified.

Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania & Rhode Island: NY81-3073 (NY83-3013).	Oct. 9, 1981
Florida:	
FL77-1060 (FL83-1033)	May 20, 1977.
FL81-1250 (FL83-1034)	June 19, 1981.
Georgia, North Carolina, South Carolina, Virginia, Washington, D.C. & Florida: GA81-1043 (GA83-1035).	Sept. 10, 1982
Illinois, Indiana, Michigan, Minnesota, new York, Ohio, Pennsylvania & Wisconsin: IL82-2026 (IL83-2037).	Apr. 9, 1982.
Indiana: IN80-2059 (IN83-2033)	Aug. 1, 1980.
Iowa: IA82-4032 (IA83-4033)	June 18, 1982

Signed at Washington, D.C. this 22nd day of April 1983.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

DECISION NO. CA82-5118 - Mod. #9
(47 FR 36513 - August 20, 1982)
Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardipo, San Luis Obispo, Santa Barbara, and Ventura Counties, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers; Stonemasons:		
Area 3	$20.50	$3.52
Area 7	20.75	2.97
Add:		
Add asterisks denoting footnote to Basic Hourly Rate of Power Equipment Operators, Group 1 thru 9 as published in Modification Number 4 on January 3, 1983		

DECISION NO. CO82-5107 - Mod. #6
(47 FR 15491 - April 9, 1982)
Delta, Garfield, Gunnison, Mesa, Montrose, and Pitkin Counties, Colorado

	Basic Hourly Rates	Fringe Benefits
Change:		
Electricians:		
Electricians	$16.80	$1.50+ 4%
Cable Splicers	16.25	1.50+ 4%

DECISION #MI83-2009 - Mod. #1
(48 FR 6453 - February 11, 1983)
Marquette County, Michigan

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Plumbers & Pipefitters:		
Single family homes	$11.36	2.17
All other Residential Work	15.98	2.17
Sprinkler fitters	16.67	2.83

DECISION #MI83-2020 - Mod. #1
(48 FR 11415 - March 18, 1983)
Genesee, Huron, Lapeer, Saginaw, St. Clair, Sanilac, & Shiawassee Counties, Michigan

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Power Equipment Operators:		
St. Clair County:		
Crane operator	$14.77	4.10+13%
Regular engineer	14.40	"
Compressor & welding machine operators	12.15	"
Fireman or oiler	11.33	"
Remainder of Counties:		
Crane, stiff leg derrick, scraper, dozer, grader, front end loader, hoist, & mechanic	15.10	4.10
Air tugger (single drum), material hoist, boiler, sweeping machine, winch truck, Bob-cat & similar equipment, & fork truck (over 20 ft. lift)	13.50	"
Pump 6" & over, well points, freeze systems, boom truck (non-swinging)	13.20	"
Air compressor, welder, generator, pump under 6", grease man, conveyor, fork truck (20 ft. & under)	11.80	"
Oiler, fireman, & heater operator	10.95	"
Sheet metal workers:		
Remainder of Counties	10.65	2.14

DECISION #MI83-2007 - Mod. #2
(48 FR 6454 - February 11, 1983)
Macomb, Monroe, Oakland, Washtenaw, & Wayne Counties, Michigan

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Power Equipment Operators - Building, Residential, & Heavy Work:		
Class A	$16.03	4.10+13%
Class B	15.81	"
Class C	15.25	"
Class D	14.77	"
Class E	14.40	"
Class F	12.15	"
Class G	11.33	"

DECISION #MI83-2015 - Mod. #2
(48 FR 10579 - March 11, 1983)
Allegan, Barry, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Hillsdale, Ingham, Ionia, Jackson, Kalamazoo, Lenawee, St. Joseph, & Van Buren Counties, Michigan

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Power Equipment Operators:		
Lenawee County:		
Class A	$16.03	4.10+13%
Class B	15.81	"
Class C	15.25	"
Class D	14.77	"
Class E	14.40	"
Class F	12.15	"
Class G	11.33	"
Remainder of Counties:		
Class A	15.85	4.10
Class B	15.60	"
Class C	15.10	"
Class D	13.50	"
Class E	13.20	"
Class F	11.80	"
Class G	10.95	"

DECISION #MI83-2016 - Mod. #2
(48 FR 10582 - March 11, 1983)
Alcona, Allegan, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Kalkaska, Lake, Leelanau, Manistee, Mason, Mecosta, Midland, Missaukee, Montcalm, Muskegon, Newaygo, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, & Wexford Counties, Michigan

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Power Equipment Operators:		
Class A	$15.85	4.10
Class B	15.60	"
Class C	15.10	"
Class D	13.50	"
Class E	13.20	"
Class F	11.80	"
Class G	10.95	"

DECISION #MI83-2021 - Mod. #1
(48 FR 11616 - March 16, 1983)
Bay, Genesee, Huron, Iosco, Lapeer, Saginaw, St. Clair, Sanilac, Shiawassee, & Tuscola Counties, Michigan

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Power Equipment Operators:		
St. Clair County:		
Class A	$16.03	4.10+13%
Class B	15.81	"
Class C	15.25	"
Class D	14.77	"
Class E	14.40	"
Class F	12.15	"
Class G	11.33	"
Remainder of Counties:		
Class A	15.85	4.10
Class B	15.60	"
Class C	15.10	"
Class D	13.50	"
Class E	13.20	"
Class F	11.80	"
Class G	10.95	"

Modification Page 3

DECISION NO. MA81-3050 - Mod. #7 (46 FR 43625 - Aug.28,1981) Worcester County, Mass.	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos Workers	$17.23	2.42
Boilermakers	18.25	3.75
Bricklayers,Cement Masons, Plasterers & Stonemasons:		
Warren	13.55	4.22
Hopedale,Milford and Southboro	17.15	2.84
Ashburnham,Gardner,Harvard,Hubbardston,Lancaster,Leominster,Luneburg,Petersham,Phillipston,Princeton,Royalston Sterling,Templeton, Westminister & Winchendon	17.75	2.24
Remainder of County	17.35	2.50
Carpenters,Soft Floor Layers:		
Hardwick,Warren,W. Brookfield	14.90	2.72
Remainder of County	15.81	3.52
Electricians:		
Warren, W. Warren	14.95	3.31+3%
Elevator Constructors	16.41	2.63
Elevator Constructors' Helpers	11.49	2.63
Elevator Constructors' Probationary Helpers	8.205	
Glaziers:		
Warren, W.Warren	12.77	2.87
Remainder of County	17.45	2.14
Ironworkers	16.65	4.25
Line Construction:		
Lineman	17.00	1.45+ 3.375% +c
Equipment Operator	14.45	"
Driver Groundman	13.60	"
Groundman	11.05	"
Marble, Tile & Terrazzo Workers:		
Ashburnham,Fitchburg, Harvard, Lancaster, Leominister,Luneburg, Princeton,Sterling, Wesminister	15.35	3.40
Painters:		
Warren, W. Warren:		
Brush & Tapers	13.56	2.59
Spray & Sandblasting	17.43	2.59
PAINTERS (Cont'd)		
Warren,W.Warren (Cont'd)		
Swing & chair work & steel riding under 40 feet	13.75	2.59
Swing & chair work & steel riding 40 feet & over	14.06	2.59
Holodale,Mendon,Milford, Southboro,Upton & Westboro:		
Brush	13.10	2.38
Spray: Sandblast	14.10	2.38
Steel	14.35	2.38
Repaint (Brush)	12.55	2.38
Remainder of County:		
Brush	15.08	3.15
Steel	17.20	3.15
Sandblasting;Spray	16.08	3.15
Repaint	12.82	3.15
Residential	11.31	3.15
Piledrivermen	16.65	2.90
Pipefitters:		
Holedale & Southboro	15.50	5.88
Remainder of County	16.43	2.00
Plumbers:		
Holedale & Southboro	15.50	5.88
Ashburnham,Athol,Bolton, Fitchburg,Gardner,Harverd,Hubbardston,Lancaster,Leoinster,Luneburg,Petersham,Phillipston,Royalston, Templeton,Westminister & Winchendon	16.28	1.85+4%
Remainder of County	16.08	2.35
POWER EQUIPMENT OPERATORS (Building Construction):		
Royalston,Phillipston, Athol,Petersham,Hardwick,New Braintree, Brookfield,E.Brookfield, N.Brookfield,Oakham, Barre,Templeton,Winchendon,Sturbridge,W. Brookfield & Warren:		
Class I	15.13	2.20+a
Class II	14.93	2.20+a
Class III	14.73	2.20+a
Class IIIA	14.36	2.20+a
Class IV	12.83	2.20+a
Class V	12.13	2.20+a
Class VI	10.98	2.20+a
Class VII	15.88	2.20+a
Class VIII	12.16	2.20+a
Class IX	15.71	2.20+a
Class X	15.63	2.20+a
Class XI	16.13	2.20+a

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DECISION MA81-3050(Cont'd):	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (Building Constr.)(Cont'd)		
Remainder of County:		
Class I	17.61	2.81+a
Hourly premium for boom lengths including jib:		
Over 150 feet + .55		
Over 185 feet + .99		
Over 210 feet + 1.37		
Over 250 feet + 2.08		
Over 295 feet + 2.90		
Class II	17.49	2.81+a
Class III	14.78	2.81+a
Class IV	16.09	2.81+a
Class V	13.13	2.81+a
Class VI	13.92	2.81+a
Power Equipment Operators (Heavy & Highway Constr.): Royalston,Phillipston, Athol,Petersham,Hardwick, New Braintree,Brookfield, E. Brookfield,N.Brookfield, Oakham,Barre,Templeton, Winchendon,Sturbridge,W. Brookfield,& Warren:		
Class I	15.13	2.20+a
Class II	14.93	2.20+a
Class III	14.73	2.20+a
Class IIIA	14.36	2.20+a
Class IV	12.83	2.20+a
Class V	12.13	2.20+a
Class VI	10.98	2.20+a
Class VII	15.88	2.20+a
Class VIII	12.16	2.20+a
Class IX	15.71	2.20+a
Class X	15.63	2.20+a
Class XI	16.13	2.20+a
Remainder of County:		
Class I	17.61	2.81+a
Hourly premium for boom lengths including jib:		
Over 150 feet + .55		
Over 185 feet + .99		
Over 210 feet + 1.37		
Over 250 feet + 2.08		
Over 295 feet + 2.90		
Class II	17.49	2.81+a
Class III	14.78	2.81+a
Class IV	16.09	2.81+a
Class V	13.13	2.81+a
Class VI	13.92	2.81+a
Sheet Metal Workers	15.66	4.06
Sprinkler Fitters	16.37	2.78

DECISION NO. MA81-3054 - MOD. #15 (46 FR 44631 - Sept. 4, 1981) BARNSTABLE, BRISTOL, DUKES, ESSEX, MIDDLESEX, NANTUCKET, NORFOLK, PLYMOUTH AND SUFFOLK COUNTY, MASS.	Basic Hourly Rates	Fringe Benefit
CHANGE:		
ELECTRICIANS:		
MIDDLESEX (Bedford, Billerica, Boxboro, Burlington, Carlisle, Clemsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford, Wilmington)	15.00	3.58 +3%

DECISION #NE83-4023-MOD.#1
48 FR 11627-March 18,1983
Cass, Douglas, Sarpy, Washington and that portion of Saunders County East of Highway #109, Nebraska

OMIT:
Under Counties
Cass, Washington and that portion of Saunders County East of Highway #109
Under Description of Work
Heavy in all, but Washington County and Highway construction (excluding bridges across navigable waterways

ADD:
Under Description of Work
Heavy and highway construction (excluding bridges across navigable waterways)

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Cement Masons	$12.17	$2.45
Ironworkers, Reinforcing & Structural	14.10	2.90
Power Equipment Operators:		
Group 1	8.31	2.00
Group 2	8.40	2.00
Group 3	10.69	1.40
Group 4	11.13	1.40
Group 5	12.17	1.40
Group 6	12.42	1.40
Group 7	12.82	1.35
Group 8	13.01	1.35

CLASSIFICATION DEFINITIONS

Power Equipment Operators:
Group 1 - Oilers; Greasers
Group 2 - Oiler Driver
Group 3 - Tractor under 35 h.p.; Air Compressors; Pumps-welding machine; Spray machine; form trenchers; belt machine
Group 4 - Concrete Mixer; Fork-lift Operator, Hydro-Hammer
Group 5 - Spreader Oiler
Group 6 - Concrete Spreader; Concrete Finishing Machine; Concrete Pump Operator; Bulldozer; Roller; Traxcavator; One Drum Hoist; Oiler Distributor; Asphalt Roller; One Drum Winch Truck
Group 7 - Blade (patrol); Scraper

CLASSIFICATION DEFINITIONS - (Cont'd)	Basic Hourly Rates	Fringe Benefits
Group 8 - Hoist, 2 drums; Trenching Machine; Paving Mixer; Piledriver; Heavy duty Mechanic & Welder; Shovel; Dragline; Clamshell; Orange Peel; Backhoe; Derrick; Crane; Locomotive; Fireman on Boiler; Laydown Machine; Two Drum Winch Truck; Side Boom Cat; Pug Mill Operator on Asphalt Plant; Leverman on Dredge; Engineer on Dredge; Tugboat Operator; Gradall Operator; Rotary Well Drilling Operator; Hydrocrane; Cleveland type Backfiller; Self-propelled Spreader Vibrator; Slip Form Paver		
Laborers:		
General Laborers	$10.19	$1.90
Towboats & Dredge Deckhands	10.31	1.90
Rakers & Screedmen on asphalt; mortar mixers; chain saw operators	10.54	1.90
Pipelayers; concrete saw operator	10.48	1.90
Form Setters & Precast manhole setter, inlet builders & manhole setters	10.92	1.90
Truck Drivers:		
Single axle, jack & spreader tandem axle euclid trucks, power lift form trucks & jack, jack & spreader trucks, lowboys, tractor-trailer water pulls, tandem dump w/auxiliary end, dump trailer	10.27	1.75
Water Pulls	10.62	1.75
Lumber Carrier	10.82	1.75

	Basic Hourly Rates	Fringe Benefits
DECISION NO. NC83-1013 -- MOD. # 1 (48 FR 10585 - March 11, 1983)		
Buncombe, Haywood, Henderson, McDowell, Madison, Transylvania, & Yancey Counties in NORTH CAROLINA BUILDING CONSTRUCTION		
CHANGE:		
BOILERMAKERS	$ 16.20	3.315

DECISION NO. NV83-5103 - Mod. #1
(48 FR 11629 - March 18, 1983)
Statewide (does not include the Nevada Test Site and Tonopah Test Range, and Highway Construction in Douglas County), Nevada

	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers:		
Area 1	$20.59	$3.76
Painters:		
Area 2:		
Brush and Roller	17.45	1.95
Spray; Taper; Paperhangers; Sandblaster	17.95	1.95
Spray, Swing Stage up to 40 ft.; Spray, Steel	18.20	1.95
Brush, Swing Stage up to 40 ft.; Brush, Steel	17.70	1.95
Plaster Tenders:		
Area 1	15.97	3.62
Soft Floor Layers:		
Area 2	16.54	1.78

DECISION NO. NV82-5113-Mod. #7
(47 FR 36300 - August 6, 1982)
Clark County (does include the Nevada Test Site), Nevada

	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers	$20.59	$3.76
Plaster Tenders	15.97	3.62

DECISION NO. NV82-5114 - Mod. #6
(47 FR 34312 - August 6, 1982)
Nevada Test Site including Tonopah Test Range in Clark, Lincoln, and Nye Counties, Nevada

	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers	$19.41	$3.30
Electricians:		
Electricians; Equipment Operators; Linemen	18.74	3%+4.7%
Cable Splicers	19.07	3%+4.7%
Groundman	14.942	3%+4.7%
Mason Tenders	13.14	5.79

DECISION NO. NE83-4025 - Mod. #1
(48 FR 14313-April 1,1983)
Lancaster County, Nebraska

	Basic Hourly Rates	Fringe Benefits
ADD:		
Plumbers & Pipefitters	$14.64	

DECISION NO. OR83-5102 - Mod. #4
(48 FR 7379 Feb.18,1983)
Statewide Oregon

CHANGE:
Modification #2 dated April 22, 1983, to read "Mod. #3"

ADD:
ZONE DESCRIPTIONS FOR LABORERS AND TRUCK DRIVERS:
CITIES:
Add "Salem"

DECISION NO. WV82-3002	Basic Hourly Rates	Fringe Benefits
MOD. NO. 4		
(47 FR 49220 - October 29, 1982)		
Statewide, West Virginia excluding the Counties of Berkeley, Jefferson & Morgan		
CHANGE:		
CARPENTERS & PILEDRIVERMEN:		
AREA 2		
Carpenters	$13.71	2.63
Piledrivermen	14.11	2.63
AREA 5		
Carpenters	14.77	1.93
Piledrivermen	15.02	1.93
AREA 6		
Carpenters	14.91	1.95
Piledrivermen	15.30	1.95
Elevator Constructors:		
Brooke, Hancock, Marshall, Ohio Counties:		
Mechanics	15.07	2.69+ b+c
Helpers	10.55	2.69+ b+c
Probationary Helpers	7.53	
Boone, Clay, Fayette, Kanawha, Putnam, Lincoln, Logan & Boone Counties:		
Mechanics	16.29	2.69+ b+c
Helpers	11.40	2.69+ b+c
Probationary Helpers	8.145	
Cabell, Mason & Wayne Counties:		
Mechanics	17.095	2.465+ b+c
Helpers	11.97	2.465+ b+c
Probationary Helpers	8.55	

	Basic Hourly Rates	Frin. Benefits
LABORERS:		
AREA 2		
Group 1	10.50	2.15
Group 2	10.66	2.15
Group 3	11.29	2.15
AREA 8		
Group 1	11.30	2.70
Group 2	12.47	2.70
Group 3	12.50	2.70
Group 4	12.63	2.70
Group 5		
50' to 100'	12.63	2.70
100' to 150'	12.80	2.70
over 150'	13.20	2.70
Group 6	12.98	2.70
Group 7	12.54	2.70
Group 8	12.83	2.70
Group 9	12.63	2.70
Group 10	13.13	2.70

SUPERSEDEAS DECISION

STATES: CONNECTICUT, DELAWARE, MAINE, MARYLAND, MASSACHUSETTS, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, PENNSYLVANIA & RHODE ISLAND

DECISION NO.: NY83-3013 DATE: DATE OF PUBLICATION

Supersedes Decision No. NY81-3073 dated October 9, 1981, in 46 FR 50262

DESCRIPTION OF WORK: All Dredging on the Atlantic Coast from the Canadian Border to the southerly border of the State of Maryland & tributary waters emptying into the Atlantic Ocean, the Cheaspeake & Delaware Canal, Baltimore City & Baltimore County, Md.

	Basic Hourly Rates	Fringe Benefits
DIPPER & CLAMSHELL DREDGES:		
Operator	14.69	1.73+a
Engineer	14.58	1.73+a
Craneman	14.31	1.73+a
Maintenance Engineer	14.11	1.73+a
Welder	13.92	1.73+a
Mate	13.26	1.73+a
Fireman and Oiler	12.28	1.73+a
Deckhand, Handyman and Tug Deckhand	12.00	1.73+a
Scowman and Rodman	11.87	1.73+a
HYDRAULIC DREDGES:		
Leverman	14.45	1.73+a
Engineer and Derrick Operator	14.41	1.73+a
Maintenance Engineer	14.11	1.73+a
Boilerman; Dredge Carpenter; Dredge Blacksmith; Electricians and Dredge Welder	13.92	1.73+a
Spider Barge Operator	13.79	1.73+a
Mate	13.26	1.73+a
Fireman and Oiler	12.28	1.73+a
Tug Deckhand	12.00	1.73+a
Deckhand; Handyman; Shoreman and Rodman	11.87	1.73+a

	Basic Hourly Rates	Fringe Benefits
COMPANY LEAD DREDGEMAN:		
Lead Dredgeman	14.45	1.73+a
TUG Boats over 400 H.P. (with master or captain having license endorsed for 200 miles off shore):		
Tug Engineer	13.86	1.73+a
Tug Deckhand	12.05	1.73+a
TUG Boats over 400 H.P. (without master or Captain having license endorsed for 200 miles off shore):		
Tug Engineer	13.35	1.73+a
Tug Deckhand	12.00	1.73+a
DRILL BOATS:		
Engineer	15.61	1.73+ a+b
Blaster	15.77	1.73+ a+b
Driller, Welder or Machinist	15.62	1.73+ a+b
Fireman	15.13	1.73+ a+b
Oiler	14.88	1.73+ a+b

FOOTNOTES:

a. 8 Paid Holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and Christmas Day

b. Vacation: 6½ days vacation with pay for 84 days of service, plus one additional day for each additional period of 21 2/3 days of service, all in one calendar year. Employees not qualifying for vacation as set forth above will receive one day's vacation with pay for each full 20 days of service in one calendar year.

SUPERSEDEAS DECISION

STATE: FLORIDA
DECISION NUMBER: FL83-1033
COUNTY: POLK
DATE: DATE OF PUBLICATION
Supersedes Decision No.: FL77-1060 dated May 20, 1977 in 42 FR 26093.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$7.55	
CARPENTERS	8.315	.615
CEMENT MASONS	7.20	
ELECTRICIANS:		
Industrial Manufacturing production facilities (excluding retail food establishments);Hospitals (over 50 beds) excluding nursing homes & clinics shopping malls with over 10 businesses; and any business complex with elevator or escalator system.		
Wireman	14.03	15.5%+ .10
Cable Splicer	14.53	15.5%+ .10
Commercial		
Wireman	12.45	15.5%+ .10
Cable Splicer	12.95	15.5%+ .10
IRONWORKERS	9.61	1.22
LABORERS	4.69	
LATHERS	5.50	
PAINTERS	6.25	
PLASTERERS	$ 6.00	
PLUMBERS	8.91	
ROOFERS	5.55	1.15
SHEET METAL WORKERS	7.46	
SOFT FLOOR LAYERS	6.46	
STONE MASONS	7.00	
TRUCK DRIVERS	3.35	
WELDERS--Rate for Craft		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: FLORIDA
COUNTY: BREVARD (excludes Cape Canaveral Air Force Station,Patrick Air Force Base,Kennedy Space Flight Center & Melabar Radar Site).
DECISION NUMBER: FL83-1034
Supersedes Decision No.: FL81-1250 dated June 19, 1981 in 46 FR 32183.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS(excludes single family homes & apartments up to & including 4 stories).

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$8.70	.93
CARPENTERS	6.81	
CEMENT MASONS	6.71	
ELECTRICIANS	9.80	.55+4%
IRONWORKERS	6.86	
LABORERS	4.06	
PAINTERS	7.84	
PLUMBERS	8.45	
ROOFERS	11.50	1.00
TILE SETTERS	6.63	
TRUCK DRIVERS	$ 4.25	
WELDERS-Rate for Craft		
POWER EQUIPMENT OPERATORS:		
Group A	7.33	.60
Group B	6.29	.60
Group C	5.48	.60
Group D	4.51	.60

POWER EQUIPMENT OPERATORS: CLASSIFICATION DEFINITIONS:

Group A--Cranes,Derricks,Clamshells,Draglines,Piledriver(including auger & boring machine for drilling in piling),Backhoes,Hydra Cranes,Gradall,Shovels, Patrols,Cableways,Tugboat Captain (150 hp or more),Multi-bowl Operator,Similar to R.G. LaTourneau Model L-60-2 ir tqree 20 cu yd. scrapers),Front End Loaders (over 4 cu yd),Side Boom Cats, Multi-drum hoist (for rigging), Heavy equipment Mechanic, Tower Crane (stationary,climbing & travelling), Gantry Cranes, Locomotive Cranes, Bridge Cranes (over 20 ton cap.),Concrete Pump w/boom(mobile). High Lift or Fork Lift (second floor & higher), Locomotive Engineer, (jobs not covered by Railroad Unions.

Group B--Bulldozers,Bridge Cranes (20 tons & under),Highlift or Forklift (up to 2nd floor),Straddle Buggies,Hoists(other than rigging including winch truck not mobile & used as a hoist, front end loader (over 2 cy & up to & incl. 4 cy capacity),Trenching Machine (ladder & wheel type), over 6' cut & over 24" width,Concrete Paver & Scraper.

Group C--Concrete Pumps,Front End Loader (2 cy. or less not used as a hoist), Mobile Winch Trucks,Self-propelled Sub-grader, Asphalt Paving Machine,Concrete Mixer, Tractors,Air Compressor Plant (2 or more compressors on a common manifold), Lubricating Engineer (mobile plant),Pavement Breakers,Street Sweeping Machines.

Group D--Tractor-operated Sweeper,Trenching machine(ladder & wheel type maximum cut 6' maximum width 24"),Fireman,Self-propelled rollers,Wellpoint Pump. Asphalt Distributor,Water Truck Driver,Motor Boat Operator,Oiler,Mechanics Helper, Pumpman(other than wellpoint up to & including 5 pumps within 300 ft radius). Self-Propelled sweepers, combination pump, Compressor & Combustion Type Welding Machine.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the Labor Standards Contract Clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: FLORIDA COUNTY: BROWARD
DECISION NUMBER: FL83-1032 DATE: DATE OF PUBLICATION
Supersedes Decision No.: FL81-1270 dated July 17, 1981 in 46 FR 37166.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (Does not include single family homes or apartments of 4 stories or less).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$18.23	2.45
BOILERMAKERS	17.20	3.315
BRICKLAYERS,CEMENT MASONS, MARBLE SETTERS,STONE-MASONS,TILE & TERRAZZO WORKERS	14.70	1.90
CARPENTERS & SOFT FLOOR LAYERS	13.30	1.53
ELECTRICIANS:		
Electricians	15.91	1.30+ 4%
Cable Splicers	16.86	1.30+ 4%
ELEVATOR CONSTRUCTORS:		
Mechanics	15.865	2.69+ a
Helpers	11.105	2.69+ a
GLAZIERS	10.24	.95
IRONWORKERS	13.70	2.48
LABORERS:		
1.Permit value $500,000+ over--		
Air tool oper.,Mason Tenders,Mortar Mixers, Pipelayers	8.75	1.62
Plasterers Tenders	8.93	1.62
Unskilled	8.65	1.62
2.Permit value up to $500,000--		
Air tool oper.,Mason Tenders,Mortar Mixers, Pipelayers	7.05	1.57
Plasterers Tenders	7.23	1.57
Unskilled	6.95	1.57
LATHERS	11.10	1.51
MILLWRIGHTS	14.02	2.10
PAINTERS:		
Brush	12.55	1.82
Drywall Tapers,Paper-hangers	12.88	1.82
Spray,Sandblaster	13.05	1.82
PILEDRIVERMEN	$14.10	2.45
PLASTERERS	14.70	1.90
PLUMBERS & PIPEFITTERS:		
Commercial	14.80	1.95
Industrial	15.80	1.95
REFRIGERATION & A/C MECHANICS:		
Units of over 10 tons	18.94	2.55
Units under 10 tons	14.15	2.53
ROOFERS:		
Roofers	11.95	1.70
Kettlemen	10.98	1.70
SHEET METAL WORKERS	18.51	1.78
SPRINKLER FITTERS	15.00	2.88
WELDERS--Rate for Craft		
POWER EQUIPMENT OPERATORS:		
Group 1	15.00	1.96
Group 2	14.85	1.96
Group 3	14.35	1.96
Group 4	13.90	1.96
Group 5	13.75	1.96
Group 6	13.40	1.96
Group 7	13.15	1.96
Group 8	13.05	1.96
Group 9	12.10	1.96

POWER EQUIPMENT CLASSIFICATION DEFINITIONS:

Group 1--All tower cranes (must have 2 operators;mobile,rail,climbers,static mount), cranes w/boom length 250ft & over (with or w/out jib),derricks, helicopters, all types of fling cranes & all nuclear powered equipment, single station hydro cranes over 18 tons but not more than 50 tons, finish grader.

Group 2--All cranes w/boom length 150ft & over (with or w/out jib;friction, hydro, electric or otherwise), cranes 150 tons & over w/boom length less than 250 ft., gantry & overhead cranes.

Group 3--Cranes w/boom length less than 150 ft. (with or w/out jib), single station hydro cranes 18 tons & under, single station hydro cranes over 50 tons, dual station hydro cranes, clam shell, shovel, backhoe, gradall, dragline, piledriver, drilling of piling, tugger (all types), hoist (all types), mechanic, sideboom or tractor boom, concrete mixer, cableway.

Group 4--Boring & Drilling machine, concrete pumping machine (all types) batching plant (on job sites), inside elevator, forklift (w/vertical lift of over 20 ft).

Group 5--Locomotive operator, motor mixing pump (all types), winch truck, A-frame truck, grease truck operator, front end loader, bulldozer, pan, motor grader, forklift.

Group 6--Trenching & ditching machine, roller, fireman, distributor (bituminous), finish machine (paving), wellpoint system (installation and/or operation), siphon, vacuum pump, tractor, conveyor.

Group 7--Utility operator (any combination of equipment up to & including 4 pieces of equipment listed in Group 8), Welding Machines (3-4).

Group 8--Pump(s) or any combination over 2½", compressors or any combination over 125 CFM, generator(s) or any combination over 5 KW .

Group 9--Oiler, fuel truck driver, mechanic helper, boom hauling truck driver.

FOOTNOTE: a. Six paid holiday: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day.
8% of basic hourly rate for employee who has worked in business more than five years; 6% for employees who have worked in business less than 5 years.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATES: GEORGIA, NORTH CAROLINA, SOUTH CAROLINA, VIRGINIA, & WASHINGTON, D.C., AND IN FLORIDA, ALL COUNTIES ON THE ATLANTIC COAST AND THE GULF COAST WEST TO THE ANCILLA RIVER AND ALL TRIBUTARY WATERWAYS.
DECISION NUMBER: GA83-1035 DATE: DATE OF PUBLICATION
Supersedes Decision Number GA82-1043, dated September 10, 1982, in 47 FR 39968.
DESCRIPTION OF WORK: DREDGING PROJECTS.

	Basic Hourly Rates	Fringe Benefits
HYDRAULIC DREDGES 20" & OVER:		
Leverman	$11.21	1.73+a
Engineer	11.10	"
Mate	10.07	"
Welder	10.38	"
Derrick Operator	10.73	"
Spill Barge Operator	10.52	"
Spider Barge Operator	10.52	"
Tug Master	10.00	"
Tug Mate	9.58	"
Tug Deckhand	8.08	"
Carpenter	10.66	"
Electrician	10.90	"
Machinist	10.58	"
Steward	8.83	"
Oiler & Fireman	8.58	"
Deckhand	8.08	"
Shoreman	7.94	"
Second Cook	8.08	"
Messman	7.94	"
HYDRAULIC DREDGES UNDER 20":		
Leverman	$ 9.73	1.73+a
Engineer	9.29	"
Welder	9.43	"
Mate	8.48	"
Oiler & Fireman	8.01	"
Deckhand	7.62	"
Launchman	8.09	"
Shoreman	7.49	"
Spill Barge Operator	8.68	"
Spider Barge Operator	8.68	"
CLAMSHELL DREDGES:		
Operator	$11.14	1.73+a
Engineer	10.55	"
Welder	10.25	"
Mate	9.89	"
Fireman & Oiler	8.58	"
Deckhand	8.08	"
Launchman	8.58	"
Scowman	8.19	"

	Basic Hourly Rates	Fringe Benefits
DIPPER DREDGES:		
Operator	$11.26	1.73+a
Crane man	10.77	"
Engineer	10.99	"
Welder	10.38	"
Mate	10.07	"
Fireman & Oiler	8.58	"
Deckhand	8.08	"
Launchman	8.58	"
Scowman	8.19	"
BARGES (TOWING DIPPER & CLAM-SHELL DREDGES):		
Tug Master	$10.17	1.73+a
Tug Mate	9.67	"
Engineer	10.17	"
Assistant Engineer	9.49	"
Deckhand	7.97	"
Cook	8.19	"
STEWARD DEPARTMENT (ON DIPPER & CLAMSHELL DREDGES & ON HYDRAULIC DREDGES UNDER 20"):		
Cook	$ 8.01	1.73+a
Mess Cook	7.56	"
Messman & Janitor	7.46	"
DRILL BOATS:		
Driller, Blaster, & Operator Engineer	$11.10	1.73+a
Helper	8.58	"

FOOTNOTE 'a': SIX PAID HOLIDAYS: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day: Plus VACATION CONTRIBUTION of 7% of straight time pay for all hours worked.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATES: ILLINOIS, INDIANA, MICHIGAN, MINNESOTA, NEW YORK, OHIO, PENNSYLVANIA, & WISCONSIN
DECISION NUMBER: IL83-2037 DATE: DATE OF PUBLICATION
Supersedes Decision Number IL82-2026, dated April 9, 1982, in 47 FR 15496.
DESCRIPTION OF WORK: DREDGING PROJECTS - on the Great Lakes, their connecting and tributory waters, including the Illinois Waterway to the Lock at Lockport, Illinois; and in the New York State Barge Canal System between Tonawanda, New York, & Waterford, New York, & Oswego, New York; and on the St. Lawrence River Eastward to the Internation Boundary near St. Regis, New York.

	Basic Hourly Rates	Fringe Benefits
DIPPER & HYDRAULIC DREDGING:		
Chief Engineer	$21.21	1.63+a
Operators	21.04	"
Assistant Engineer	20.33	"
Welder	20.16	"
Crewman - Dipper Dredging	20.16	"
Spill Barge Operator - Hydraulic Dredging	20.16	"
DRILL BOATS:		
Engineer	$15.16	1.73+c
Blaster	15.77	"
Fireman	15.13	"
Driller, Welder, Machinist	15.62	"
Oiler	14.88	"
TUG ENGINEER - OPERATOR	$19.00	1.05+h
TUG OPERATOR - OF LAUNCH	$18.46	"
FLOATING EQUIPMENT (CLAMSHELL, DRAGLINE, & MARINE CONSTRUCTION)		
Engineer & Operator	$21.65	e+f+g
Equipment Operator	19.20	"
Fireman	18.10	"
Oiler	16.00	"

	Basic Hourly Rates	Fringe Benefits
TUG WORKERS:		
Fireman, Lineman, Oiler, Deckhand, Scowman (on/or with tugboats, launches, or other self-propelled boats)	$17.33	1.75+b+d
HARBOR WORKERS:		
Fireman, oiler, deckhand & scowman (with dipper dredges, hydraulic dredges or other floating equipment engaged in dredging operations; pipeline men (both afloat & shore, including loading, unloading, installing, maintaining & handling pipelines for hydraulic dredges & sandboats)	17.33	1.75+b+d
Barge & Sweep men, Service truck driver	13.45	1.75+b+d

PAID HOLIDAYS (WHERE APPLICABLE):

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Eight Paid Holidays: A through F plus Washington's Birthday and Veterans' Day; 6⅔ days vacation with pay for 104 days of service, one additional day of vacation with pay for each of the next 3 periods of 26 days or over of service 13 days of vacation with pay, all in one calendar year. Employees not qualifying for vacation, as set forth above, will receive one day's vacation with pay for each full 24 days of service in one calendar year.
b. $9.40 per day per employee.
c. Eight Paid Holidays: A through F plus Washington's Birthday and Veterans Day; 6⅔ days vacation with pay for 84 days of service, one additional day of vacation with pay for each additional 21-2/3 days of service, all in one calendar year. Employees not qualifying for vacation, as set forth above, are to receive one day's vacation with pay for each full 20 days of service in one calendar year.
d. Nine Paid Holidays: A through F plus Washington's Birthday, Veterans Day, and Paul Hall's Day.
e. A half day vacation for each full 10 days employment in one calendar year.
f. $3.50 per hour in fringe benefits (excluding vacation payments).
g. Eight Paid Holidays: A through F plus Washington's Birthday, and Veteran's Day.
h. Nine Paid Holidays: A through F plus Washington's Birthday, Veterans' Day, and Association Day; 6⅔ days vacation with pay for 104 days service, one additional day of vacation with pay for each of the next 3 periods of 26 days of service, and for 208 days or over of service 13 days of vacation with pay, all in one calendar year. Employees not qualifying for vacation, as set forth above, will receive a half day's vacation with pay for each full 12 days of service in one calendar year.

SUPERSEDEAS DECISION

STATE: INDIANA
DECISION NUMBER: IN83-2033
COUNTIES: *See Below
DATE: Date of Publication
Supersedes Decision No. IN80-2059 dated August 1, 1980, in 45 FR 51401
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and apartments up to and including 4 stories)

*BROWN, CLARK, CRAWFORD, DEARBORN, DECATUR, FAIETTE, FLOYD, FRANKLIN, HARRISON, HENRY, JACKSON, JEFFERSON, JENNINGS, LAWRENCE, OHIO, ORANGE, RANDOLPH, RIPLEY, RUSH, SCOTT, SWITZERLAND, UNION, WASHINGTON & WAYNE COUNTIES

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Area 1	$18.00	2.45
Area 2	17.11	2.48
Area 3	16.36	3.02
Area 4	17.19	2.45
BOILERMAKERS:		
Area 1	16.35	4.815
Area 2	18.83	3.405
BRICKLAYERS, CAULKERS, Pointer, Cleaners & Stonemasons:		
Area 1	13.95	2.56
Area 2	16.73	2.48
Area 3	13.84	1.51
Area 4	14.80	1.77
CARPENTERS:		
Area 1:		
Carpenter & Soft Floor Layers	14.97	2.00
Piledrivermen	15.22	2.00
Millwrights	17.79	2.10
Area 2:		
Carpenter & Soft Floor Layers	15.02	1.99
Millwrights	15.62	1.99
Piledrivermen	15.42	1.99
Area 3:		
Carpenter, Soft Floor Layers & Lathers	13.35	1.88
Piledrivermen	13.60	1.88
Area 4:		
Carpenter & Soft Floor Layer	13.63	2.35
Millwrights	13.93	2.35
Piledrivermen	13.83	2.35
Area 5:		
Carpenter & soft Floor Layers	13.86	2.00
Millwrights	14.61	2.00
Piledrivermen	14.36	2.00
CEMENT MASONS:		
Area 1	14.85	2.10
Area 2	12.64	2.08
Area 3	13.70	1.85
Area 4	12.45	1.80
Area 5	13.95	

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
Area 1	17.30	1.86 +3%
Area 2	17.18	.85+ 9½%
Area 3:		
to 18 miles from Hamilton Co. Ohio Courthouse	17.75	2.55 +3½%
18-21 miles	18.05	2.55 +3½%
21-25 Miles	18.15	2.55 +3½%
Over 25 miles	18.30	2.55 +3½%
Area 4	16.95	16.5%
Area 5	16.30	2.20 +3.2%
Area 6	16.14	1.25+ 13.5%
ELEVATOR CONSTRUCTORS:		
Area 1	16.37	2.465 +a&b
Area 2	15.65	2.43+ a&b
Area 3	16.585	2.69+ a&b
ELEVATOR CONSTRUCTORS HELPERS		
Area 1	70%JR	2.465 +a&b
Area 2	70%JR	2.43+ a&b
Area 3	70%JR	2.69+ a&b
ELEVATOR CONSTRUCTION HELPERS (PROB.):		
Areas 1-2-3	50%JR	
GLAZIERS:		
Area 1	18.00	
Area 2	14.10	.61
IRONWORKERS:		
Area 1	15.55	2.60+ 1%
Area 2	14.20	4.20
Area 3:		
Structural & Ornamental	16.28	3.18
Reinforcing	16.18	3.12
Area 4	16.26	2.95
Area 5	15.25	4.05

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	Basic Hourly Rates	Fringe Benefits
MARBLE SETTERS, TILE SETTERS & TERRAZZO WORKERS:		
Area 1:		
Tile setters	13.70	2.56
Area 2	15.80	2.20
Area 3	14.80	1.77
MARBLE, TILE & TERRAZZO FINISSERS:		
AREA 1	15.98	
Area 2	11.25	
Area 3	14.86	
PAINTERS:		
Area 1:		
Brush	8.90	.30
Structural Steel	9.65	.30
Spray	9.90	.30
Area 2:		
Brush & Roller	14.30	1.40
Spray & Sandblasting	15.30	1.40
Area 3:		
Brush, Steel & Roller	10.80	.80
Spray	11.80	.80
Area 4:		
Brush	15.00	
Spray	16.00	
Area 5:		
Brush	12.55	1.75
Spray & Sandblasting	13.55	1.75
Area 6:		
Brush	9.83	.58
Spray	10.28	.58
PLASTERERS:		
Area 1	14.38	
Area 2	15.20	.77
Area 3	13.40	.86
Area 4	13.23	1.76
Area 5	13.65	1.33
Area 6	13.95	
PLUMBERS & STEAMFITTERS:		
Area 1	17.31	1.85
Area 2:		
Plumbers	16.32	3.42
Steamfitters	17.51	3.86
Area 3	17.95	2.30
Area 4	19.92	2.20
ROOFERS:		
Area 1	17.52	1.53
Area 2:		
Composition	15.32	2.00
Slate & Tile	15.57	2.00
Area 3	13.10	1.35
Area 4:		
Composition	15.08	2.40
Slate, Tile Gypsum, Plank & Concrete Slab	15.83	2.40
Area 5:		
Roofers	12.00	1.75
Slate, Tile & Precast Slab	12.45	1.75
SHEET METAL WORKERS:		
Area 1	16.94	2.12
Area 2	16.22	2.94 +3%
Area 3	16.68	3.488
Area 4	17.61	2.62
SPRINKLER FITTERS	16.67	2.83
LABORERS:		
Area 1:		
Group 1	11.23	1.94
Group 2	11.43	1.94
Group 3	11.53	1.94
Group 4	12.23	1.94
Area 2:		
Group 1	11.58	1.94
Group 2	11.78	1.94
Group 3	11.88	1.94
Group 4	12.58	1.94
POWER EQUIPMENT OPERATORS:		
Area 1:		
Group 1	16.75	2.20
Group 2	15.80	2.20
Group 3	12.80	2.20
Group 4	11.30	2.20
Area 2:		
Group 1	15.73	2.15
Group 2	14.44	2.15
Group 3	13.60	2.15

DECISION NO. IN83-2033

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Seven paid holidays: A Thru F and day after Thanksgiving
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 yrs.; Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years

AREA DESCRIPTIONS

ASBESTOS WORKERS:

Area 1 - Brown County
Area 2 - Randolph & Wayne Counties
Area 3 - Dearborn, Fayette, Franklin, Ohio, Ripley, Switzerland, and Union Counties
Area 4 - Remainder of Counties

BOILERMAKERS

Area 1 - Clark, Dearborn, Floyd, Harrison, Jefferson, Scott, Switzerland, & Washington Counties
Area 2 - Remainder of Counties

BRICKLAYERS; Caulkers, Pointers, Cleaners & Stonemasons

Area 1 - Fayette, Franklin, Henry, Randolph, Rush, Union & Wayne Cos.
Area 2 - Crawford County
Area 3 - Clark, Floyd, and Harrison Counties
Area 4 - Remainder of Counties

CARPENTERS

Area 1 - Crawford County
Area 2 - Lawrence & Orange Counites
Area 3 - Clark, Floyd, Harrison & Washington Counties
Area 4 - Fayette, Henry, Randolph, Rush (Carthage & N. thereof), Union & Wayne Counties
Area 5 - Remainder of Counties

CEMENT MASONS

Area 1 - Crawford County
Area 2 - Clark, Floyd & Harrison Counties
Area 3 - Randolph County
Area 4 - Decatur, Fayette, Franklin (N½ Brookville & N. thereof) Rush, Union & Wayne Counties
Area 5 - Remainder of Counties

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AREA DESCRIPTIONS (CONT'D)

ELECTRICIANS

Area 1 - Brown County
Area 2 - Crawford, Lawrence & Orange Counties
Area 3 - Dearborn, Ohio & Switzerland Counties
Area 4 - Decatur, Jennings, Ripley & Rush Counties
Area 5 - Fayette, Franklin, Henry, Randolph, Union & Wayne Counties
Area 6 - Clark, Floyd, Harrison, Jackson, Jefferson, Scott & Washington Counties

ELEVATOR CONSTRUCTORS

Area 1 - Brown, Decatur, Henry & Rush Counties
Area 2 - Dearborn, Fayette, Franklin, Randolph, Ripley, Ohio, Switzerland, Union & Wayne Counties
Area 3 - Remainder of Counties

GLAZIERS

Area 1 - Brown, Decatur, Fayette, Franklin, Henry, Jackson, Jennings, Randolph, Rush, Union & Wayne Counties
Area 2 - Dearborn, Ripley, Ohio & Switzerland Counties

IRONWORKERS

Area 1 - Brown, Decatur (W½), Fayette (W½), Franklin (NW TIP), Henry, Jackson (N Part including Freetown), Jennings (NW Corner), Lawrence (N. Part excluding Oolitic) Randolph (S.W. Tip) & Rush Counties
Area 2 - Clark, Crawford, Floyd, Harrison, Jackson (Remainder of Co.), Jefferson (W 2/3), Jennings (S 2/3) Lawrence (S 2/3), Orange, Scott, Switzerland (SW Tip), & Washington Counties
Area 3 - Dearborn, Decatur (remainder of Co.), Fayette (SE 2/3), Franklin (remainder of Co.), Jefferson (NE 1/3), Ohio, Ripley, Switzerland (remainder of Co.) & Union (S 1/3)
Area 4 - Fayette (Remainder of Co.), Randolph (S. Part of Co. excluding Winchester but including Union City), Union (W 2/3 & Wayne)
Area 5 - Remainder of Randolph County

MARBLE SETTERS, TILE SETTERS & TERRAZZO WORKERS

Area 1 - Fayette, Franklin, Henry, Randolph, Rush, Union & Wayne Counties
Area 2 - Crawford County
Area 3 - Brown, Dearborn, Decatur, Jackson, Jefferson, Jennings, Lawrence, Ohio, Orange, Ripley, Scott, Switzerland, & Washington Counties

DECISION NO. IN83-2033

AREA DESCRIPTIONS (CONT'D)

MARBLE, TILE & TERRAZZO FINISHERS

Area 1 - Dearborn County
Area 2 - Clark, Floyd & Harrison Counties
Area 3 - Remainder of Counties

PAINTERS

Area 1 - Brown County
Area 2 - Lawrence & Orange Counties
Area 3 - Decatur, Jackson & Jennings Counties
Area 4 - Dearborn, Ripley, Ohio & Switzerland Counties
Area 5 - Fayette, Franklin, Henry, Randolph, Rush, Union & Wayne Counties
Area 6 - Clark, Crawford, Floyd, Harrison, Jefferson, Scott & Washington Counties

PLASTERERS

Area 1 - Crawford County
Area 2 - Clark, Floyd & Harrison Counties
Area 3 - Randolph County
Area 4 - Henry County
Area 5 - Decatur, Fayette, Franklin (N ½ including Brookville), Rush, Union & Wayne Counties
Area 6 - Remainder of Counties

PLUMBERS AND STEAMFITTERS

Area 1 - Decatur & Jennings Counties
Area 2 - Dearborn, Ohio & Ripley Counties
Area 3 - Fayette, Franklin, Henry, Randolph, Rush, Union & Wayne Cos.
Area 4 - Remainder of Counties

ROOFERS

Area 1 - Dearborn, Ohio & Ripley Counties
Area 2 - Brown, Decatur, Franklin, Jackson, Jennings, Lawrence, Rush & Union Counties
Area 3 - Fayette, Henry, Randolph & Wayne Counties
Area 4 - Crawford & Orange Counties
Area 5 - Remainder of Counties

SHEET METAL WORKERS

Area 1 - Dearborne & Ohio Counties
Area 2 - Randolph & Wayne Counties
Area 3 - Clark, Crawford, Floyd, Harrison, Jefferson, Scott & Switzerland Counties
Area 4 - Remainder of Counties

DECISION NO. IN83-2033

AREA DESCRIPTION (CONT'D)

LABORERS

Area 1 - Fayette, Henry, Randolph, Rush, Union & Wayne Counties
Area 2 - Remainder of Counties

POWER EQUIPMENT OPERATORS

Area 1 - Fayette, Henry, Randolph, Rush, Union & Wayne Counties
Area 2 - Remainder of Counties

CLASSIFICATION DEFINITIONS

LABORERS

Group I - Building and Construction Laborers; Scaffold Builders (other than for Masons or Plasterers); Ironworker Tenders; Mechanic Tenders; Window Washers and Cleaners; Water Boys and Tool Housemen; Roofers Tenders; Railroad Workers; Masonry Wall Washers; Cement Finishers Tenders; Carpenter Tenders; Mason Tenders in Area I and IA; Portable Water Pumps with Discharge up to 3 inches

Group II - Waterproofing; Handling of creosote lumber or like treated material (ex railroad material); Asphalt Rakers & Lutemen; Kettlemen; Air Tool Operator; Pneumatic Tool Operator; Air & Electric Vibrators and Chipping Hammer Operator; Earth Compactors; Jackmen and Sheetmen in Ditches more than 6 feet deep; Laborers in Ditches 6' deep or deeper; Assembly at unicrete pump; Tile Layers (sewer or field); Sewer Pipe Layers; Motor Driven Wheelbarrows and Concrete Buggies; Hyster Op.; Pump Crete Assemblers; Core Drill Operator; Cement, Lime or Silica Clay Handlers; Handling of Toxic Materials Damaging to Clothing; Pneumatic Spikers; Deck Engine & Winch Operator; Water Maine & Cable Ducking; Screed Man or Screw Operator on Asphalt Paver; Chain Saw & Demolition Saw Operator; Concrete Conveyor Assembler

Group III - Plaster Tenders; Mason Tenders (ex in areas I and IA); Motor Mixers; Welders; Cutting Torch or Burner; Cement Nozzle Laborers, Cement Gun Operators; Scaffold Builders for Plasterers; Scaffold Builders for Mason (ex Area I and IA); Water Blast Mach. Operator.

Group IV - Dynamite Men; Drillers-Air Track or Wagon Drilling for Explosives

POWER EQUIPMENT OPERATORS

AREA 1

Group 1 - Air Compressor (pressurizing shafts, tunnels & divers); Air Tugger; Auto Patrol; Back Filler; Back Hoe; Boom Cat; Boring Machine; Bull Dozer; Caisson Drilling Machine; Cherry Picker; Compactor (with dozer blade); Concrete Mixer (dual drum); Concrete Plant; Concrete Pump; Crane with all attachments; Crane - Electric

DECISION NO. IN83-2033

CLASSIFICATION DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS (CONT'D)

Overhead; Derrick; Ditching Machine (18" and over) Dredge; Elevators (when hoisting material or tools); Fork Lift (Machinery); Formless Paver; Generator (power for welders or compressors); Gradall; Helicopter; Helicpter Winch Operator; High Lift - Front End Loader; Hoist - Material and/or personnel over 3 floors; Locomtive; Mechanic on Job Site; Mucking Machine; Panel Board Concrete Plant; Pile Driver; Push Cat; Scoop & Tractor; Scraper - Rubber Tired; Spreader - Tractor Mounted; Straddle Carrier - Ross Type; Sub Base Finish Machine (C.M.I. or similar); Tower Crane; Tractor with Backhoe (over ½ yd.); Welder (Craft)

Group 2 - A-Frame Truck; Batcher Plant (automatic dry batch); Bending Machine - Power Driven; Bituminous Mixer; Bituminous Paver; Bituminous Plant Engineer; Boatman; Bull Float; Compactor or Tamper - Self Propelled; Concrete Mixer (21 cu. ft. or over); Concrete Spreader - Power Driven; Dinkey Engine; Ditching Machine (less than 18"); Drilling Machine; Finish Machine & Bull Float; Finishing Machine; Fireman - Pile Driving and Boilers; Fork Lift - Masonry & Material; Gunite Machine; Head Greaser; Hoist-Material and/or personnel 3 floors and under; Mechanic in Shop; Mesh Depresser - Mesh Placer; P.C.C. Concrete Belt Placer; Roller - Asphalt, Stone & Sub Base; Sheepsfoot Roller - Self Propelled; Shop Mule; Spreader or Base Paver - Self Propelled; Sub Grader; Throttle Valve with Air Compressor or Boiler; Tractor with Backhoe (½ yd. & under); Tractor - High Lift - Farm Type; Tractor-Industrial Type; Tractor with Winch; Well Points; Winch Truck

Group 3 - Air Compressor (210 cu. ft. & over); Bituminous Distributor; Chair Cart; Concrete Curing Machine; Concrete Saw; Dope Pot - Power Agitated; Flex Plane; Form Grader; Hydrohammer; Jacks-Hydraulic Power Driven; Minor Equipment Opr. 3,4, or 5; Paving Joint Machine; Post Hole Digger; Roller - Earth; Throttle Valve; Track Jack - Power Driven; Tractor - Farm Type; Truck Crane Driver

Group 4 - Air Compressor (less than 210 cu. ft.); Concrete Mixer (under 21 cu. ft.); Conveyor; Generator; Mechanical Heater; Oiler; Operator - 2 peices of minor equipment; Power Broom; Pump; Welding Machine

DECISION NO. IN83-2033

CLASSIFICATION DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS AREA 2

GROUP 1 - A-Frame Winch Truck, Air Compressors over 600 cu. ft., Air Tugger, Autograde (CMI), Auto Patrol, Backhoe, Ballast Regulator (RR), Batcher Plant (electricial control concrete), Bending Machine (pipe), Bituminous Plant (engineer), Bituminous Plant, Bituminous Mixer Travel Plant, Bituminous Paver, Bituminous Roller, Buck Hoist, Bull Dozer, Cable Way, Chicago Boom, Clamshell, Concrete Mixer (21 cu. ft. or over), Concrete Paver, Concrete Pump (crete), Crane, Craneman, Crusher Plant, Derrick, Derrick Boat, Dinkey, Dope Pots (pipeline), Dragline, Dredge Operator, Dredge Engineer, Drill Operator, Elevating Grader, Elevator, Ford Hoe (or similar type equipment), Forklift, Formless Paver, Gantry Crane, Gradall, Grademan, Grout Pump, Helicopter Crew, Hetherington Paver, High-Lift, Hoist, Hopto, Hough Loader (or similar type), Hydro Crane, Hydro Hammer, Locomotive Crane, Locomotive, Mechanic, Mobile Mixer, Motor Crane, Mucking Machine, Multiple Tamping Machine (RR), Overhead Crane, Pile Driver, Pulls, Push Dozer, Push Boats, Roller (sheep foot), Ross Carrier, Scoop, Shovel, Side Boom, Swing Crane, Tail Boom, Tar Machine (pipeline), Throttle Valve, Tower Crane, Trench Machine, Welder (heavy duty), Truck Mounted Concrete Pump, Truck-Mounted Drill, Well Point, Whirleys

Group 2 - Air Compressor (up to 600 cu. ft.), Brakeman, Bull Float, Concrete Mixer (over 10S and under 21S), Concrete Spreader or Puddler, Deck Engine, Drill Helper, Electic Vibrator Kompactor (earth or rock), Finishing Machine, Fireman, Greaser (on grease facilities servicing heavy equipment), Material Pump, Motor Boats, Motor Crane Oiler, Portable Loader, Post Hole Digger, Power Broom, Rock Roller, Roller-Wobble Wheel (earth and rock), Spike Machine (RR) Seaman Tiller, Spreader Rock, Sub Grader, Tamping Machine, Truck Mounted Drill Oiler, Welding Machine, Widener (Apsco or similar type)

Group 3 - Air Compressor (under 200 cu. ft. per min), Bituminous Distributor, Cement Gun, Concrete Saw, Conveyor, Deck Hand Oiler, Earth Roller, Form Grader, Generator, Guardrail Driver, Heater, Oiler, Paving Joint Machine, Power Traffic Signals, Steam Jenny, Vibrator, Water Pump, "JLG" Lifts and "Scissor" Lift or similar machine

SUPERSEDEAS DECISION

STATE: IOWA

COUNTIES: Statewide (except Cerro Gordo, Scott & Webster Cos.)

DECISION NO: IA83-4033

DATE: Date of Publication

Supersedes Decision No. IA82-4032, dated June 18, 1982, in 47 FR 26536.

DESCRIPTION OF WORK: Highway Projects (does not include building structures in rest area projects & work on or pertaining to the Mississippi & Missouri River)

	Basic Hourly Rates	Fringe Benefits
CARPENTERS & PILEDRIVERMEN:		
ZONE 1 - Carpenters	$14.33	2.10
Carpenters(creosote)	14.58	2.10
Piledrivermen	14.455	2.10
ZONES 2 & 3	11.22	1.38
ZONES 4 & 5	11.12	1.00
ZONE 6	8.78	.90
ZONE 7	8.53	
ZONES 8 & 9	7.92	
ZONE 10	7.66	
CEMENT MASONS:		
ZONE 1	12.17	2.45
ZONES 2 & 3	11.22	1.38
ZONES 4 & 5	11.12	1.00
ZONE 6	8.78	.90
ZONE 7	8.53	
ZONE 8	7.92	
ZONE 9	7.78	
ZONE 10	7.66	
LABORERS:		
ZONE 1 - GROUP 1	10.19	1.90
GROUP 2	10.31	1.90
GROUP 3	10.54	1.90
GROUP 4	10.48	1.90
GROUP 5	10.92	1.90
ZONES 2 & 3 - GROUP 1	9.91	1.30
GROUP 2	9.61	1.30
GROUP 3	9.41	1.30
ZONES 4 & 5 - GROUP 1	9.76	1.20
GROUP 2	9.46	1.20
GROUP 3	9.26	1.20
ZONE 6 - GROUP 1	7.00	.95
GROUP 2	6.70	.95
GROUP 3	6.50	.95
ZONE 7 - GROUP 1	7.00	.82
GROUP 2	6.35	.82
GROUP 3	5.90	.82
ZONES 8,9 & 10 - GROUP 1	6.05	.95
GROUP 2	5.75	.95
GROUP 3	5.55	.95
POWER EQUIPMENT OPERATOR:		
ZONES 1 & 2 - GROUP 1	$12.25	2.10
GROUP 2	11.55	2.10
GROUP 3	10.76	2.10
ZONES 3 & 5 - GROUP 1	11.40	2.13
GROUP 2	9.79	2.13
GROUP 3	8.94	2.13
ZONE 4 - GROUP 1	11.91	2.00
GROUP 2	11.26	2.00
GROUP 3	10.56	2.00
ZONE 6 - GROUP 1	9.64	1.10
GROUP 2	9.64	1.10
GROUP 3	9.25	1.10
GROUP 4	8.84	1.10
ZONE 7 - GROUP 1	9.03	.70
GROUP 2	8.54	.70
GROUP 3	8.11	.70
GROUP 4	7.31	.70
ZONE 8 - GROUP 1	8.35	.70
GROUP 2	7.93	.70
GROUP 3	7.31	.70
GROUP 4	6.57	.70
ZONE 9 - GROUP 1	7.95	.70
GROUP 2	7.52	.70
GROUP 3	6.90	.70
GROUP 4	6.16	.70
ZONE 10 - GROUP 1	7.69	.70
GROUP 2	7.25	.70
GROUP 3	6.64	.70
GROUP 4	5.90	.70
TRUCK DRIVERS:		
ZONE 1:		
Single axle,jack & spreader tandem axle euclid,power lift form truck & jack,jack & spre spreader trucks lowboys,tractor-trailer water pulls,tandem dump w/auxiliary end, dump trailer	10.27	1.75
Water pulls	10.62	1.75
Lumber carrier	10.82	1.75
ZONES 2 & 3	10.48	.85
ZONES 4 & 5	10.18	.75
ZONE 6	8.35	.65
ZONE 7	7.02	.35
ZONE 8	6.15	.35
ZONE 9	6.27	.30
ZONE 10	6.00	.30

ZONE 1 - City of Council Bluffs

ZONE 2 - Linn & Polk Cos.; City of Dubuque

ZONE 3 - City of Clinton

ZONE 4 - Black Hawk Co. & Cities of Ames & Iowa City

ZONE 5 - City of Burlington (including Burlington Ordnance Plant)

ZONE 6 - Pottawattamie Co. (area west of the eastern boundaries of Minden, York, Washington & Silver Creek Townships); Benton, Boone, Buchanan, Cedar, Clinton, Dallas, Delaware, Dubuque, Jackson, Jasper, Johnson, Jones, Madison, Marion, Marshall, Story, Warren Cos.; the Cities of Fort Madison, Keokuk, Muscatine & their abutting Municipalities (excluding the Cities of Ames, Clinton, Council Bluffs, Dubuque & Iowa City & their abutting municipalities

ZONE 7 - Des Moines, Louisa & Muscatine Cos. (excluding Cities of Burlington (including Burlington Ordnance Plant), Muscatine & abutting municipalities)

ZONE 8 - Allamakee, Appanoose, Bremer, Butler, Chickasaw, Clayton, Davis, Fayette, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Henry, Howard, Iowa, Jefferson, Keokuk, Lee, Mahaska, Mitchell, Monroe, Poweshiek, Tama, Van Buren, Wapello, Washington, Winnebago, Winneshiek, Worth & Wright Cos. (excluding Cities of Keokuk, Fort Madison & abutting municipalities)

ZONE 9 - Adair, Adams, Audubon, Calhoun, Carroll, Cass, Clarke, Crawford, Decatur, Fremont, Greene, Guthrie, Harrison, Ida, Lucas, Mills, Monona, Montgomery, Page, Ringgold, Sac, Shelby, Taylor, Union, Wayne & Woodbury Cos. & Pottawattamie Co. (east of Minden, York, Washington & Silver Creek Townships)

ZONE 10 - Buena Vista, Cherokee, Clay, Dickinson, Emmet, Humboldt, Kossuth, Lyon, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas & Sioux Cos.

LABORERS CLASSIFICATION DEFINITIONS - ZONE 1

GROUP 1 - General Laborers

GROUP 2 - Towboats & dredge deckhands

GROUP 3 - Rakers & Screedman on Asphalt; Mortar Mixers; Chain Saw Operators

GROUP 4 - Pipelayers; Concrete Saw Op.

GROUP 5 - Form Setters & Precast Manhole Setter, Inlet Builders & Manhole Setters

LABORERS CLASSIFICATION DEFINITIONS - ZONES 2 thru 10

GROUP 1 - Sandblasters;Powderman & blaster;Powderman tender;Pipelayer,sewer, water,telephone conduits,tec.;Sewer utility topman & laser Op.;Gunnite nozzleman;Diamond & core drills,powered by air;All work performed by Laborers working from a bos'n chair,swinging stage,tag line or block & tackle;Drill ops. of air tracs,wagon drills & similar drillings;Tree Climber;Form setters;Rakers;Automatic asphalt & concrete power curbing machines;Potmen,not mechanical;Timbermen;Underpinning & shoring;Caissons over 12' depth;Grade Checker & cutting torches on demolition work;Trenchers; Self-propelled vibrating compactors;Safety boat ops.

GROUP 2 - Power buggymen;Concrete & paving sawmen;Form line;Expansion joint assembler;Bottom man;Caulker,jointer & painter;Timber & chair-sawman; Mechanical grouters;Stresser or stretcherman on post tension or prestressed concrete on or off the job;Form tamper;Air,Gas,Electric tool ops.;Vibrator, barco hammer, paving breakers, spaders, tampers, electric drills, hammer & jack hammers; Tree groundman;chain tender;Drill tender;Tool room men & checkers;Sandblaster tender;Concrete processing material & monitors;Cement finisher tenders;Stringman or paving work & power broom op.

GROUP 3 - Fence erectors;Handling & placing of metal mesh,dowel bars, reinforcing bars & chairs Dumpmen & spotters;Carrying reinforcing rods;Corrugated culvert pipe;Stake chaser,seeding & mulching & planting of trees shrubs & flowers;Mechanic tenders;Group greaser tender;Water pumps (under 3"); Compressors (under 400 CFM); Common Labor;Carpenter tender & hot asphalt labor

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS - ZONES 1,2,3,4, & 5

GROUP 1 - Power Shovel, Crane,Backhoe & Dragline;Central Mix Plant;Dredge Engineer;Dredge Leverman;Paver or Spreader;Hoisting Engineer(steel erection); Motor Patrol;Piledriver Machine;Concrete Mixer;Tow or Push Boat;Master Mechanic; CMI Paver; CMI Subgrader(or equivalent);Asphalt Plant;Front Endloader; Scraper;Bulldozer;Push Cat;Tractor Pulling Scraper;Sideboom Tractor; Churn or Rotary Drill;Trenching Machine(Cleveland 80 or similar capacity);Asphalt Laydown; Asphalt Screed;Asphalt Heater-Planer Unit;Asphalt Roller; Self-propelled Elevating Grader or similar machine;Spreader(Concrete);Horizontal Boring Machine;Mechanics-Welders;Group Equip. Greaser;Concrete Pump;Self-propelled Curb Machine

GROUP 2 - Concrete Curb Breaking Machine;Concrete Widening Machine;Paving Breaker;Barber Greene,Haiss Loader or similar machine;Tractor-pulling ripper, disc,sheepsfoot or flat roller;Self-propelled Sheepsfoot Roller;Self-propelled Roller(other than asphalt);Distributor;Screening & Washing Plant;Self-propelled Vibrating Compactor;Trenching Machine(other than above);Steel Placing Machine;Conveyor;Finishing Machine(on concrete);Flexplane; Bullfloat;Form Grader;Water Wagon on Compaction

GROUP 3 - Boiler;Mechanical Broom;Oiler;Farm-type Tractor(pulling disc,harrow or roller);Welding Machine;Pump(other than dredge);Boom & Winch Truck;Compressor;Tank Car Heater(combination boiler & booster);Pumps on Well Points & Deep Wells for dewatering;Truck Crane Combination Driver-Oiler;Concrete Curbing Machine;Safety Boat;Batch Plant,dry;Light Plants;Compressors; Mechanical Heaters;Pumps;Welding Machines;Conveyors

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS - ZONES 6,7,8,9, & 10

GROUP 1 - Power Shovel;Crane;Backhoe(3/4 cu. yd. or larger);Dragline;Dredge Engineer & Leverman;Hoisting Engineer(steel erection);Motor Patrol(finish); Piledriver;Master Mechanic;Sideboom Tractor;Horizontal Boring Machine

GROUP 2 - Central Mix Plant;Paver or Self-propelled Spreader;Tow or Push Boat; CMI Paver,Subgrader or equivalent;Asphalt Plant;Scraper(over 12 cu. yd.); Bulldozer(finish);Push Cat;Mechanics-Welders;Churn or Rotary Drill;Trenching Machine(Cleveland 80 or similar capacity);Asphalt Laydown;Asphalt Screed; Asphalt Heater-Planer;Concrete Pump;Self-propelled Curb Machine

GROUP 3 - Motor Patrol(rough);Front End Loader (3 cu. yd. or over);Scraper (12 cu. yd. & under);Bulldozer(rough);Backhoe(under 3/4 cu. yd.);Asphalt Roller;Group Equip, Greaser;Concrete Curb Breaking Machine;Concrete Widening Machine;Paving Breaker;Barber Greene,Haiss Loader or similar machine; Crawler Tractor(pulling disc, sheepsfoot, ripper or flat roller);Self-propelled Sheepsfoot Roller;Self-propelled Roller;Distributor; Screening & Washing Plant;Self-propelled Vibrating Compactor;Trenching Machine(other than above);Steel Placing Machine;Conveyor;Finishing Machine(on concrete); Flex Plane;Bullfloat;Form Grader

GROUP 4 - Boiler;Mechanical;Boom;Oiler;Farm-type Tractor(pulling disc,harrow or roller);Welding Machine;Pump(other than dredge);Boom & Winch Trucks; Compressor;Tank Car Heater(combination boiler & booster);Pumps on Well Points & Deep Wells for dewatering;Truck Crane Combination Driver-Oiler; Concrete Curbing Machine;Safety Boat;Batch Plant,dry;Spreader attachments; Utility Tractor with attachments

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

[FR Doc. 83-11287 Filed 4-28-83; 8:45 am]

BILLING CODE 4510-27-C

federal register

Friday
April 29, 1983

Part V

Department of Justice

Bureau of Prisons

Control, Custody, Care, Treatment and Instruction of Inmates

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 553

Control, Custody, Care, Treatment and Instruction of Inmates; Final Rule

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons is publishing its final rule on Inmate Personal Property. The rule discusses limitations on inmate personal property, as well as the identification of, and procedures for handling contraband. The rule is intended to contribute to the management of inmate personal property in the institution, and to contribute to a safe environment for staff and inmates by reducing fire hazards, security risks, and sanitation problems which relate to inmate personal property.

EFFECTIVE DATE: June 1, 1983.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724/3062.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is publishing its final rule on Inmate Personal Property. A proposed rule on this subject was published in the **Federal Register** August 31, 1981 (at 46 FR 43812–13). Interested persons were invited to submit comments on the proposed rule. No public comment was received. On the basis of internal staff review, some changes have been made. These changes are intended to clarify Bureau policy on inmate personal property. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determinded that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and the regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354) does not have a significant impact on a substantial number of small entities.

Summary of Changes

1. *Section 553.11.*—Section 553.11(a) is reworded to clearly state that the inmate shall have the opportunity to purchase an approved locking device for personal property storage in regular living units. The extraneous word "place" is deleted from § 553.11(a)(1). For clarity, the word "authorized" is added to this section. In § 553.11(b), the clarifying phrase "(at institutions where authorized)" is added. In § 553.11(c), the word "purchase" is substituted for "purpose". In § 553.11(d), the phrase "on-going litigation" is substituted for "legal activities" to recognize when staff may authorize an inmate additional storage space, on a temporary, short-term basis, for legal materials. Section 553.11(e) is expanded to recognize that, while an inmate may be allowed to temporarily retain an oversized (unable to be stored) hobbycraft project within the cell or living area, such retention is done at the inmate's own risk. The extraneous phrase "or contain" is deleted from § 553.11(e). Section 553.11(f) is reworded to state that commissary items must be neatly stored in the designated area. Deleted is the proposed rule language that the inmate's accumulation of commissary items may not exceed the inmate's monthly spending limitation. The Bureau's concern is not whether the inmate's commissary accumulation exceeds the monthly spending limitation, but whether such accumulation is excessive and thereby poses a health, fire, or housekeeping hazard.

Section 553.11(g), which authorizes the inmate to possess one approved radio and one approved watch at a time, deletes the extraneous phrase "or own". Another sentence in paragraph (g) requires that the inmate be able to prove ownership. Added to § 553.11(g) is a statement that the inmate will ordinarily be permitted use of a radio or watch purchased through a Bureau of Prisons commissary at any other Bureau institution to which the inmate may later be transferred. If this use is not allowed, the receiving institution, at its expense, will mail the item to a destination of the inmate's choice. If the inmate refuses to provide a mailing address, the radio or watch may be disposed of through approved methods. Section 553.11(i) is new, and places into writing the Bureau's policy on personal photographs. The rule allows an inmate to possess personal photographs so long as they are not detrimental to personal safety or security, or to the good order of the institution. Personal photographs reflect meaningful ties to the community and are ordinarily approved. This approval does not extend to nude or sexually suggestive photographs, particularly of a family member, relative, or acquaintance of the inmate when the Warden determines that such pictorial material may be detrimental to an individual's personal safety or security, or to institution good order.

2. *Section 553.12.*—Section 553.12(a) is expanded to include as contraband an item possessed by an inmate "unless the inmate was authorized to retain the item upon admission to the institution". This concept was expressed in proposed § 553.10. Other revisions to paragraph (a) clarify the intent of the proposed rule by stating that an item is ordinarily not considered contraband if issued by "authorized" staff or purchased "by the inmate" from the institution's commissary. In § 553.12(b)(1) the broader term "weapons" is substituted for "guns". Based on the description of contraband given in § 553.12(a), § 553.12(b)(2) now includes any item, other than hard contraband, which has never been authorized for possession by an inmate. This subsection also contains additional examples of nuisance contraband. These include excessive accumulation of commissary, government-issued items which have been altered, or other items made from government property without staff authorization. Altered personal property may be considered nuisance contraband when determined to adversely affect institution security, safety, or good order.

3. *Section 553.13.*—Section 553.13(b)(2)(i) now requires that a copy of the inventory be placed in the inmate central file. Section 553.13(b)(2)(ii) is expanded to recognize that claims of ownership are ordinarily not permitted for items made from the unauthorized use of government property or for items obtained from another inmate without staff authorization. This revision is consistent with the Bureau's description of contraband. In § 553.13(b)(2)(iii), and throughout the final rule the reference to mailing items to the home address of the inmate or to the address the inmate provides for return of all property is replaced by the phrase "to a destination of the inmate's choice". This change reduces the likelihood that an inmate's property will be sent to a non-current address. Section 553.13(b)(2)(iv) is reworded but its intent is not changed. Section 553.13(b)(2)(v) now requires "written" documentation describing disposition of the items destroyed, and the reasons for such action. The phrase "(including appeals)" is added to § 553.13(b)(2)(vi) as an inmate has the

opportunity to appeal the decision on disposition of property.

Section 553.13(c) is clarified. The final rule deletes, from the second sentence, the extraneous phrase "investigation and prosecution". For clarity, the word "criminal" is inserted, in the third sentence, to define the type of prosecution. Paragragh (c) also establishes a two year time period for retaining written documentation of the destruction of hard contraband.

Section 553.13(d) is revised. The final rule substitutes the broad term "cash" for "money, currency". The final rule deletes reference to the inmate's proving ownership of funds. If the inmate is found in possession of funds above the amount authorized by the institution, disciplinary action will be taken (see 28 CFR Part 541). Funds determined to be contraband by the disciplinary committee will be confiscated for crediting to the U.S. Treasury. Section 553.13(d)(1) is expanded to allow for the appeal process to occur before any final disposition of funds is made. Section 553.13(d)(2) substitutes the phrase "a reasonable amount of time to prove ownership" for "the opportunity to establish ownership".

4. *Section 553.14.*—The final rule inserts the phrase "(other than the sending institution)" as a limiting factor on where the inmate may elect to mail excess personal property. Because of the limited storage space available in may Bureau institutions, the final rule states that where the inmate fails to provide a mailing address for the forwarding of excess personal property, that property may be disposed of through approved methods.

5. *Section 553.15.*—Section 553.15 now states that the Warden of a medical facility "shall", as opposed to the proposed rule's "may", establish a limit on the amount of personal property sent with an inmate transferring to that facility. Section 553.15(c) is expanded. The final rule allows the property either to be retained at the sending institution or to be mailed to a destination of the inmate's choice. Section 553.15(c)(1) and (c)(2) are new. Paragraph (c)(1) states that if the inmate is expected to return to the sending institution within 120 days of transfer property not allowed in the medical facility will be retained at the sending instituition or, if the inmate requests, mailed, at the inmate's expense, to a destination of the inmate's choice (other than the medical facility). If insufficent storage space does not allow the sending institution to retain the property, that institution is to pay the postage costs necessary for mailing the property to a destination of the inmate's choice. If the inmate refuses to provide a mailing address for return of the property, the property will be disposed of through approved methods, including destruction of the property. Paragraph (c)(2) provides for forwarding the inmate's property to the medical facility when the inmate is not expected to return to the sending facility, when he will be at the medical facility for over 120 days, or for any other justified reason. Documentation of the reasons for forwarding the property is to be placed in the inmate central file. The procedures in this section allow for the more effective handling of inmate property and reduce the probability of porperty being damaged or lost. In § 553.15(d), the word "medical" is substituted for "treating". The final rule states that where the inmate is financially able but refuses to pay for the mailing, or if the inmate refuses to provide a mailing address for forwarding the excess personal property, that property is to be disposed of through approved methods, including destruction of the property.

List of Subjects in 28 CFR Part 553

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisions, in 28 CFR 0.96(q), 28 CFR, Chapter V is amended as set forth below.

Dated: April 25, 1983.

Norman A. Carlson,

Director.

Amend 28 CFR, Chapter V, by adding a new Part 553 to Subchapter C to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 553—INMATE PROPERTY

Subpart A—[Reserved]

Subpart B—Inmate Personal Property

Sec.

553.10 Purpose and scope.
553.11 Limitations on inmate personal property.
553.12 Contraband.
553.13 Procedures for handling contraband.
553.14 Inmate transfer between institutions.
553.15 Limitations on personal property—medical transfers.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart A—[Reserved]

Subpart B—Inmate Personal Property

§ 553.10 Purpose and scope.

It is the policy of the Bureau of Prisons that an inmate may possess only that property which the inmate is authorized to retain upon admission to the institution, which is issued while the inmate is in custody, which the inmate purchases in the institution commissary, or which is approved by staff to be mailed to, or otherwise received by an inmate. These rules contribute to the management of inmate personal property in the institution, and contribute to a safe environment for staff and inmates by reducing fire hazards, security risks, and sanitation problems which relate to inmate personal property. Consistent with the mission of the institution, each Warden shall identify in writing that personal property which may be retained by an inmate.

§ 553.11 Limitations on inmate personal property.

(a) *Storage space.* Staff shall set aside space within each housing area for use by an inmate. The designated area shall include a locker or other securable area in which the inmate may store authorized personal property. The inmate shall be allowed to purchase an approved locking device for personal property storage in regular living units.

(1) Staff may allow an inmate to retain that authorized personal property which the inmate may neatly and safely store in the designated area.

(2) Staff may not allow an inmate to accumulate materials to the point where the materials become a fire, sanitation, security, or housekeeping hazard.

(b) *Clothing.* Staff may allow an inmate to retain that clothing, whether civilian (at institutions where authorized) or institution, which the inmate is able to neatly store in the space provided.

(c) *Special purchase items.* Staff may authorize an inmate to retain special purchase items provided the items are able to be stored within the designated storage area.

(d) *Legal materials.* Staff may allow an inmate to retain those legal materials which are necessary for an inmate's legal actions. Legal reference materials, such as books, may be retained if such materials are not available in the institution library. To ensure that materials do not become a fire, sanitation, security, or housekeeping hazard, each institution may establish a limit on the amount of, and storage

location for, legal materials in the inmate's living area. Staff may authorize additional storage space, on a temporary, short-term basis, to an inmate who demonstrates a need for additional material in connection with that inmate's on-going litigation.

(e) *Hobbycraft materials.* Staff shall limit an inmate's hobby shop projects within the cell or living area to those projects which the inmate may store in designated personal property containers. Staff may make an exception for an item (for example, a painting) where size would prohibit placing the item in a locker. This exception is made with the understanding that the placement of the item is at the inmate's own risk. Staff shall require that hobby shop items be removed from the living area when completed, and be disposed of in accordance with the provisions of Part 544, Subpart D.

(f) *Commissary items.* Commissary items must be neatly stored in the designated storage space.

(g) *Radios and watches.* An inmate may possess only one approved radio and one approved watch at a time. The inmate must be able to demonstrate proof of ownership. An inmate who purchases a radio or watch through a Bureau of Prisons commissary is ordinarily permitted the use of that radio or watch at any Bureau institution if the inmate is later transferred. If the inmate is not allowed to use the radio or watch at the new institution, the inmate shall be permitted to mail, at the receiving institution's expense, the radio or watch to a destination of the inmate's choice. Where the inmate refuses to provide a mailing address, the radio and/or watch may be disposed of through approved methods, including destruction of the property.

(h) *Correspondence and reading materials.* An inmate may retain those books, letters, newspapers, etc., which can be neatly and safely contained or stored in the designated storage space. Educational materials or current correspondence courses are exempt from this requirement.

(i) *Personal photos.* An inmate may possess photographs, subject to the limitations of paragraph (a) of this section, and so long as they are not detrimental to personal safety or security, or to the good order of the institution.

§ 553.12 Contraband.

(a) Staff shall consider an item possesed by an inmate to be contraband unless the inmate was authorized to retain the item upon admission to the institution, the item was issued by authorized staff, purchased by the inmate from the commissary, or purchased or received through approved channels (to include approved for receipt by an authorized staff member or authorized by institution guidelines).

(b) There are two types of contraband.

(1) Staff shall consider as hard contraband any item which poses a serious threat to the security of an institution and which ordinarily is not approved for possession by an inmate or for admission into the institution. Examples of hard contraband include weapons, intoxicants, and currency (where prohibited).

(2) Staff shall consider as nuisance contraband any item other than hard contraband, which has never been authorized, or which may be, or which previously has been authorized for possession by an inmate, but whose possession is prohibited when its condition or excessive quantities of it present a health, fire, or housekeeping hazard. Examples of nuisance contraband include excessive accumulation of commissary, newspapers, letters, or magazines which cannot be stored neatly and safely in the designated area, food items which are spoiled or retained beyond the point of safe consumption, government-issued items which have been altered, or other items made from government property without staff authorization. Altered personal property may be considered nuisance contraband when it is determined to adversely affect institution security, safety, or good order.

§ 553.13 Procedures for handling contraband.

(a) Staff shall seize any item in the institution which has been identified as contraband whether the item is found in the physical possession of an inmate, in an inmate's living quarters, or in common areas of the institution.

(b) Staff shall dispose of items seized as contraband in accordance with the following procedures.

(1) Staff shall return to the institution's issuing authority any item of government property seized as contraband, except where the item is needed as evidence for disciplinary action or criminal prosecution. In such cases, staff may retain the seized property as evidence.

(2) Items of personal property confiscated by staff as contraband are to be inventoried and stored pending identification of the true owner (if in question) and possible disciplinary action. Following an inventory of the confiscated items, staff shall employ the following procedures.

(i) Staff shall provide the inmate with a copy of the inventory as soon as practicable. A copy of this inventory shall also be placed in the inmate's central file.

(ii) The inmate shall have seven days following receipt of the inventory to provide staff with evidence of ownership of the listed items. A claim of ownership may not be accepted for an item made from the unauthorized use of government property. Items obtained from another inmate (for example, through purchase, or as a gift) without staff authorization may be considered nuisance contraband for which a claim of ownership is ordinarily not accepted.

(iii) If the inmate establishes ownership, but the item is identified as contraband, staff shall mail such items (other than hard contraband), at the inmate's expense, to a destination of the inmate's choice. The Warden or designee may authorize the institution to pay the cost of such mailings where the inmate has insufficient funds and no likelihood of new funds being received. Where the inmate has established ownership of a contraband item, but is unwilling, although financially able to pay postage, or refuses to provide a mailing address for return of the property, the property is to be disposed of through approved methods, including destruction of the property.

(iv) If the inmate is unable to establish ownership, staff shall make reasonable efforts to identify the owner of the property before any decision to destroy the property is made.

(v) Staff shall prepare and retain written documentation describing any items destroyed and the reasons for such action.

(vi) Where disciplinary action is appropriate, staff shall delay disposition of property until completion of such action (including appeals).

(c) Staff shall retain items of hard contraband for disciplinary action or prosecution or both. The contraband items may be delivered to law enforcement personnel for official use. When it is determined that the item is not needed for criminal prosecution, the hard contraband shall be destroyed as provided in paragraph (b)(2)(v) of this section. Written documentation of the destruction shall be maintained for at least two years.

(d) Staff may not allow an inmate to possess funds in excess of established institutional limits. Staff shall deliver to the cashier any cash or negotiable instruments found in an inmate's possession which exceed the institution's allowable limits. Funds determined to be contraband shall be

confiscated for crediting to the U.S. Treasury.

(1) Where disciplinary action against the inmate is appropriate, staff shall delay final disposition of the funds until such action (including appeals) is completed.

(2) Prior to a decision on the disposition of funds, staff shall allow the inmate a reasonable amount of time to prove ownership.

§ 553.14 Inmate transfer between institutions

When the institution to which an inmate is transferred has less available storage space than the sending institution, staff at the receiving institution shall arrange for the inmate's excess personal property to be mailed to a destination of the inmate's choice (other than the sending institution). The receiving institution shall bear the expense for this mailing. Where the inmate refuses to provide a mailing address for return of the property, the property is to be disposed of through approved methods, including destruction of the property.

§ 553.15 Limitations on personal property—medical transfers.

The Warden shall set a limit on the amount of personal property that may accompany an inmate transferring to a medical facility. For purpose of this rule, a medical facility is one which provides observation and/or treatment of a medical, surgical, or psychiatric nature, or any combination of these. Such medical transfers are ordinarily of a short-term duration (30–120 days).

(a) The Wardens of the sending and receiving institutions shall allow the inmate to retain those legal materials specifically needed in respect to on-going litigation. Questions as to the need for such material may be referred to Regional Counsel.

(b) The Warden of the sending institution shall designate a secure location for storage of all inmate personal property not accompanying the inmate.

(c) Personal property permitted in the sending institution, but not in the receiving institution, shall either be retained at the sending institution or be mailed to a destination of the inmate's choice.

(1) If the inmate is expected to return to the sending institution within 120 days of transfer, staff shall advise the inmate that property not allowed in the medical facility may be held at the sending institution or sent to a destination of the inmate's choice (other than the medical facility), at the inmate's expense. Where lack of space prevents retention of the inmate's property at the sending institution, that institution shall pay postage costs connected with mailing the inmate's property to a destination of the inmate's choice. Where lack of space prevents the retention of the inmate's property at the sending institution, and the inmate refuses to provide a mailing address for return of the property, the property is to be disposed of through approved methods, including destruction of the property.

(2) The inmate's property may be sent with the inmate to the medical facility when the inmate is not expected to return to the sending institution, will be at the medical facility over 120 days, or for any other justified reason. The Warden at the sending institution shall prepare and place in the inmate's central file written documentation for forwarding the inmate's personal property.

(d) The Warden of the medical facility shall return an inmate's personal property ordinarily in the same or equivalent size container as originally used by the sending institution. Property accumulated over that amount, at the option of the inmate, will either be sent to a destination selected by the inmate, at the inmate's expense, donated, or destroyed. If the inmate is financially able but refuses to pay for the mailing, or if the inmate refuses to provide a mailing address for forwarding of the property, the property is to be disposed of through approved methods, including destruction of the property.

[FR Doc. 83-11501 Filed 4-28-83; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 500, 524, 527, 545, and 552

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rules.

SUMMARY: The Bureau of Prisons is proposing another set of rules for the management of inmates in Federal correctional institutions. This proposal is part of the Bureau's overall program to publish in the **Federal Register**, and subsequently in the Code of Federal Regulations, Bureau rules relating to the control, custody, care, treatment, and instruction of inmates. In this installment, the Bureau is proposing two new rules and amending three others. The new rules are on Designations and Transfers of D.C. Women Offenders and on the Inmate Work and Performance Pay Program. The former rule concerns the designation of women District of Columbia (D.C.) Code violators to the Bureau of Prisons and the transfer of women D.C. offenders in federal institutions to the District of Columbia Department of Corrections. The rule on work and performance pay is intended to reduce inmate idleness, while allowing an inmate to improve and/or develop meaningful job skills, work habits, and experiences that will assist in post-release employment and ensure that activities necessary to maintain day-to-day operations of the institution are completed.

The Bureau of Prisons is also proposing to add the term "qualified health personnel" to its definition section of the rules and to amend its final rules on Classification and Program Review of Inmates, and on Searches of Housing Units, Inmates, and Inmate Work Areas. These amendments are intended to refine and/or clarify existing rules.

DATE: Comments must be received on or before June 15, 1983

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street NW., Washington, D.C. 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724–3062.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons intends to publish in the **Federal Register** its proposed new and amended rules on (1) Designations and Transfers of D.C. Women Offenders; (2) Inmate Work and Performance Pay Program; (3) Classification and Program Review of Inmates; and (4) Searches of Housing Units, Inmates, and Inmate Work Areas. This document also proposes to add to the rules a definition for "qualified health personnel."

The rule on designations and transfers of D.C. women offenders results from an agreement between the Bureau of Prisons and the D.C. Department of Corrections. The Bureau of Prisons, recognizing that the D.C. Department of Corrections had no facilities for housing long-term female offenders, agreed to designate federal institutions for women D.C. Code violators with sentences of more than one year who are not within nine months of a parole eligibility, sentence expiration, or mandatory release date. The Bureau further agreed to refer to the D.C. Department of Corrections and to the D.C. Board of Parole for transfer consideration a District of Columbia woman confined within a Bureau institution provided the inmate desires the referral and is within nine months of a parole eligibility, sentence expiration, or mandatory release date.

The rule on work and performance pay provides inmates with incentives and rewards in the form of monetary compensation for outstanding work performance as well as for productive participation in specified correctional programs. The proposed rule also discusses various aspects of inmate work/program assignments.

Several changes are being proposed to the final rule (May 1, 1981 **Federal Register**, at 46 FR 24899) on Classification and Program Review of Inmates. In an effort to provide more classroom instruction, § 524.11(a) deletes the requirement that an education representative be a mandatory member of the classification team. The revised rule states that the education representative is ordinarily a member of this team. Section 524.12, retitled "Initial classification", is revised. Specifically, the first sentence of existing § 524.12(d) becomes the first sentence of new § 524.12(c). The existing reference in paragraph (c) to the classification packet is deleted as the program review report discusses the inmate's program. Proposed additions to § 524.12(c) include a statement that all sentenced inmates who are mentally and physically able are to be assigned to a work program at the time of initial classification. Because the Bureau has rescinded its optional programming rule (May 20, 1982, **Federal Register**, at 47 FR 22006), this subject is deleted from § 524.12(c). As revised, the proposed rule states that with the exception of the work assignment, or where program involvement is mandated by statute (for example, the Youth Corrections Act) or by Bureau policy (for example, the Adult Basic Education (ABE) Program), an inmate may choose not to participate in the offered program. Section 524.12(e) is clarified by substituting the phrase "following the initial classification meeting" for "of the initial classification meeting."

Section 524.13 is revised. Existing § 524.13(a)(2)(v) used U.S. Parole Commission's guidelines to determine an inmate's anticipated release date. Because there is no certainty that the Bureau would interpret these guidelines the same as the U.S. Parole Commission, subparagraph (v) is deleted from the proposed rule. Remaining § 524.13(a)(i)–(iv) sufficiently explains the term "anticipated release date." Section 524.13(b) is revised to require that a copy of the program review report be placed in the inmate's central file. Revised § 524.13(c) holds the inmate who refuses to attend the program review directly responsible, and accountable, for recommendations made by the classification team. While a copy of the report will be forwarded to the inmate, the Bureau will no longer personally inform the inmate of the team's actions. Section 524.14 is new and discusses the impact of a detainer (ordinarily none) on an inmate's program. Based on new § 524.14, existing §§ 524.14–16 become new §§ 524.15–17.

Revisions to the final rule (November 13, 1980 **Federal Register**, at 45 FR 75134) on Searches of Housing Units, Inmates, and Inmate Work Areas clarify the intent of the rule. Section 552.11 is revised. Section 552.11(a)(2), which stated that pat searches ordinarily are conducted by staff of the same sex as the inmate, is deleted. The nature and purpose of the pat search, inspection of a clothed inmate on a routine or random basis, does not warrant this requirement. Existing § 552.11(a)(1) becomes the second paragraph of § 552.11(a). Other revisions are contained in § 552.11(c) and § 552.12(b). The first substitutes the more explicit term "designated qualified health personnel (for example, physicians, physician assistants, and nurses)" for "medical staff". (Note: A general definition of qualified health personnel,

consistent with that used by the Commission on Accreditation for Corrections Standards for Adult Correctional Institutions (Second Edition) is being proposed as an addition to § 500.1, Definitions.) Section 552.12(b) is rewritten to recognize that the institution physician is not required to personally perform a non-repetitive X-ray.

The Bureau of Prisons has determined that these rules are not major rules for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to these rules since the rules involve agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that these rules, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), do not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 760, 320 1st Street, N.W., Washington, D.C. 20534. Comments received will be considered before final action is taken. The proposed rules may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Parts 500, 524, 527, 545, and 552

Prisoners.

In consideration of the foregoing, it is proposed to amend subchapters A, B, and C of 28 CFR Chapter V as follows:

I. In Subchapter A, Part 500, amend § 500.1 by adding new paragraph (i);

II. In Subchapter B, Part 524, amend Subpart B; in Subchapter B, Part 527, add a new Subpart F;

III. In Subchapter C, Part 545, add a new subpart C; and in Subchapter C, Part 552, amend Subpart B.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

I. In Subchapter A, Part 500 is amended by adding paragraph (i) to § 500.1 to read as follows:

PART 500—GENERAL DEFINITIONS

A. The authority citation for Part 500 reads as follows:

Authority: 5 U.S.C. 301, 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 95-99.

B. In § 500.1, add a new paragraph (i) to read as follows:

§ 500.1 Definitions.

* * * * *

(i) "Qualified health personnel" includes physicians, dentists, and other professional and technical workers who engage in activities within their respective level of health care training or experience which support, complement, or supplement the administration of health care.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

II. In Subchapter B, Parts 524 and 527 are amended to read as follows:

A. In Part 524, Subpart B is amended as follows:

PART 524—CLASSIFICATION OF INMATES

Subpart B—Classification and Program Review of Inmates

1. In Part 524, Subpart B, the Table of Contents and authority citation are revised to read as follows:

Sec.
524.10 Purpose and scope.
524.11 Classification team.
524.12 Initial classification.
524.13 Program reviews.
524.14 Effect of a detainer on an inmate's program.
524.15 Unscheduled reviews.
524.16 Appeals procedure.
524.17 Study and observation cases.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 95-99.

2. In § 524.11, paragraph (a) is revised to read as follows:

§ 524.11 Classification team.

The Warden shall ensure that each department within the institution has the opportunity to contribute to the classification process.

(a) At a minimum, each classification team shall include the unit manager, a case manager, and a correctional counselor. An education representative is ordinarily a member of the classification team. Where the institution does not have unit management, the classification team shall include a case manager, correctional counselor, and one other staff member.

* * * * *

3. In § 524.12, the title of this section and paragraphs (c), (d), and (e) are revised to read as follows:

§ 524.12 Initial classification.

* * * * *

(c) Staff shall complete a program review report at the inmate's initial classification. This report ordinarily includes information on the apparent needs of the inmate, and shall offer a correctional program designed to meet these needs. Each sentenced inmate who is physically and mentally able is assigned to a work program at the time of initial classification. With the exception of the work assignment, or where program involvement is mandated by Bureau policy (for example, Adult Basic Education (ABE) Program) or statute (for example, Youth Corrections Act), the inmate may choose not to participate in the offered program.

(d) The inmate is to be provided and sign for a copy of the program review report. If the inmate refuses to sign for a copy of this report, staff witnessing the refusal shall place a signed statement to this effect on the report. Staff shall place a copy of the program review report in the inmate's central file.

(e) Within five working days following the initial classification meeting, staff shall prepare a staff summary, discussing those facts which were available at the time of the initial classification. The staff summary is to include information on the inmate's current offense and prior record, social situation, recommended programs, and community resources. A copy of the staff summary is provided to the inmate, upon the inmate's request.

4. In § 524.13, paragraphs (a)(2)(i)-(iv) are revised, paragraph (a)(2)(v) is removed and paragraphs (b), and (c) are revised to read as follows:

§ 524.13 Program reviews.

(a) * * *

(2) * * *

(i) The inmate's mandatory (statutory) release date;

(ii) The inmate's minimum expiration date;

(iii) The inmate's presumptive parole date; or

(iv) The inmate's effective parole date.

(b) Staff shall prepare a program review report to document each program review. The inmate is to sign for an receive a copy of this report. If the inmate refuses to sign for a copy of this report, staff witnessing the refusal shall place a signed statement to this effect on the report. Staff shall place a copy of the program review report in the inmate's central file.

(c) Staff shall notify an inmate of the scheduled program review at least 48 hours prior to a staff-originated meeting. An inmate may waive in writing the 48 hours notice requirement. An inmate may elect not to attend the program review. If this occurs, staff shall indicate the refusal and, if known, the reasons for refusal on the program review report. A copy of this report is to be forwarded to the inmate. The inmate who elects not to appear for a program review is responsible for becoming aware of, and will be held accountable for, the classification team's actions.

5. Renumber existing §§ 524.14 through 524.16 as §§ 524.15 through 524.17 and revise these sections to read as follows:

§ 524.15 Unscheduled reviews.

Staff may establish a schedule to ensure that inmates are provided program reviews as required by this rule. Upon request of either the inmate or staff, and with the concurrence of the team chairperson, an advanced or previously unscheduled program review may occur.

§ 524.16 Appeals procedure.

An inmate may appeal, through the Administrative Remedy Procedure, a decision made at initial classification or at a program review.

§ 524.17 Study and observation cases.

Inmates committed to the custody of the U.S. Attorney General for purposes of study and observation are excluded from the provisions of this rule.

6. Add a new § 524.14 to read as follows:

§ 524.14 Effect of a detainer on an inmate's program.

The existence of a detainer, by itself, ordinarily does not affect the inmate's program. An exception may occur where the program is contingent on a specific issue (for example, custody) which is affected by the detainer.

PART 527—TRANSFERS

B. In Part 527, add a new Subpart F to read as follows:

Subpart F—Designations and Transfers of C.C. Women Offenders

Sec.
527.50 Purpose and scope.
527.51 Definitions.
527.52 Designation.
527.53 Transfer referrals.
527.54 Grievance procedures.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5003, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 527.50 Purpose and scope.

(a) The Bureau of Prisons will designate federal institutions for most female D.C. Code violators who are serving sentences of more than one year and who are not within nine months of a parole eligibility, sentence expiration, or mandatory release date.

(b) The Bureau of Prisons will refer to the District of Columbia (D.C.) Department of Corrections and to the D.C. Board of Parole for transfer consideration any District of Columbia female inmate in Bureau of Prisons custody provided the inmate has made a request for transfer and is within nine months of a parole eligibility, sentence expiration, or mandatory release date.

§ 527.51 Definitions.

For purposes of this rule, the following definitions apply.

(a) Parole eligibility date—the date on which the inmate becomes eligible for parole consideration.

(b) Sentence expiration date—the date on which the inmate is to be released by good time allowances or other statutory means, and not by parole action, and with 180 days or less remaining on the sentence.

(c) Mandatory release date—the date on which the inmate is to be released by good time allowances, and not by parole action, and with more than 180 days remaining on the sentence.

(d) Appropriate District of Columbia officials—officials of the District of Columbia Department of Corrections and/or the District of Columbia Board of Parole.

§ 527.52 Designation.

Bureau of Prisons staff shall review all requests for designation of female D.C. Code violators to a federal institution to ensure that the individual is not within nine months of a parole eligibility, sentence expiration, or mandatory release date. When staff determine that the inmate is within nine months of such a release date, the request for designation shall be held in abeyance until a determination has been made by the appropriate District of Columbia officials with respect to the inmate's suitability for community placement or parole.

(a) Bureau staff shall proceed with the designation of the inmate to a federal institution upon being notified that the appropriate District of Columbia officials have determined that the inmate is presently considered unsuitable for both community placement and for parole.

(b) Bureau staff should not proceed with the designation upon being notified that the appropriate District of Columbia officials have determined that the inmate is considered a suitable candidate for community placement and/or parole.

§ 527.53 Transfer referrals.

(a) Staff, at the time of the inmate's initial classification, shall notify the inmate of her right to request referral to the District of Columbia and the procedures to the followed with respect to making this request. Staff shall give the inmate a copy of the "Notice of Eligibility" form to sign, and ask that the inmate indicate on this form whether she wishes to be referred, at the time of her eligibility, for transfer to the District of Columbia.

(1) Where an inmate requests referral to the D.C. Department of Corrections, Bureau staff shall make this referral when the inmate is within nine months of her parole eligibility, sentence expiration, or mandatory release date.

(2) The inmate may choose not to be referred to the District of Columbia Department of Corrections. Staff shall provide an inmate who, at the time of initial classification, elects not to be referred, a second opportunity for referral when she is within nine months of her parole eligibility or upon her request. A copy of all declinations for referral by the inmate shall be forwarded by Bureau staff both to the D.C. Department of Corrections and to the D.C. Board of Parole.

(b) If the D.C. Board of Parole indicates that the inmate's parole prognosis is such that they do not wish to have her returned to the District of Columbia for a hearing, and she is also denied acceptance by the D.C. Department of Corrections for community placement, Bureau staff are to use the following timetable with respect to a re-referral of the inmate to both agencies: When the inmate's sentence is less then 5 years, a re-referral may occur after 6 months; where the maximum sentence is five years or more, she is eligible for re-referral in one year.

(c) If the inmate is approved for community placement and/or parole by the appropriate District of Columbia officials, arrangements shall be coordinated between officials of the Bureau of Prisons and the District of Columbia for the inmate's transfer to the District of Columbia.

§ 527.54 Grievance procedures.

District of Columbia women wishing to express a formal complaint regarding their designation or transfer may file a grievance under one of the following procedures.

(a) The Bureau of Prisons Administrative Remedy Procedure is to be used for matters under Bureau of Prisons jurisdiction.

(b) The D.C. Department of Corrections grievance procedure is to be used for matters under the D.C. Department of Corrections jurisdiction.

III. In Subchapter C, Parts 545 and 552 are amended as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

A. In Part 545, Subpart C is added to read as follows:

PART 545—WORK AND COMPENSATION

* * * * *

Subpart C—Inmate Work and Performance Pay Program

Sec.
545.20 Purpose and scope.
545.21 Definitions.
545.22 Institution work and performance pay committee.
545.23 Inmate work program assignment.
545.24 Inmate work conditions.
545.25 Funding for, and allocation of performance pay.
545.26 Eligibility for performance pay.
545.27 Performance pay provisions.
545.28 Inmate vocations.
545.29 Achievement awards.
545.30 Special awards.
545.31 Training.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4126, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart C—Inmate Work and Performance Pay Program

§ 545.20 Purpose and scope.

(a) The Bureau of Prisons operates an inmate work program within its institutions. To the extent practicable, the work program (1) reduces inmate idleness, while allowing the inmate to improve and/or develop meaningful job skills, work habits and experiences that will assist in post-release employment; and (2) ensures that activities necessary to maintain the day-to-day operation of the institution are completed. Sentenced inmates who are physically and mentally able to work are required to participate in the work program. When approved by the Warden or designee, educational or vocational training may be substituted for all or part of the work program.

(b) The Warden may recognize an inmate's outstanding work performance as well as productive participation in specified correctional programs through the granting of performance pay.

§ 545.21 Definitions.

(a) *Inmate*—For purposes of this rule, the term "inmate" refers to any person committed to, or in the custody of, the U.S. Attorney General.

(b) *Institution Work Assignment*—A work assignment which contributes to the day-to-day operation of the institution (e.g., carpentry, plumbing, food service).

(c) *Industry Assignment*—A Federal Prison Industries (UNICOR) work assignment.

(d) *Full-Time Work Assignment*—A work assignment to which an inmate is assigned for the entire scheduled work day.

(e) *Part-Time Work Assignment*—A work assignment to which an inmate is assigned for only a portion of the scheduled work day. Part-time work assignments are ordinarily made in conjunction with educational and vocational training programs.

(f) *Medically Unassigned*—An inmate who because of medical restrictions is unable to be assigned to any work program.

(g) *Light Duty Work Assignment*—An inmate who because of physical limitations, temporary or otherwise, may only perform limited work functions, e.g., sedentary work, no prolonged standing, no lifting over 25 lbs., etc.

§ 545.22 Institution work and performance pay committee.

(a) The Warden at each Bureau of Prisons Institution is to establish an Institution Inmate Work and Performance Pay Committee to administer the institution work and performance pay program. The Committee is to be comprised of an Associate Warden, the Inmate Performance Pay Coordinator, and other member(s) the Warden considers appropriate.

(b) The Committee is responsible for approving the following aspects of the institution's inmate work and performance pay program:

(1) Number of inmates on each work detail;

(2) Number of pay grades in each detail;

(3) Job descriptions;

(4) Performance standards;

(5) Budgeting for special act awards; and

(6) Overtime procedures.

§ 545.23 Inmate work program assignment.

(a) Each sentenced inmate who is physically and mentally able is to be assigned to an institutional or industrial work program. An inmate shall be assigned to an educational or vocational program, on either a full or part-time basis, where this involvement is mandated by Bureau policy (for example, Adult Basic Education (ABE) Program) or statute (for example, Youth Corrections Act). An inmate, for whom educational or vocational participation is not required by either policy or statute, may request and, upon approval of the Warden or designee, will be able to participate in an educational or vocational training program rather than work full-time.

(b) A pre-trial inmate may not be required to work in any assignment or area other than housekeeping tasks in the inmate's own cell and in the community living area. Unless the pre-trial inmates signs a waiver, the Warden may not permit the pre-trial inmate to work with convicted inmates or in any assignment or area other than housekeeping tasks (see Part 551, Subpart J).

(c) Medically unassigned inmates may be required to perform housekeeping tasks in the inmate's own cell and in the community living area.

(d) In making the work and/or program assignment(s), staff shall consider the inmate's capacity to learn, interests, requests, needs, and eligibility, and the availability of the assignment(s). An inmate's assignment shall be made with consideration of the institution's security and operational needs, and should be consistent with the safekeeping of the inmate and protection of the public.

§ 545.24 Inmate work conditions.

(a) The scheduled work day for an inmate in a federal institution ordinarily consists of a minimum of seven, and a maximum of eight hours. Work in excess of eight hours is considered overtime and the inmate shall be compensated at the overtime rate (1.5 times hourly pay rate for that grade).

(b) An inmate is expected to report to his place of assignment at the required time. An inmate may not leave an assignment without permission.

(c) An inmate, regardless of assignment, is expected to perform all assigned tasks diligently and conscientiously. Disciplinary action may be taken against an inmate who refuses to work, who otherwise evades attendance and performance standards in assignment activities, or who encourages others to do so.

(d) Work, vocational, and educational programs are to meet the appropriate minimum standards for health and safety. Safety equipment is to be available where needed.

(e) An inmate is expected to perform the work assignment in a safe manner, using safety equipment as instructed by the Work Supervisor. In the event of any work related injury, an inmate shall notify the Work Supervisor so that appropriate action (for example, medical attention, and submission of necessary reports) may be taken.

§ 545.25 Funding for, and allocation of performance pay.

The Board of Directors, Federal Prison Industries (UNICOR) will fund the Bureau's performance pay program.

(a) The Assistant Director, Correctional Programs Division is responsible for overseeing the

distribution of performance pay funds. The Assistant Director shall establish and, as necessary, periodically revise the performance pay hourly rate.

(b) Within the Central Office, the specific authority to allocate performance pay funds to each Region is delegated to the Administrator, Correctional Programs Branch.

(c) Within each Region, the Regional Correctional Programs Administrators are responsible for institution allocations and for supervision of institution performance pay programs.

(d) Within each institution, each Department Head shall be credited with an equitable share of the performance pay money allocated to the institution.

(e) The General Office, regional offices and institutions are authorized to hold limited performance pay funds in a reserve status. These reserve funds will be used to cover such contingencies as institution mission changes, payment of special act awards, and to cover fluctuations in population within the institutions.

§ 545.26 Eligibility for performance pay.

(a) An inmate may receive performance pay for accomplishments in one or more of the following areas:

(1) Institution work assignment;

(2) Adult Basic Education (ABE) program participation;

(3) General Educational Development (GED) participation;

(4) Apprenticeship training; and

(5) Vocational Training courses (approved by the Bureau of Prisons as certified vocational training instruction).

(b) An inmate is eligible for performance pay from the date of work or program assignment. An inmate is eligible to receive performance pay for each month that the inmate's performance justifies such payment.

§ 545.27 Performance pay provisions.

(a) The Warden shall ensure that all institution work assignments have standardized work descriptions. Each inmate work position is assigned one of four pay grade levels. Factors to consider in assigning a grade level to the specific work position include the position's educational and vocational requirements, physical demands, working conditions (exposed to dusts, odors, etc.), and the degree of responsibility held by the inmate worker. The inmate assigned to a specific work position shall sign for, and receive a copy of, that position description.

(b) In recognition of budgetary constraints and for the effective management of the overall performance pay program, the percentage of inmates assigned to each grade level is approximately as follows (Grade 1 is highest pay):

Grade 1—5% of the institution's inmate work assignments;

Grade 2—15% of the institution's inmate work assignments;

Grade 3—25% of the institution's inmate work assignments; and

Grade 4—55% of the institution's inmate work assignments.

(c) A pay period begins the first day of the month and ends the last day of the month. An inmate may receive performance pay only for that portion of the month that the inmate was working. Performance pay may not be awarded retroactively.

(d) An inmate is eligible to receive performance pay only for those hours during which the inmate is actually performing work or actively participating in an educational or vocational training program. Absences from the inmate's scheduled assignment for such reasons as call-outs, visits, sick call, interviews, or making telephone calls shall be deducted from the monthly number of hours worked and will accordingly reduce the amount of pay received by the inmate.

(e) *Work Evaluation.* At the end of each month the work detail/program supervisor shall compute on an evaluation form the hours worked by the inmate and the pay to be awarded. The supervisor shall also rate the inmate's performance over the past month as excellent, satisfactory, or unsatisfactory in each of several categories. These categories include quantity of work performed, ability to follow instructions, work attitude, responsibility demonstrated, safety and care of equipment, attendance, promptness, quality of work, and judgment exercised.

(1) An inmate shall receive performance pay only for those hours during which the inmate is satisfactorily or better performing work or is actively participating in an educational/vocational program.

(2) An inmate's monthly pay shall be based on the grade and the number of hours during the month that the inmate's performance was satisfactory. The "hourly rate" may not be "reduced" for unsatisfactory performance; the inmate is either paid the hourly rate for an hour of at least satisfactory performance or receives no pay for an hour of unsatisfactory performance.

The work detail/program supervisor shall review the evaluation with the inmate and request that the inmate sign the evaluation form. If the inmate refuses to sign the form, the supervisor shall note this refusal on the evaluation and, if known, the reasons for refusal.

(f) *Bonus pay.* When the supervisor of an inmate worker or program participant believes the inmate has made exceptional accomplishments, the supervisor may recommend that the inmate receive a bonus. Written justification for the bonus request must be forwarded to the Department Head for approval. The bonus may not be for more than one-half of that inmate's monthly pay.

(g) *Special bonus pay.* An inmate may receive special bonus pay based on the inmate's exceptional work in a position previously identified by the Warden, and approved by the Regional Director, as critical to the institution. When the supervisor of an inmate worker assigned to a critical position believes the inmate has performed exceptionally well, the supervisor may recommend that the inmate receive a special bonus. Written justification for the special bonus request must be forwarded to the Department Head for approval. The special bonus may not be for more than that inmate's monthly pay.

(h) An inmate's performance pay, once earned, becomes vested.

§ 545.28 Inmate vacations.

An inmate who has worked full-time for 12 consecutive months on an institution work assignment is eligible to take a six-day paid vacation at the inmate's average prevailing rate of pay. An inmate who has worked part-time for 12 consecutive months on an institution work assignment is eligible to take a three-day vacation at the inmate's prevailing rate of pay. A recommendation for an inmate to receive vacation credit is made by the inmate's work supervisor, through both the Department Head and Unit Team, to the Associate Warden, who shall approve the request if the inmate's work performance qualifies for vacation credit.

(a) An inmate must take and/or be paid for vacation credit within sixty days of the annual eligibility date of the inmate's most recent date of assignment to the institution work position. An inmate who elects not to take vacation time must indicate this in writing. That inmate shall receive pay for the vacation credit in a lump sum on the regular monthly payroll. This amount is ordinarily paid within sixty days of the annual eligibility date of the inmate's most recent date of assignment to the institution work position. An inmate whose employment is terminated by release, reassignment, transfer, or other reasons, and who has unused vacation credit shall be paid for this credit on the monthly payroll.

(b) At the discretion of the Department Head, an inmate may take accurred vacation for visits, participation in institutional programs, or other reasons approved by the Department Head. Staff shall schedule an inmate's vacation so that it is compatible with shop production and administrative support requirements.

(c) When the inmate takes and/or is paid for earned vacation, the total hours of vacation credit are multiplied by the inmate's regular hourly rate of compensation to arrive at the compensation payable.

(d) An inmate temporarily assigned to industries, such as on a construction crew, and who is placed on an industrial payroll may earn vacation credit. The inmate may take and/or receive pay for the vacation credit upon termination of the temporary assignment.

(e) An inmate reassigned from an institution to UNICOR work assignment must take and/or be paid for any accrued vacation credit prior to reassignment.

(f) An inmate earns vacation credit while confined to the hospital or quarters because of a compensible work-related injury.

(g) The Warden or designee may authorize an inmate to continue to accumulate vacation credit when:

(1) The inmate is transferred to another institution for the benefit of the government or because of the inmate's favorable adjustment (custody reduction); or

(2) The inmate is placed in a new work assignment in the institution for the benefit of the government or institution, rather than solely at the inmate's request or because of the inmate's poor performance or adverse behavior.

§ 545.29 Achievement awards.

With prior approval of the inmate's unit team, each inmate who completes an Adult Basic Education, GED, Vocational Training, or related trades classroom work that is part of a certified apprenticeship program may be granted an achievement award from performance pay funds.

§ 545.30 Special awards.

(a) Inmates who perform exceptional services not ordinarily a part of the inmate's regular assignment may be granted a special award regardless of the inmate's work or program status. Examples of actions which may result in the inmate being considered for a special award are the following:

(1) An act of heroism;

(2) Voluntary acceptance and satisfactory performance of an unusually hazardous assignment.

(3) An act which protects the lives of employees or inmates, or the property of the United States. (This does not apply to informants.)

(4) Suggestions which result in substantial improvements or cost-savings in institutional programs or operations.

(5) Other exceptionally meritorious or outstanding services consistent with the general character of the preceding cases.

(b) The special award may be given in the form of a lump sum monetary payment in addition to any other award given.

(c) The Warden of each institution is empowered to approve special awards not exceeding $150. Awards in excess of this amount may not be made unless approved by the Regional Director.

§ 545.31 Training.

The Warden shall ensure that staff receive training on their roles in, and on the operation of, the work and performance pay program. The Warden shall also ensure that the inmate population is informed of the work and performance pay program, and of the hourly rates paid to inmate workers.

B. In Subchapter C, Part 552 is amended as follows:

PART 552—CUSTODY

Subpart B—Searches of Housing Units, Inmates, and Inmate Work Areas

1. The authority citation for Part 552, Subpart B is as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039, 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 552.11, revise § 552.11 (a) and (c) to read as follows:

§ 552.11 Body searches of inmates.

(a) *Pat search.* An inspection of an inmate, using the hands, that does not require the inmate to remove clothing. The inspection includes a search of the inmate's clothing and personal effects. A metal detector search may be done under the same circumstances. Staff may conduct a pat search of an inmate on a routine or random basis to control contraband.

* * * * *

(c) Digital or simple instrument search-inspection for contraband or any other foreign item in a body cavity of an inmate by use of fingers or simple instruments, such as an otoscope, tongue blade, short nasal speculum, and simple forcep. A digital or simple instrument search may be conducted only by designated qualified health personnel (for example, physicians, physician assistants, and nurses) upon approval of the Warden and only if the Warden has reasonable belief that an inmate is concealing contraband or on his person. If located, the contraband or foreign item may be removed immediately by medical staff if such removal can easily be effected by use of fingers or the simple instruments referred to above. Staff shall document all digital and simple instrument searches and the reasons for the searches in the inmate's central file.

* * * * *

3. In § 552.12, revise paragraph (b) to read as follows:

§ 552.12 X-ray, major instrument, fluoroscope, or surgical intrusion.

* * * * *

(b) The institution physician may authorize use of an X-ray for medical reasons and only with the consent of the inmate. When there exists no reasonable alternative, and an X-ray examination is determined necessary for the security, good order, or discipline of the institution, the Warden, upon approval of the Regional Director, may authorize the institution physician to order a non-repetitive X-ray examination for the purpose of determining if contraband is concealed in or on the inmate (for example: in a cast or body cavity). The X-ray examination may not be performed if it is determined by the institution physician that it is likely to result in serious or lasting medical injury or harm to the inmate. Staff shall place documentation of the examination and the reasons for the examination in the inmate's central file and medical file.

* * * * *

Dated: April 25, 1983.

Norman A. Carlson,

Director.

[FR Doc. 83-11502 Filed 4-28-83; 8:45 am]

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Friday
April 29, 1983

Part VI

Environmental Protection Agency

Standards for Uranium and Thorium Mill Tailings at Licensed Commercial Processing Sites

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 192

[AH-FRL 3219-6]

Environmental Standards for Uranium and Thorium Mill Tailings at Licensed Commercial Processing Sites; Invitation for Comment

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: In this notice we propose health and environmental standards to govern stabilization and control of byproduct materials (primarily mill tailings) at licensed commercial uranium and thorium processing sites. These standards were developed pursuant to Section 275 of the Atomic Energy Act (42 U.S.C. 2022), as added by Section 206 of the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95-604).

The standards would apply to tailings at locations that are licensed by the Nuclear Regulatory Commission (NRC) or the States under Title II of the Act. The standards for disposal of tailings would require stabilization so that the health hazards associated with tailings will be controlled and limited, in most cases, for at least one thousand years. They would limit releases of radon to 20 pCi/m^2s, averaged over the surface of the piles, and require measures to avoid releases of other hazardous substances from tailings to water. The standards for tailings at operating mills, prior to disposal, would add limits on the radiation levels in effluents to ground water to the limits now specified under the Solid Waste Disposal Act, as amended. Existing EPA regulations and Federal Radiation Protection Guidance currently applicable to tailings would remain unchanged.

This notice summarizes the technical information and other considerations upon which these proposed standards are based. More detailed background material is contained in a Draft Environmental Impact Statement (DEIS) and in a Regulatory Impact Analysis (RIA). We invite written comments on all of this material and, in addition, will hold public hearings on these proposed standards.

DATES:

Written Comments. Comments should be received on or before May 31, 1983.

Public Hearings. Requests to participate in the public hearings should be received on or before May 20, 1983. Public hearings on this proposed rule will begin on May 31, 1983. All hearings will commence at 9:30 a.m.

ADDRESSES:

Written Comments. Comments should be submitted to Docket No., A-82-26 at the address specified for the docket below. We would appreciate an additional copy sent to Mr. Jack Russell at the address listed below (see the heading "FOR FURTHER INFORMATION.")

Public Hearings. Requests to participate in the public hearings should be submitted in writing to the Director, Criteria and Standards Division (ANR-460), Office of Radiation Programs, Environmental Protection Agency, Washington, D.C. 20460. All requests for participation must include at least an outline of the topics to be addressed, the amount of time requested, and the names of the participants. Statements should not repeat information already presented in written comments, but should address additional matters. Public hearings on this proposed rule will be held at the DuPont Plaza Hotel, Embassy Hall, 1500 New Hampshire Avenue, NW., Washington, D.C. 20036. All hearings will commence at 9:30 A.M.

Background Documents. Background information is contained in the reports entitled *Draft Environmental Impact Statement for Standards for the Control of Byproduct Materials from Uranium Ore Processing (40 CFR Part 192)*, EPA Report 520/1-82-022; and *Regulatory Impact Analysis of Environmental Standards for Uranium Mill Tailings at Active Sites*, EPA Report 520/1-82-023. Single copies of these reports, as available, may be obtained from the Program Management Office (ANR-458), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460; telephone number (703) 557-9351.

Docket. Docket Number A-82-26 contains the rulemaking record. The docket is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA Headquarters. The address is: Central Docket Section (LE-130), West Tower Lobby, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION:

Contact Mr. Jack Russell, Guides and Criteria Branch (ANR-460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460; telephone number (703) 557-8610.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 8, 1978, Congress enacted Pub. L. 95-604, the Uranium Mill Tailings Radiation Control Act of 1978 (henceforth designated "UMTRCA"). In the Act, Congress stated its finding that uranium mill tailings "* * * may pose a potential and significant radiation health hazard to the public, * * * and * * * that every reasonable effort should be made to provide for stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings." The Administrator of the Environmental Protection Agency (EPA) was directed to set "* * * standards of general application for the protection of the public health, safety, and the environment * * *" to govern this process of stabilization, disposal, and control.

UMTRCA established two programs to protect public health, safety and the environment from uranium mill tailings, one for certain designated sites which are now inactive (i.e., at which all milling has stopped and which are not under license) and another for active sites (those sites licensed by the Nuclear Regulatory Commission or the State in which the site is located, when this State is an Agreement State of the NRC under Section 274 of the Atomic Energy Act).

Tailings at the inactive uranium milling sites are defined in UMTRCA as residual radioactive materials. The program for inactive sites covers the disposal of tailings and the cleanup of onsite and offsite locations contaminated with tailings. EPA has established health and environmental standards to govern each of these activities. The U.S. Department of Energy (DOE) is reponsible for carrying out these activities in conformance with these standards, with the concurrence of the NRC, and in cooperation with the States.

EPA proposed standards for cleanup of residual radioactive materials from open lands and buildings and made them effective on an interim basis on April 22, 1980 (45 FR 25682 and 45 FR 27370), and proposed standards for disposal of these materials at inactive uranium processing sites on January 9, 1981 (46 FR 2556). Final cleanup and disposal standards for the inactive sites were published on January 5, 1983 (48 FR 590).

Tailings at active uranium milling sites are defined in UMTRCA as uranium byproduct materials. The program for active sites covers the final disposal of tailings and the control of effluents and emissions during and after milling operations, but does not address cleanup of contaminated offsite locations. UMTRCA requires EPA to

establish standards for this program, and that standards for nonradioactive hazards protect human health and the environment in a manner consistent with standards established under Subtitle C of the Solid Waste Disposal Act, as amended. The NRC or the licensing Agreement State is responsible for assuring compliance with the standards at active mill sites.

UMTRCA was amended by the NRC Authorization Act during December 1982. These amendments changed the date by which these standards must be promulgated (Cong. Record, 515310; Dec. 16, 1982). The amendments also provide that "If the Administrator fails to promulgate standards in final form * * * by October 1, 1983, the authority of the Administrator to promulgate such standards shall terminate, and the Commission may take action under this Act without regard to any provision of this Act requiring such actions to comply with, or to be taken in accordance with, standards promulgated by the Administrator." WE are therefore proceeding to establish these standards expeditiously.

A. The Uranium Industry

The major deposits of high-grade uranium ores in the United States are located in the Colorado Plateau, the Wyoming Basins, and the Gulf Coast Plan of Texas. Most ore is mined by either underground or open-pit methods. At the mill the ore is first crushed, blended, and ground to the proper size for the leaching process which extracts uranium. Several leaching processes are used, including acid, alkaline and a combination of the two. After uranium is leached from the ore it is concentrated from the leach liquor through ion exchange or solvent extraction. The concentrated uranium is then stripped or extracted from the concentrating medium, precipitated, dried, and packaged. The depleted ore, in the form of tailings, is pumped to a tailings pile as a slurry mixed with water.

Since the uranium content of ore averages only about 0.15 percent, essentially all the bulk of ore mined and processed is contained in the tailings. These wastes contain significant quantities of radioactive uranium decay products, including thorium-230, radium-226, and decay products of radon-222. Tailings can also contain significant quantities of other hazardous substances, depending upon the source of the ore and the reagents used in the milling process. Most of the tailings are a sand-like material and are attractive for use in construction and soil conditioning.

In 1980 there were 21 operating uranium mills, located in Colorado, New Mexico, Texas, Utah, Washington, and Wyoming. All of these mills have tailings stored at their sites, as have two additional licensed mills in Edgemont, South Dakota, and Ray Point, Texas, which were no longer operating in 1980. The total quantity of tailings was about 146 million metric tons (MT) at these 23 sites as of January 1980.

As of September 1982 there were 27 licensed uranium mills, of which only 16 were operating. Eight mills closed during the period from January 1981 to September 1982, and the two mills with tailings piles which were not operating in 1980 remained closed. Another mill has been constructed and licensed, but has not started operation. By early 1982, the amount of stored tailings had reached about 170 million MT. The size of individual tailings piles ranges from about 2 million MT to about 30 million MT.

The future demand for uranium is projected to be almost exclusively for electrical power generation. Thus, the demand should be stable and reasonably predictable, depending mainly on the number of operating nuclear power reactors. Based on recent DOE projections, it is estimated that at least an additional 350 million MT of tailings will be generated by the year 2000 in the United States. This projection is for the conventional milling of uranium described above. A small quantity of uranium is also recovered as a secondary product in the extraction of other minerals, such as phosphate and copper, and also by solution (*in situ*) mining methods. Foreign sources of uranium may also influence demand projections for the domestic uranium industry, especially since some foreign deposits are richer in uranium, which permits lower pricing.

The United States Government purchased large quantities or uranium, primarily for use in defense programs, from 1943 to 1970. Many of the producers of this uranium continued operating after 1970 to supply the commercial demand for uranium. In most cases the tailings from Government and commercial purchases were mixed and stored in the same pile. These mixed tailings are now referred to as "commingled" tailings. There are about 56 million MT of defense-related tailings commingled with approximately 82 million MT of other tailings at 13 sites which are now licensed for milling uranium ore.

B. Hazards Associated With Uranium Byproduct Materials

The most important of the hazardous constituents of uranium mill tailings is radium, which is radioactive. We estimate that currently existing tailings at the licensed sites contain a total of about 85,000 curies [1] of radium. Radium, in addition to being hazardous itself, produces radon, a radioactive gas whose decay products can cause lung cancer. Figure 1 shows the radon production of tailings as a function of time.

[1] A curie is the amount of radioactive material that produces 37 billion nuclear transformations (e.g. disintegrations of radium into radon) per second.

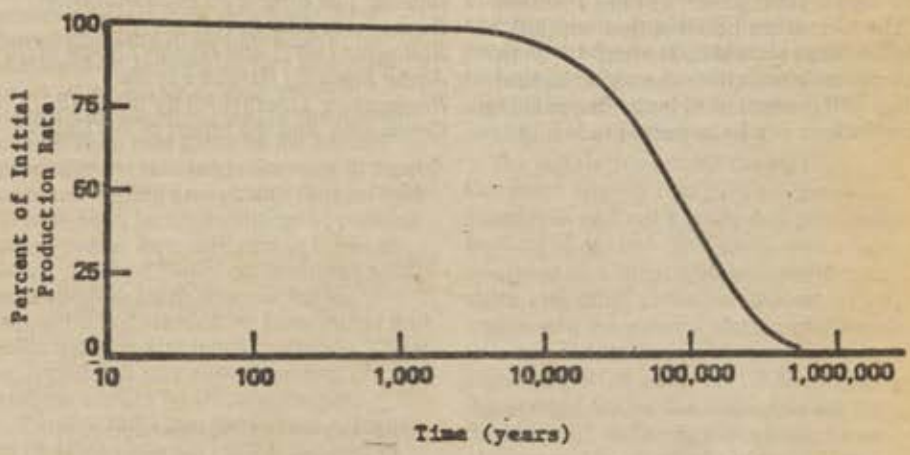


Figure 1. Radon production in a tailings pile.

The amount of radium in tailings, and, therefore, the rate at which radon is produced, will decay to about 10 percent of the current amount in several hundred thousand years. Other potentially hazardous constituents of tailings include arsenic, molybdenum, selenium, uranium and, usually in lesser amounts, a variety of other toxic substances. The concentrations of all of these materials vary from pile to pile.

The radioactivity and toxic materials in tailings may cause cancer and other diseases, as well as genetic damage and teratogenic effects. More specifically, tailings are hazardous to man primarily because: (1) Radioactive decay products of radon may be inhaled and increase the risk of lung cancer; (2) individuals may be exposed to gamma radiation from the radioactivity in tailings; and (3) radioactive and toxic materials from tailings may be ingested with food or water. The first of these hazards is by far the most important.

As noted above, the radiation hazard from tailings lasts for many hundreds of thousands of years, and some nonradioactive toxic chemicals persist indefinitely. The hazard from uranium tailings therefore must be viewed in two ways. Tailings pose a present hazard to human health. Beyond this immediate but generally limited health threat, the tailings are vulnerable to human misuse and to dispersal by natural forces for an essentially indefinite period. In the long run the future risks to health of indefinitely extended contamination from misused and dispersed tailings overshadows the short-term danger to public health. The Congressional report accompanying UMTRCA recognized the existence of long-term risks, and expressed the view that the methods used for disposal should not be effective for only a short period of time. It stated: "The committee believes that uranium mill tailings should be treated * * * in accordance with the substantial hazard they will present until long after existing institutions can be expected to last in their present forms * * *" and, in commenting on the Federally-funded program to clean up and dispose of tailings at the inactive sites, it stated "The committee does not want to visit this problem again with additional aid. The remedial action must be done right the first time." (H.R. Rep. No. 1480, 95th Cong., 2nd Sess., Pt. I, p. 17, and Pt. II, p. 40 (1978).)

For the purpose of establishing standards for the protection of the general public from radiation, we assume a linear, nonthreshold dose-effect relationship as a reasonable basis for estimating risks to health. This means we assume that any radiation dose poses some risk and that the risk of low doses is directly proportional to the risk that has been demonstrated at higher doses. We recognize that the data available preclude neither a threshold for some types of damage below which there are no harmful effects, nor the possibility that low doses of gamma radiation may be less harmful to people than the linear model implies. However, the major radiation hazard from tailings arises from alpha radiation, and, as the National Academy of Sciences' Advisory Committee on the Biological Effects of Ionizing Radiation (the BEIR Committee) stated in its 1980 report, for "* * * radiation, such as from internally deposited alpha-emitting radionuclides, the application of the linear hypothesis is less likely to lead to overestimates of risk, and may, in fact, lead to underestimates."

Our quantitative estimates of radiation risk are based on our review of epidemiological studies, conducted in the United States and in other countries, of underground miners of uranium and other metals who have been exposed to radon decay products, and on three reports: *The Effects on Populations of Exposure to Low Levels of Ionizing Radiation* (1972) and *Health Effects of Alpha Emitting Particles in the Respiratory Tract* (1976) by the BEIR Committee, and the report of the United Nations Scientific Committee on the Effects of Atomic Radiation entitled *Sources and Effects of Ionizing Radiation* (1977). Details of our risk estimates are provided in a previous EPA report, *Indoor Radiation Exposure Due to Radium-226 in Florida Phosphate Lands* (EPA 520/4–78–013), and in the DEIS.

Although the studies of underground miners show that there is a significant risk of lung cancer from exposure to radon decay products, there is some uncertainty about its magnitude. Exposures of miners were estimated from the time spent in each location in a mine and the measured radon decay product levels at those locations. However, radon decay product measurements were infrequent and often nonexistent for exposures of miners prior to the 1960's. The uncertainty increases when data for miners are used to estimate risk to members of the general public, because there are differences in age, physiology, exposure conditions, and other factors between the two populations.

In addition, we must make numerous assumptions when estimating the radiation dose to individuals and population groups which introduce other uncertainties. For example, we make our estimates for individuals who are assumed to spend their lifetimes in the same location, and we assume that people will continue to have the same life expectancy as the U.S. population did in 1970. Nevertheless, we believe the information available supports an estimate of risk which is sufficiently reliable to provide an adequate basis for these proposed standards. EPA's risk estimates are to be viewed as "best estimates," considering the above factors.

It is not possible to reduce the risk to zero for people exposed to radiation or, for that matter, to many other hazardous

materials. To decide on an appropriate level of (small) residual risk, we evaluated the costs and benefits of different levels of control. We also considered technical difficulties associated with implementing different levels of control.

C. Environmental Standards and Guidance Now Applicable to Uranium Tailings

EPA recognizes that it is establishing standards in an area that is already the subject of governmental regulation and has taken into account the existing schemes and levels of protection in developing this proposal.

EPA promulgated 40 CFR Part 190, "Environmental Radiation Protection Standards for Uranium Fuel Cycle Operations," on January 13, 1977 (42 FR 2858). These standards specify the upper limits of radiation doses to members of the general public to which normal operations of the uranium fuel cycle must conform. They cover radiation doses due to all environmental releases of uranium byproduct materials during the period a milling site is licensed, with the exception of emissions of radon and its decay products.

The Nuclear Regulatory Commission promulgated rules in 10 CFR Part 40 on October 3, 1980, which specify licensing requirements for uranium and thorium milling activities, including tailings and wastes generated from these activities (45 FR 65521). These rules specify technical, surety, ownership, and long-term care criteria for the management and final disposition of uranium byproduct materials. Some of these rules would be affected by these proposed standards, and the NRC has noted that any changes necessary will be made when these EPA standards are promulgated.

The NRC has also enumerated in 10 CFR Part 150 the authorities reserved to it in its relations with Agreement States under the provisions of UMTRCA, and has specified conditions under which Agreement States may issue licenses under UMTRCA (45 FR 65521). Under the Agreement State program, States can issue licenses for uranium processing activities, including control and disposal of uranium byproduct materials. These NRC conditions include the specification that State licenses must ensure that the standards proposed here are adhered to when they have been promulgated.

EPA promulgated 40 CFR Part 260 et seq., "Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities," under Subtitle C of the Solid Waste Disposal Act, as amended (SWDA) on July 26, 1982 (47 FR 32274). Although radioactive materials controlled under the Atomic Energy Act of 1954, as amended, are not covered by the SWDA, UMTRCA requires that the standards proposed herein provide for protection of human health and the environment from nonradioactive hazards in a manner consistent with applicable standards promulgated under Subtitle C of the SWDA. The Act also requires the NRC to ensure conformance to "* * * general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material under [Subtitle C of the SWDA]."

EPA promulgated 40 CFR Part 440, "Ore Mining and Dressing Point Source Category; Effluent Limitations Guidelines and New Source Performance Standards, Subpart C—Uranium, Radium and Vanadium Ores Subcategory," on December 3, 1982 (47 FR 54598). The purpose of 40 CFR Part 440 is to establish effluent limitations, guidelines, and standards under the Clean Water Act for existing and new sources in a number of ore mining and dressing subcategories. Out of 27 mills in the uranium, radium and vanadium ores subcategory existing at that time, only one was discharging directly to surface water. In view of this, the regulations did not establish best available technology (BAT) limitations for existing sources in this subcategory. The one direct discharging uranium mill is currently regulated by a discharge permit in accordance with previously existing best practicable control technology (BPT) effluent limitations contained in 40 CFR Part 440. The new source performance standards were based upon the demonstration of no discharge to surface waters at the 26 other mills. These standards were derived for locations where the annual evaporation rate exceeds the annual precipitation rate (as is the case in most uranium milling areas), and require that "There shall be no discharge of process waste water from mills using the acid leach, alkaline leach, or combined acid and alkaline leach process for the extraction of uranium or from mines and mills using in-situ leach materials." That is, it prohibts any contamination of surface waters by these activities.

Finally, radiation protection guidance to Federal agencies for the conduct of their radiation protection activities was issued by the President on May 13, 1960 and published on May 18, 1960 (25 FR 4402). Federal Radiation Protection Guidance governs the regulation of radioactive materials by the NRC and Agreement States, and includes the following guidance: "* * * every effort should be made to encourage the maintenance of radiation doses as far below [the Federal Radiation Protection Guides] as practicable * * *" and "There can be no single permissible or acceptable level of exposure without regard to the reason for permitting the exposure. It should be general practice to reduce exposure to radiation, and positive effort should be carried out to fulfill the sense of [this Guidance]. It is basic that exposure to radiation should result from a real determination of its necessity." This guidance is currently known as the "as low as reasonably achievable" (ALARA) principle. It is particularly suited to minimizing radiation exposure in situations which vary greatly from site to site, or from time to time, and is an integral part of NRC and Agreement State licensing determinations.

The standards proposed here would supplement the above standards, guidance, and regulations in order to satisfy the purposes of UMTRCA to "* * * stabilize and control * * * tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public." UMTRCA does not provide specific criteria to be used in determining that these purposes have been satisfied. EPA's objective, when not preempted by other statutory requirements, has been to propose standards that (1) take account of the tradeoffs between health, safety, and environmental and economic costs and benefits in a way that assures adequate protection of the public health, safety, and the environment; (2) can be implemented using presently available techniques and measuring instruments; and (3) are reasonable in terms of overall costs and benefits.

The legislative record shows that Congress intends that EPA set general standards and not specify any particular method of control. Therefore, our analyses of control methods, costs, risks, and other pertinent factors emphasize the general characteristics of uranium mill tailings and the affected sites. UMTRCA gives the NRC and the Agreement States the responsibility to decide what methods will assure these standards are satisfied at specific sites. (However, EPA must concur with NRC regulations established to implement Section 82a(3) of UMTRACA.)

II. Summary of Background Information

The information upon which we have based these proposed health and environmental standards for tailings as licensed commercial uranium processing sites is summarized below. Additional background information and more complete presentations are given in our DEIS and RIA.

A. The Risks From Tailings

Uranium mill tailings can affect man through four principal environmental pathways:

• *Diffusion of radon-222, the decay product of radium-226, from tailings into indoor air.* Breathing radon-222, an inert gas, and its short half-life decay products, which attach to tiny dust particles, exposes the lungs to alpha radiation (principally from polonium-218 and polonium-214). The exposures involved may be large for persons who have tailings in or around their houses, or who live very close ot tailings piles. Additional, but smaller, exposures to alpha radiation may result from long-lived radon-222 decay products (principally lead-210 and polonium-210). Exposure due to radon from tailings in or around buildings is best estimated from direct measurements of its decay products in indoor air.

• *Disposal of radon and of small particles of tailings material in air.* Radon emitted from tailings is widely dispersed in air, and exposes both nearby residents and those at greater distances. These doses are predominately to the lungs. Wind erosion of unstabilized tailings piles creates local airborne tailings material. The predominant dose from airborne tailings is to the bones from eating foods contaminated by thorium-230, radium-226, and lead-210, and is small. Exposure due to airborne transport of radon and particulates from a pile usually can be directly measured only near the pile, but may be reliably estimated for larger distances using meteorological transport models.

• *Direct exposure to gamma radiation.* Many of the radioactive decay products in tailings produce gamma radiation. The most important are lead-214, bismuth-214, and thallium-210. Hazards from gamma radiation are limited to persons in the immediate vicinity of piles or removed tailings. Exposure due to gamma radiation from tailings is readily estimated from direct measurements.

• *Waterborne transport of radioactive and toxic material.* Dispersal of unstabilized tailings by wind or water, or leaching, can carry radioactive and other toxic materials to surface or ground water. Current levels of contamination appear to be low. However, contamination of surface and ground water and consequent intake by man and animals is possible. Potential exposure due to this possibility of ground and surface water contamination is highly site-specific and can generally only be determined by a careful survey program.

Our assessments of risks from tailings deal primarily with risks to man. This is because risks to other elements of the environment are judged to be much less significant, and would therefore be controlled to acceptable levels by measures adequate to protect man. In addition, the following discussion focuses largely on *current* levels of risk to man from tailings through air and water pathways. However, these current risks could be expanded by future misuse of tailings by man and by uncontrolled future effects of natural forces. Our proposed disposal standards reflect consideration of both current and potential future risks from tailings.

• *1. Air Pathways.* We estimated the hazards posed by emissions to air from tailings piles and from tailings used in and around houses. For the first case we used standard meteorological transport models and considered representative examples of exposure of people in the immediate neighborhood of a pile, the population in the local region, and the remainder of the national population. For the second, we drew largely upon experience from houses contaminated by tailings in Grand Junction, Colorado. Four sources of exposure were considered: inhaled short-lived radon decay products, gamma radiation, long-lived radon decay products, and airborne tailings particulates.

From this analysis we conclude:

(a) Lung cancer caused by the short-lived decay products of radon is the dominant radiation hazard from tailings. Estimated effects of gamma radiation, of long-lived radon decay products, and of airborn tailings particulates from the piles are generally much less significant, although high gamma radiation doses may sometimes occur.

(b) Individuals who have tailings in or around their houses often have large exposures to indoor radon and hence high risks of lung cancer. For example, in 50 percent of a sample of 190 houses with tailings in Grand Junction, Colorado, we estimate that the excess lifetime risk to occupants due to exposure to short-lived radon decay products prior to remediation may have been greater than 4 chances in 100.

(c) Individuals living near an uncontrolled tailings pile are also subject to high risks from short-lived radon decay products of radon emitted directly from tailings piles. For example, we estimate that people living continuously next to some tailings piles may have lifetime excess lung cancer risks as high as 4 chances in 100.

(d) Based on models for the cumulative risk to all exposed populations, we estimate that, *without* remedial action, the radon released directly from all tailings at presently (1982) licensed sites together would cause about 500 lung cancer deaths per century. This figure does not account for any likely additional deaths from misuse or windblown tailings because their number is difficult to predict, even though risk to individuals from such tailings may be somewhat greater than from direct radon emissions. By the year 2000, we estimate that, *without* remedial action, then-existing tailings would cause approximately 1200 to 1400 lung cancer deaths per century, depending on the amount of tailings generated by future demand for uranium. Of these, roughly 50 percent are projected to occur less than 50 miles from the piles.

There is substantial uncertainty in these estimates because of uncertainties in the rate of release of radon from tailings piles, the exposure people will receive from its decay products, and from incomplete knowledge of the effects on people of these exposures. The values presented here represent best estimates based on current knowledge. In addition, these estimates are based upon current sizes and geographical distributions of populations. If populations continue to increase in the future, the estimated impact would be larger.

We conclude that the primary objective of standards for control of hazards from tailings through air pathways is isolation and stabilization to prevent their misuse by man and dispersal by natural forces, such as wind, rain, and flood waters. The second objective is to minimize radon emissions from tailings piles. A third objective is the elimination of significant exposure to gamma radiation from tailings.

2. Water Pathways. Water contamination does not now appear to be a significant source of radiation exposure at most piles. However, in addition to radionuclides, nonradioactive toxic substances, such as arsenic, molybdenum, and selenium, can be leached from tailings and contaminate water. Such contamination could affect crops, animals, and people. Process water is used to carry tailings to the piles as a slurry. Rainwater also may collect on the piles. The greatest threat

of contamination appears to be from process water discharged to the piles from the mill, although, in principle, it could be from the gradual effects of rainwater over the indefinite future. Most of this water eventually evaporates or seeps away. Elevated concentrations of toxic or radioactive substances in ground water have been observed at many active sites (seven are identified in the DEIS), and in some standing surface water ponds (but only rarely in surface running water). Any future contamination of water after disposal would arise from the effects of rain or through flooding of a pile, from pentration of a pile from below by ground water, or from leaching of tailings transported off a pile.

A theoretical analysis performed for the NRC of a large model pile with no seepage control showed that contamination of ground water by selenium, sulfate, managese, and iron might exceed current drinking water standards over an area 2 kilometers wide and 8 to 30 kilometers long. More than 95 percent of this projected contamination was attributed to initial seepage of process water discharged to the pile during mill operations.

We recognize that the NRC generic model is only one of several that could be applied to contaminant transport in groundwater. Other models could predict greater or less risks of ground water contamination. An example of greater risk is a plume of contamination that, under certain circumstances, could still move cohesively towards a water supply after the flow of liquid through the tailings has stopped following closure of a pile.

In general, the movement of contaminants through a pile and subsoil to ground water depends on a combination of complex chemical and physical properties, as well as on local precipitation and evaporation rates. Chemical and physical processes can effectively remove or retard the flow of many toxic substances passing through subsoil. However, some contaminants, such as arsenic, molybdenum, and selenium, can occur in forms that are not removed. Typically, ground water can move as slowly as a few feet per year, and only in coarse or cracked materials does the speed exceed one mile per year. For these reasons, contaminants from tailings may not affect the quality of nearby water supply wells for decades or longer after they are released. However, once contaminated, the quality of water supplies cannot usually be easily restored simply by eliminating the source (although, in some cases, removing or isolating the tailings may contribute to improving water quality).

Based on results from the NRC generic model for mill tailings piles, it is likely that the observed cases of ground water contamination result from seepage of the liquid waste discharges from the mill, and can be controlled by preventing this seepage until the piles dry out by natural evaporation. Additional future contamination of ground water after these liquid wastes are dried up should be much smaller, and in most cases would be expected to be eliminated by measures required to control misuse of disposed tailings by man and dispersal by wind, rain, and flood waters. These measures should also effectively eliminate the threat of contamination of surface water by runoff or from leaching of tailings transported off piles, and provide a degree of protection of surface and ground water from contamination by flooding. However, at some sites, especially in areas of high rainfall or where ground water tables intersect the piles, special consideration of potential future contamination of ground water may be needed in designing disposal systems.

We conclude that the primary objective of standards for control of hazards from tailings through water pathways is to prevent loss of process water through seepage, prior to closure. A secondary objective is to avoid surface runoff and infiltration both before and after disposal.

B. Methods for Control of Hazards From Tailings

As noted above, the objectives of tailings disposal (and of tailings management prior to disposal) are to prevent misuse by man, to reduce radon emissions and gamma radiation exposure, and to avoid the contamination of land and water by prevenitng erosion of piles by natural processes and seepage of process water. The longevity of control is particularly important. This can be affected by the degree to which control measures discourage disruption by man; and by the resistance of control measures to such natural phenomena as earthquakes, floods, windstorms, and glaciers, and to chemical and mechanical processes in the piles. Prediction of the long-term integrity of control methods becomes less certain as the period of concern increases. Beyond several thousand years, long-term geological processes and climatic change become the dominant factors.

Methods to prevent misuse by man and disruption by natural phenomena may be divided into those whose integrity depends upon man and his institutions ("active" controls) and those that do not ("passive" controls). Examples of active controls are fences, warning signs, restrictions on land use, inspection and repair of semi-permanent tailings covers, temporary dikes, and drainage courses. Examples of passive controls are thick earthen covers, rock covers, massive earth and rock dikes, burial below grade, and moving piles out of locations highly subject to erosion, such as unstable river banks.

Erosion of tailings by wind, rain, and flooding can be inhibited by contouring the pile and its cover, by stabilizing the surface (with rock, for example) to make it resistant to erosion, and by constructing dikes to divert rapidly moving flood waters. If necessary, erosion can be inhibited by burying tailings in a shallow pit or by locating them away from particularly flood-prone or otherwise geologically unstable sites.

Methods to inhibit the release of radon range from applying a simple barrier (such as an earthen cover) to such ambitious treatments as embedding tailings in cement or processing them to remove radium, the precursor of radon. Covering tailings with a permeable (porous) barrier, such as earth, delays radon diffusion so that most of it decays in and is therefore effectively retained by the cover. In addition to simple earthen covers, other less permeable materials such as asphalt, clay, or soil cement (preferably in combination with earthen covers) may be used. The more permeable the covering material, the thicker it must be to achieve a given reduction in radon release. However, maintaining the integrity of control of radon by thin, very impermeable covers, such as plastic sheets, is unlikely, even over a period as short as several decades, given the chemical and physical stresses present at piles.

The most likely constituents of cover for disposal of tailings are locally available earthen materials. The effectiveness of an earthen cover as a barrier to radon depends most strongly on its moisture content. Typical clay soils in the uranium milling regions of the West exhibit ambient moisture contents of 9 percent to 12 percent. For nonclay soils ambient moisture contents range from 6 percent to 10 percent. The following table provides, as an example, the cover thicknesses that would be required to reduce the radon emission to 20 pCi/m^2s for the above ranges of soil moisture. Four examples of tailings are shown that cover the probable extreme values of radon emission from bare tailings (100 to 1000 pCi/m^2s); the most common value for new tailings is

approximately 300 pCi/m²s. These values are for homogeneous covers. In practice, multi-layer covers using clay next to the tailings can significantly reduce the total thickness required. The DOE and NRC have conducted extensive studies which provide a basis for optimum design of tailings covers based on the locally available materials.

ESTIMATED COVER THICKNESS[1] (IN METERS) TO ACHIEVE 20 PCi/M²S

Radon Emission from Tailings (pCi/m²s)	Percent moisture content of cover			
	6	8	10	12
100	1.7	1.3	1.0	0.7
300	2.8	2.2	1.5	1.1
500	3.4	2.6	2.0	1.5
1000	4.1	3.2	2.4	1.8

[1] These values were calculated from equation (9) in Appendix P of the Final Generic Environmental Impact Statement on Uranium Milling, U.S. Nuclear Regulatory Commission, NUREG-0706, September 1980.
[2] A picocurie (pCi) is a trillionth of a curie. One picocurie of material produces just over two transformations per minute. A pCi/m²s is a unit for the release rate of radioactivity from a surface (m=meter, s=second).

Methods that control radon emissions will also prevent transport of particulates from the tailings pile to air or to surface water. Similarly, permeable covers sufficiently thick for effective radon control will also absorb gamma radiation effectively (although thin impermeable covers will not).

Two methods may be considered for protecting ground water at new tailings piles. The first is the placement of a physical barrier, called a liner, between the tailings and the aquifer zone, to prevent water containing hazardous constituents from entering the aquifer. Either clay or plastic liners can be used at about the same cost. Plastic liners are expected to perform satisfactorily throughout the lifetime of a model mill, i.e., about 15 years. Clay liners may require use of additional measures, such as partial neutralization of the tailings, especially at acid leach mills, to satisfactorily protect ground water, but are expected to retain their effectiveness for longer periods of time. The second method could be treatment of process water to modify its acidity or alkalinity, if such treatment were shown to prevent contamination. At a neutral level many hazardous constituents of tailings liquids become insoluble and thus not available to contaminate ground water. However, not all hazardous constituents are so affected, and the action of rainwater, selected weathering processes, and mineralization of the soil or rock matrix can upset this neutralization over time, thereby releasing contaminants. There is little difference in costs for these two methods. Liners are currently required by NRC as a matter of good engineering practice for most new tailings impoundments.

EPA does not believe it is necessary to require all new wastes at existing sites to be placed on new piles. Satisfying ground water standards at existing tailings sites without liners, however, will require widely varying actions from site to site. Ground water contamination is known to have occurred at seven sites, and may be occurring at many others. It may not be possible to clean up the ground water at some sites. In the worst cases a new, lined tailings pile may be required to prevent future contamination. In other cases existing tailings piles may release essentially no contaminants to ground water because the type of soil they rest on acts as an effective liner. In practice, most tailings ponds will fall somewhere between these two extremes. Less expensive corrective action than a new liner may be sufficient to satisfy ground water standards for hazardous constituents at many sites. For example, an active water management program may be employed to reduce the quantity of water in the tailings and thus reduce the driving force for ground water contamination, or back pumping of water around the piles may prevent losses to the surrounding ground environment. Corrective actions are already being taken at certain sites (Cotter Mill, Canon City, Co., and Homestake Mill, Grants, N.M., for example).

Control of possible long-term low-level contamination of ground water may sometimes be difficult. In cases where intrusion of contamination into ground or surface water is a potentially significant problem, liners and/or caps may provide a good degree of protection for at least many decades. However, more permanent protection may, in such cases, require choice of (for new tailings) or removal to (for existing tailings) a site with more favorable hydrological, geochemical, or meteorological characteristics.

Very effective long-term inhibition of misuse by man, as well as of releases to air and surface water, could be achieved by burying tailings in deep mined cavities. In this case, however, direct contact with ground water would be difficult to avoid. The potential hazards of tailings could also be reduced by chemically processing them to remove contaminants. Such processes have limited efficiencies, however, so the residual tailings would still require some control. Furthermore, the extracted substances (e.g., radium and thorium) would be concentrated, and would themselves require careful control.

We analyzed the costs of a number of possible control methods. These are described in the DEIS and the RIA. The total cost is affected most strongly by the type of material used to stabilize the surface of the tailings against erosion and to inhibit misuse by man, by the water protection features required, and by the number of piles that must be moved to new sites. In general, costs of covers using man-made materials (e.g., asphalt) are somewhat higher than costs for earthen covers. Active control measures are usually less costly in the short term than are passive measures. The costs for deep burial of tailings piles or for using chemical processing to extract radium are much higher than those for surface or shallow burial disposal using covers.

III. Scope of the Proposed Standards

UMTRCA defines the term "byproduct material" as " * * * the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content." The processing wastes included in this proposed rule are the tailings from uranium or thorium ore milling processes and from ores which have been heap leached primarily to recover source material, and solid wastes from *in situ* mining. It is clear from the definition of byproduct material, however, that Congress intended UMTRCA to apply to the conventional uranium (or thorium) industry and not to industries where source material is recovered as a secondary product. Thus, tailings from the phosphate and copper extraction industries are not covered by these proposed standards.

Solution extraction, or *"in situ"* mining, is a processing method in which uranium is recovered from ore without moving or disturbing the ore body. In this method holes are drilled at selected points around an ore body and a solvent is pumped into some holes and the resulting solution out other holes. The solvent passes through the ore, dissolves the uranium, and carries it back to the surface. The uranium is then stripped from the solution and concentrated. The solvent, which is stored in holding ponds, can be treated and reused or discarded. Although this method produces no sandy tailings, it does produce sludges that contain many of the same radioactive and nonradioactive substances found in tailings piles. Consequently, the above-ground wastes from *in situ* mining are covered in these proposed standards. We note that because *in situ* mining and conventional milling currently are done

in the same regions of the country, disposal of sludges on tailings piles may often be arranged.

Protection of ground water from the underground operations of *in situ* mining is provided by the Underground Injection Control program promulgated under Sections 1421 and 1422 of the Safe Drinking Water Act. The associated regulations, 40 CFR Parts 122, 123, and 146, impose administrative and technical requirements on such operations, through either approved State programs or EPA-implemented programs. The underground ore bodies depleted by *in situ* urnaium mining operations are excluded from these proposed standards under UMTRCA.

We are proposing standards for thorium byproduct material that are derived from and comparable to the proposed standards for uranium byproduct material. To our knowledge there is currently no processing of ore primarily to recover its thorium content. Projections of thorium demand indicate there will be little need for thorium during the next decade. Nuclear power programs using thorium consist of only one power plant, Fort St. Vrain in Colorado. There is a facility processing monazite sands for recovery of rare earths, operated by the W.R. Grace Co., near Chattanooga, Tennessee. This facility can also recover thorium from this ore, which is the primary source of thorium. However, thorium is a secondary product at this facility. We will keep informed of the situation involving thorium and, if additional information on thorium-related tailing develops, will consider the need for revising the general environmental standards proposed here for the wastes from thorium processing activities.

IV. The Proposed Standards for Operations

These proposed standards are divided into two parts. The first part, described immediately below, would apply to management of tailings during the active life of the pile and during the subsequent "closure period," i.e., after cessation of operations but prior to completion of final disposal, including the period when the tailings are drying out. These are standards that govern milling operations. Most are already in effect, but these proposed standards would make some small additions for the protection of ground water.

The second part specifies the conditions to be achieved by final disposal. Those standards would guide the activities carried out during the closure period to assure adequate final disposal. They are standards that govern the design of disposal systems.

There are four parts to the standards for operations prior to completion of closure. These limit particulate emissions, radon emissions, and contamination of surface and ground water.

A. Particulate Emissions

Radionuclides in particulate emissions from uranimum mill tailings piles during the period a mill is licensed are currently limited by standards under 40 CFR Part 190. These standards limit the annual radiation dose to members of the public to 25 millirem to the whole body or any organ (except the thyroid, which is limited to 75 millirem) as a result of discharges to the general environment from uranium fuel cycle facility operations.

B. Radon Emissions

Limits on radon emissions from active uranium mill tailings sites during operation are not currently included in EPA standards. Radon and its decay products were excluded form 40 CFR Part 190 because at the time those regulations were established considerable uncertainty existed about the feasibility of control of radon emissions from tailings piles. We concluded then that the considerations associated with controlling radon emissions were sufficiently different from those for other radionuclide emissions from uranium fuel cycle facilities to warrant separate consideration at a future time.

Radon concentrations in air in unrestricted areas are currently limited only by the NRC's general regualtions for protection against radiation (10 CFR Part 20). These standards, which are based on the Federal Radiation Protection Guides (25 FR 4402), provide an upper limit on the radon concentration of 3 pCi/1 in air in areas to which individual members of the public have unlimited access. Unrestricted areas in which permanent access by more than a few identified people is possible are further limited to an upper limit of one third of this value, or 1 pCi/1, through the operation of Federal Radiation Protection Guidance for situations in which individual doses are not monitored. The incremental increase in the working level concentration inside houses caused by 1 pCi/1 of radon in indoor air is about 0.005 WL. Such an increase maintained over a 15-year period (the operational period of an average mill) would cause an incremental lifetime risk of lung cancer of 1 in 1000.

In addition to these upper limits, Federal Radiation Protection Guidance calls for the further reduction of radiation exposure to levels that are "as low as practicable," based on consideration of the particular circumstances associated with control of exposures from any specific source (the so-called ALARA principle). Neither of the above limits were derived for application to the specific case of uranium mill tailings.

Practical methods which significantly reduce radon emissions during the operational phase of existing mills are management schemes limited in their effectiveness and can achieve, at most, factors of 2 or 3 reduction. The degree of reduction possible through such management schemes depends heavily on the characteristics of a given site. Such control involves keeping the tailings wet (usually with process liquids) or covering with earth those portions of the pile that are not in active use. (Another control method is to acquire additional land adjacent to a site so as to exclude public access, and thus limit the potentially high level of risk which could occur if people live very close to an operating tailings pile.) EPA believes that milling operations are too diverse to permit establishment of a general numerical standard without the need for so many exceptions that the standard itself would be meaningless.

Based on all of the above we have tentatively concluded that a more restrictive general radon standard than now exists for the operating phase of a mill is not practical or necessary and that application of the ALARA principle by the regulatory agency will assure adequate control of radon releases during the operating phase of a mill. However, we are soliciting comments on this and alternative means to limit radon; see Section VI below. Our tentative conclusion is based in large part on EPA's assumption that existing and future management schemes will reflect ALARA principles and will involve the specific measures described above. The regulatory agency should assure that exposure to radon emissions is minimized at each site, as far below existing limits as is reasonably achievable, through the choice of optimized tailings management procedures and site boundaries.

C. Discharges to Surface Waters

Only one site currently discharges wastes to surface waters. Such discharges are unnecessary where annual natural evaporation is greater than precipitation because liquid wastes can be stored in a pond which has been lined to prevent seepage into ground water and allowed to evaporate.

Discharges to surface waters are currently governed by the provisions of the Clean Water Act. EPA regulations are in effect which define best practicable technology (BPT), and new source performance standards (NSPS) for control of discharges from mills using the acid leach, alkaline leach, or combined acid and alkaline leach process for the extraction of uranium (40 CFR Part 440).

In view of the comprehensiveness and adequacy of the regulatory program in place for surface water discharges from the uranium milling industry, we believe no additional standards for surface water are needed under UMTRCA.

D. Protection of Ground Water

Section 275b(2) of the Atomic Energy Act, as added by the UMTRCA, requires that these standards protect human health and the environment from nonradiological hazards in a manner consistent with the standards required under subtitle C of the Solid Waste Disposal Act (SWDA). Section 84a(3) directs the NRC to "* * * insure that the management of any byproduct material * * * conforms to general requirements established by the Commission, with the concurrence of the administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the Solid Waste Disposal Act, as amended."

In considering standards for groundwater protection for active uranium mill tailings piles in relation to SWDA regulations, EPA was guided by two considerations, each of which is discussed in some detail below. The first consideration is that, unlike the statutory scheme of SWDA, the statutory scheme of UMTRCA shares responsibility between EPA and NRC. Under UMTRCA, NRC is responsible for promulgating regulations to implement the EPA standards, subject to EPA concurrence that the NRC regulations are consistent with SWDA.

The second consideration is EPA's view that Congress intended that EPA adhere to the protection principles and standards reflected and embodied in the SWDA regulations where appropriate and, where adherence seems inappropriate, to explain why deviation from the SWDA regulations in particular instances is reasonable.

The proposed regulations are standards which EPA considers appropriate to the divided EPA and NRC responsibilities and as consistent as is reasonable with the standards promulgated under SWDA. This means that the proposed UMTRCA standards differ from the SWDA standards in some respects. This also means that the UMTRCA standards do not address some areas addressed by the SWDA regulations. EPA expects that a comparable degree of comprehensiveness would be afforded under UMTRCA when the companion NRC regulations are in place.

Congress in 1978 excluded the active uranium mill tailing waste it was addressing in UMTRCA from the ambit of SWDA to avoid duplication of NRC licensing and EPA permitting functions. In requiring "consistency," Congress could not have meant that the UMTRCA standards be those applicable to active uranium mill tailings under SWDA since by its own definition there would be none. What Congress intended, EPA believes, is that EPA bring to bear on the non-radioactive hazards associated with wastes regulated under UMTRCA (primarily but not exclusively groundwater contamination) the same protection principles it applies to similar hazards associated with the waste regulated under SWDA.

Since Congress in UMTRCA was addressing the hazards associated with radioactivity in waste, as well as any non-radioactive hazards, it follows that EPA should take cognizance of both kinds of hazard in these regulations. Likewise, EPA may take cognizance of any differences between the nonradioactive hazards presented by these wastes and those addressed by SWDA. Both these considerations lead EPA to believe that Congress did not intend that the UMTRCA standards achieve a purely mechanical consistency with SWDA regulations which ignores differences in the hazards presented. EPA believes instead that Congress intended the UMTRCA standards to be consistent with SWDA standards where possible and that EPA explain differences where it believes a different standard to be appropriate. That is the course which EPA has pursued in these regulations.

EPA's requirements to protect health and the environment form radiological hazards in groundwater are discussed in the context of its treatment of nonradiological hazards through the SWDA requirements. The SWDA requirements (47 FR 32274, July 26, 1982) are a comprehensive regulatory program to protect human health and the environment from hazardous waste disoposal in or on the land.[2] This program includes identification and listing of hazardous materials; a manifest system to track hazardous materials from cradle to grave; controls for the transportation of hazardous materials; standards for owners and operators of hazardous waste treatment, storage and disposal facilities; and a permitting system for the treatment, storage and disposal of hazardous waste.

Unlike EPA's role in SWDA, EPA's role for controlling hazardous materials from uranium tailings under UMTRCA is limited to setting standards and does not include an implementing responsibility. That responsibility is vestd in the NRC and the States as the licensing agencies under Title II of UMTRCA (Section 84a(3)) and would be carried out through regulations set by the NRC, with the concurrence of the Administrator, upon promulgation of these standards by EPA.

The primary purpose of the SWDA ground water regulations is to protect ground water quality so as to provide reasonable assurance that human health and the environment will be protected. To accomplish this, the goal of the regulations is to minimize the migration of hazardous components of wastes. The SWDA strategy for achieving this goal has two basic elements. The first is a liquids management strategy that is intended to minimize leachate generation and to remove leachate before it enters the subsurface environment. This is the "first line of defense," in the sense that it seeks to prevent ground water contamination by controlling the source of the contamination. The second element is a ground water monitoring and response program that is designed to remove leachate from ground water if contamination is detected in excess of specified standards. This monitoring and response program serves as a backup to liquids management.

The SWDA strategy for groundwater protection is carried out differently depending on the nature of the facility involved. Subpart K of Part 264 applies this strategy to surface impoundments. Subpart L applies it to waste piles. Supart N applies it to landfills. EPA was faced with the question which of these applications provided the best model to follow in regulating hazards associated with waste disposed of at uranium mill tailings piles.

Waste piles under SWDA are considered a storage rather than disposal facility and thus do not provide an appropriate model.

Surface impoundments under SWDA function primarily to store or dispose of

[2] In the following, any references to SWDA regulations shall apply to those regulations, as amended, as of January 1, 1983.

solid and liquid waste. Regulations addressing surface impoundments used only for storage require a liner which is removed (along with the waste) after closure. Since the liner will be removed,the regulations permit liner design involving permeable materials that will allow liquid into but not through the liner. Regulations addressing suface impoundments used for disposal require use of a liner during active use of the facility which will prevent permeation of liquid into the liner and removal of free liquid and installation of a cover at closure. The cover is required to be equally or more impermeable than the liner.

Landfills under RCRA function primarily to dispose of solid waste. The regulations require that such units have a liner and a leachate collection and removal system and, after closure, a cover. Both liner and cover are required to have permeability characteristics similar to those for impoundments.

In both cases, the liner must be designed to prevent migration of liquid into the liner. For surface impoundments, postclosure migration of liquid waste is prevented by removal of the liquid. For landfills, which are not used for storage of liquid wastes, it is expected that any leachate will be removed before closure by the leachate collection and removal system. In both cases, leaching after closure is minimized by minimizing infiltration through use of a cover.

The standards proposed here are modeled on Subpart K. Active mill tailings piles typically contain large amounts of waste liquids. Leachate collection and removal systems such as those required in Subpart N are not appropriate for such situations.

The standard proposed here would put into effect the first element of the ground water protection strategy as to new piles or lateral extensions of existing piles by incorporating the standard of 40 CFR Section 264.221 of the SWDA regulations, relating to surface impoundments. This section requires a liner that is designed, constructed, and installed to prevent migration of wastes out of the impoundment to the adjacent subsurface soil, or ground water, or surface water during the active life (including the closure period) of the impoundment. In establishing the SWDA regulations, EPA considered as an alternative a requirement that the liner for waste facilities be designed, constructed, and installed to minimize migration of wastes out of the impoundment. Operators would have been able to comply with this alternative by using either a clay or a synthetic liner. The Agency ultimately rejected this alternative in favor of a no migration policy based on a synthetic liner requirement because (1) it prevents escape of all hazardous constituents, and (2) causes constituents reaching the liner to be retained so that they can be more readily removed before closure. However, under § 264.221, an exemption to the liner requirement may be granted if the owner or operator demonstrates that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into ground or surface water. Uranium mill tailings are produced at primarily arid western sites. For specific waste/site combinations of this type it may be that clay liners, natural soils, or combinations thereof may afford an equivalent level of protection and provide substantial advantages in terms of cost.

Section 264.221 also exempts the pre-existing portion of an impoundment and new wastes placed upon it from the liner requirement. The existing portion under these regulations is defined as the land surface area on which wastes (in this case, tailings) have been placed prior to the date of publication of these standards in final form.

Two points are important here. First, by providing an exemption procedure under SWDA to the liner requirement, EPA recognized that adequate ground water protection can be achieved at some locations through alternative facility designs (which might in this application include use of clay liners, or, in some cases the elimination of a liner requirement through use of natural soils). Although the presence or absence of these factors should not be deemed conclusive, an example of a situation for which this exemption may be appropriate is when the unsaturated zone below the impoundment is composed of materials that are capable of fixing any hazardous constituents in the process liquid before it reaches ground or surface water (e.g., holding up hazardous constituents through ion exchange).

Second, the requirement for a liner does not *a priori* apply to the land surface areas where tailings are currently placed, i.e., liners would not usually have to be installed under existing tailings. Depositing tailings on existing piles could continue as long as the pile surface area is not expanded and the secondary standards for concentrations of hazardous constituents in groundwater (see below) are not exceeded. However, any expanded portion of an existing impoundment would be subject to the same liner requirements (or their equivalent) as a new impoundment. If hazardous constituent concentrations exceed the ground water standards, continued deposition of tailings on an existing pile would not be permissible unless corrective actions are expected to achieve compliance or alternate standards have been established for the site. The EPA Regional Administrator could concur in such alternate standards only if doing so would result in no substantial present or potential hazard to human health or the environment.

While modeled on Subpart K, the proposed standards modify the Subpart K requirements to take cognizance of two characteristics of active mill tailing sites: their arid location and their association with radon emissions. EPA recognizes that disposal facilities regulated under SWDA may also be located in arid areas.

As part of that consideration, EPA is considering whether the arid location of the wastes allows post-closure removal of the liquid by evaportation. It is also considering whether net evaporation makes it less important that the liner be of impermeable rather than relatively impermeable materials so long as the liner is designed so that liquid not enter the groundwater prior to closure. After closure, the pile will be drying out and reducing the pressure head which creates the hazard of groundwater contamination. Treating the pile as if it were a surface impoundment used for storage would allow designers to capitalize on possible advantages clay may have over synthetic liners: e.g., the viscosity of the mateiral, which allows it to flow into gaps; and the chemical interaction with liquids, which fixes, filters out, and chelates hazardous constituents in the liquid. EPA solicits comment on these considerations.

The radiological hazard affects the permeability characteristics desirable for the cap. Subpart K requires the cap to be at least as impermeable as the liner to prevent build-up of liquid in the facility and increase of hydrostatic pressure. In theory, therefore, an impermeable liner necessitates an impermeable cap. However, long-term radiological protection requires a thick cover that retains some moisture (6–12%) in order to function as an effective barrier to radon. Such a cover requires a relatively stable foundation. For this reason EPA considers it appropriate to specify a cover permeability requirement for these wastes which differs from that of Subpart K.

Thus, the proposed standard would not apply the surface closure requirements of § 264.228 to uranium

byproduct material impoundments. This modification is proposed since the proposed standards for disposal of tailings (§ 192.32(b)) are adequate to protect ground water. The considerations involved are discussed in more detail below.

In summary, we propose here, as a primary ground water protection requirement for tailings placed on new piles, a liner to prevent seepage of leachate from tailings into ground water. However, consistent with the primary ground water protection standard specified in the SWDA regulations, we also permit exceptions to be granted to this requirement. (We propose as a ground water protection standard for existing tailings, and new tailings added to existing piles, the secondary numerical ground water standards discussed below.) In Section VI below we request comment on what exceptions are appropriate to this liner requirement, and on how the exception procedure should be applied. We also request comment on whether these proposed primary liner requirements are appropriate for application to these tailings sites.

The standard proposed here to carry out the second element of the SWDA ground water protection strategy is that contained in existing SWDA regulations, at 40 CFR 264.92 (and related sections). This proposed standard has several parts. The first part is contained in § 264.93 and identifies hazardous constituents as those listed in Appendix VIII of Part 261. We propose to add two hazardous chemical elements, molybdenum and uranium, commonly present in tailings. A second part is contained in § 264.94 and requires that " * * * no increase over background levels" be allowed for most listed constituents. This approach is consistent with a ground water protection philosophy that seeks to maintain ground water quality. The second part also contains Table 1—"Maximum Concentration of Constituents for Ground water Protection." These standards are maximum concentration limits for a particular set of toxic metals and pesticides, and were first established in the National Interim Primary Drinking Water Regulations (NIPDWR) as health-based concentration limits. We propose to add to the Table 1 standards the NIPDWR limit for alpha radioactivity, to cover the radioactive materials found in tailings.

These proposed standards would be established through the measurement of background concentrations of hazardous constituents in ground water at each tailings site for those hazardous constituents that are reasonably expected to be in or derived from the tailings. Standards would be established for most constituents at the background ground water concentrations, except in the case of materials listed in Table 1 of § 264.94. Those standards would be established as the higher of the background levels or the Table I concentration.

The SWDA regulations provide that the EPA Regional Administrator may exclude a hazardous constituent from the list of hazardous constituents applicable to a site if he finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment (§ 264.93(b) and (c)). He is also allowed to establish an alternate concentration limit for a hazardous constituent if he finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration is not exceeded (§ 264.94(b) and (c)). EPA believes that determinations as to what constituent levels pose a health hazard are a primary responsibility of EPA and cannot be delegated to other agencies. Therefore, we propose to retain effective control over granting of exemptions and establishment of alternate standards for ground water by requiring EPA concurrence in regulatory decisions regarding such exemptions and alternate standards.

Section 264.100 of the SWDA regulations requires that a corrective action program be initiated when hazardous constituent concentration limits are exceeded in ground water. The regulatory agency will review the plans for such corrective actions, and approve them only if they provide a reasonable degree of confidence that the proposed corrective actions will succeed. The SWDA regulations do not specify a numerical time limit within which such corrective actions are to be in operation. We propose to require corrective actions to be in operation as soon as is practicable, but in no case later than within one year of a finding by the licensor that a concentration limit has been exceeded. This requirement is reasonable for tailings sites because the fewer than 30 licensed sites all contain similar materials. The SWDA regulations require only that corrective action begin within a "reasonable" time period. However, the SWDA regulations are applicable to thousands of sites, with a wide variety of hazardous constituents.

The SWDA regulations similarly do not specify a time by which corrective actions should be completed. We believe flexibility in this respect is the only practical course. Once corrective actions have begun, the regulatory agency should evaluate their effectiveness and determine whether to continue, alter, or discontinue the actions. Because corrective actions are very site-specific such determinations should not be made under a uniform, pre-established schedule. It is the regulatory agency's responsibility, however, to assure that necessary decisions are rendered in a timely fashion. Acceptable plans for corrective actions should offer a high likelihood of achieving compliance with the standards. Furthermore, corrective actions which, once begun show inadequate promise of achieving compliance, should result in the regulatory agency's promptly disallowing the addition of new tailings to a noncomplying tailings pile.

Under our proposed standard, all new waste storage areas (whether new waste facilities or expansions of existing piles) are subject to the primary standard—the liner requirement. If new wastes are added to an existing pile, however, the pile must comply with the secondary standard—the hazardous constituent concentration standards for health and environmental protection. Whether for a new or existing pile, if the secondary standards are found not to be satisfied and subsequent corrective actions fail to achieve compliance in a reasonable time, the operator must cease depositing waste on that pile.

We considered treating all new wastes the same, without regard to whether they would be placed on new or existing piles. We did not select this alternative because we concluded it would result in less overall environmental protection than the proposed standard. That is, exempting new waste added to existing piles from the primary standard is environmentally preferable because the alternative, creating new piles, would increase radon emissions by increasing surface to volume ratios. If the primary standard were applied to all new waste, we believe mill operators would generally choose to create new lined impoundments and discontinue the use of existing piles. (Our economic analysis indicates that refitting existing tailings with liners is not cost effective.) Therefore, until disposal of the discontinued piles occured, which usually would take several years, two tailings pile surfaces would be exposed instead of one. Under available controls, radon and particulate releases to the air from two piles would exceed releases from one by approximately a factor of

two. Furthermore, post-disposal radon emissions from two piles will continue indefinitely to be about twice those from only one. Congress stated in UMTRCA that "* * * every reasonable effort (should) be made to provide for the stabilization, disposal, and control * * * of such tailings in order to prevent or minimize radon diffusion into the environment * * *" (Section 2.(a)). Creating additional tailings piles would not satisfy this primary objective of Congress.

A second objective of Congress under UMTRCA is that these standards be conistent with standards under UMTRCA so as to "* * * prevent or minimize other environmental hazards from such tailings * * *" If the primary standard were applied to all new tailings, most operators would be likely to choose to construct new, lined impoundments and discontinue use of existing piles. We believe this would not increase protection of the underground environment, but would create potential for additional contamination. Subsurface soils beneath existing, unlined impoundments are usually already contaminated. The ground water beneath these contaminated soils may or may not also be contaminated. However, if it is corrective actions must be taken to achieve compliance with the ground water protection standards. This situation (contaminated subsurface soil and, possibly ground water) exists regardless of whether or not new tailings are added to existing impoundments.

Placing new tailings in new, lined impoundments would cover additional land surface with tailings, beneath which soils are not initially contaminated. The liner is expected to prevent seepage of hazardous constituents into the subsurface. However, if the liner fails, the underlying soils, and perhaps, ground water, would become contaminated.

Since the secondary standard basically requires that ground water not be degraded, the major additional effect of a fully successful liner would be to prevent hazardous constituents from entering the ground beneath a pile. Therefore, applying the primary standard to existing piles would force their replacement with new lined piles, which, if they are fully effective, would leave the underground environment at the facility as it is, and if not fully effective, could approximately double the contaminated area.

The secondary standard assures that any leakage from either lined or unlined piles will not significantly degrade the environment or pose a hazard to human health. In our judgment, creating additional piles produces a health detriment from airborne radioactivity that exceeds any benefits from improved water protection and creates the possibility of additional contamination of subsurface soil. We find, therefore, that requiring liners (the "primary" standard) for all future operations of existing piles rather than conformance to ground water standards (the secondary standard) would be likely to: (1) Increase radon and particulate releases; (2) not materially improve protection of the ground water; and (3) commit additional land surface permanently to waste disposal. Therefore, on balance, it appears that exempting new waste added to existing uranium mill tailings piles from the primary requirement if preferable for both health and environmental protection.

There are several SWDA regulations that specify monitoring after closure of an impoundment. Monitoring is a compliance activity conducted to assure that health and environmental standards are being met. The regulatory agency is responsible for establishing such requirements, including post-closure monitoring consistent with the SWDA regulations. The period over which post-closure monitoring is normally required under SWDA is 30 years. The regulatory agency should recognize, however, that monitoring of ground water for shorter or longer periods may be needed for the specific sites where tailings are located and, when appropriate, change this requirement.

The SWDA regulations are complex as well as comprehensive. In order to facilitate comment on these proposals we summarize below the sections of those regulatons which relate to the separate EPA and NRC responsibilities. EPA's responsibilities to establish standards under Section 206 of UMTRCA would be carried out through adoptation of all or part of the following sections of the SWDA regulations:

i. Subpart F:

40 CFR 264.92 Ground water protection standard
40 CFR 264.93 Hazardous constituents
40 CFR 264.94 Concentration limits (these three sections are modified and adopted as 192.32(a)(2))
40 CFR 264.100 Corrective action program (this section is modified and adopted as 192.33)

ii. Subpart G:

40 CFR 264.111 Closure performance standard (this section is adopted as part of § 192.32(b)(1))

iii. Subpart K:

40 CFR 264.221 Design and operating requirements for surface impoundments (this section is modified and adopted as § 192.32(a)(1))

NRC's responsibilities under UMTRCA are to implement EPA's standards and to "insure that the management of any byproduct material * * * is carried out in such a manner as * * * conforms to general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the SWDA, as amended." EPA will insure that NRC's regulations satisfy these admonitions through its concurrence role. Relevant SWDA regulations are those embedded in Subparts A (except § 264.3), B, C, D, E, F, G, H, and K. Examples of areas which NRC must address in discharging these responsibilities involve functions under the six sections immediately above which are incorporated into these proposed EPA standards, and the following sections of the SWDA regulations:

i. Subpart F:

40 CFR 264.91 Required programs
40 CFR 264.95 Point of compliance
40 CFR 264.96 Compliance period
40 CFR 264.97 General ground water monitoring requirements
40 CFR 264.98 Detection monitoring program
40 CFR 264.99 Compliance monitoring program

ii. Subpart G:

40 CFR 264.117 Post-closure care and use of property

iii. Subpart K:

40 CFR 264.226 Monitoring and inspection (of impoundment liners), as applicable

EPA and NRC are coordinating their efforts to insure health and environmental protection from uranium byproduct materials. In particular, we are working closely with the NRC to assure that NRC's general requirements for ground water protection will be comparable, to the maximum extent practicable, to EPA's requirements under the SWDA for similar hazardous materials.

V. The Proposed Standards for Disposal

The objectives of tailings disposal and measures available to achieve these objectives have been described in Section II. We evaluated a range of alternatives for disposal standards

based on these objectives and control measures. These alternatives are presented below. The ranges of the controls vary widely, from no control (Alternative A) to high levels of control (Alternative F). They do not include different levels of ground water protection, since those requirements must be consistent with standards that have already been established under the SWDA. However, the length of time ground water is expected to be protected is indicated.

Uranium mill tailings will remain hazardous for hundreds of thousands years, due to the 75,000-year half-life of thorium-230. Protection of public health by disposal of these tailings for such periods is difficult to conceptualize, much less assure. On a practical basis, we have assumed that the different types of controls can be reasonably relied on for the following typical periods:

- Active controls—about 100 years.
- Practical engineered controls—from a few hundred years to greater than 1,000 years.
- Controls featuring great isolation—many thousands of years, limited only by major geological activity.

Brief descriptions of each alternative follow:

Alternative A. This is the "no standards" case and represents conditions if nothing is done. The piles would remain hazardous for a long time, taking about 265,000 years for the radioactivity to decay to 10 percent of current levels. The radon emission rate is estimated to be 500 pCi/m²s from a typical existing pile and 300 pCi/m²s from a typical new pile. The background rate for typical soils is about 1 pCi/m²s. The concentration of some toxic chemicals in the tailings is hundreds of times background levels in ordinary soils, so that the potential for contaminating water and land is present and continues indefinitely.

Alternative B. Control measures include a minimal, thin earthen cover that is subject to active inspection and maintenance for 100 years. Active controls would also be required to prevent significant contamination of ground water, or ground water would be treated before use. No radon emission rate is specified.

Alternative C. A radon emission limit of 100 pCi/m²s is specified. This would usually require an earthen cover of about 1 meter thickness. The number of years for which the control measures shall be designed to be effective is not specified, but control systems would be actively maintained for 100 years, and should have some effectiveness for several centuries. Engineered control measures used to meet this limit should prevent contamination of ground water for at least a few hundred years.

Alternative D. In this alternative control measures are required to be designed to be effective for 1,000 years to the extent reasonably achievable and, in any case, for at least 200 years. (Therefore it is assumed control may not rely primarily on institutional maintenance.) The radon emission limit is 20 pCi/m²s. This would usually require an earthen cover of 2 to 3 meters thickness. Ground water would be protected for at least 1,000 years.

Alternative E. Passive control measures are required to be effective for at least 1,000 years at new tailings piles. This longevity is achieved by making any new impoundments below grade. Existing tailings would be subject to controls similar to those required under Alternative D. The radon emission limit is 20 pCi/m²s. This would usually require an earthen cover (up to the original ground level) of 2 to 3 meters thickness. Ground water would be protected for thousands of years.

Alternative F. Passive control measures are required to be effective for at least 1,000 years. This longevity is achieved through application of a very thick earthen cover usually 4 to 5 meters thick. The radon emission limit is 2 pCi/m²s. Ground water would be protected for many thousands of years.

These alternative cleanup and control standards can be generally categorized as:

(1) *Least cost* alternatives which provide minimum acceptable health and environmental protection, and depend upon the use of active methods of control (B and C);

(2) *Cost-effective* alternatives which provide greater and longer term health and environmental protection without reliance on active controls, but at somewhat higher costs (D and E); and

(3) *Nondegradation* alternatives which attempt to achieve close to the same health and environmental protection as might exist if the ore had not been mined; these entail much higher costs (F).

The analysis was based on assuming that remedial actions to satisfy a "least cost" tailings pile control standard would entail applying a thin earthen cover over the tailings and stabilizing it. Integrity of the cover would be assured through active maintenance for 100 years. Only minimal flood protection measures would be applied. Covers would be progressively thicker and much less dependent upon care under the more stringent alternatives, with commensurate upgrading of flood protection. Under the "nondegradation" alternatives, very thick covers or asphalt and/or cement fixation would be required.

We concluded that a "nondegradation" alternative would be difficult to justify, since the small incremental health and environmental benefits, when compared to the benefits for less stringent alternatives, do not appear to justify the relatively large additional costs.

We selected a "cost-effective" rather than a "least cost" alternative for the proposed standards, in part because it provides much greater protection of health and the environment for only a small cost increase above the least cost alternatives, and in part because it does not place primary reliance on institutional methods of control. The proposed standards provide for control and stabilization which would ensure, to the extent reasonably achievable, fully effective control for 1000 years, and in any case, for at least 200 years. Some effectiveness of control would be expected to continue for much longer periods. This control and stabilization would be designed to provide a barrier that will effectively minimize the potential for misuse and spread of the tailings, limit the average radon emission from the surface of tailings piles to no more than 20 pCi/m²s, protect against flooding, and protect from wind and water erosion.[3]

It was not possible to carry out a formal quanitative cost-benefit analysis to reach these conclusions. Many of the hazards reduced (or avoided) through application of alternative standards can neither be evaluated quantitatively nor restated in terms of a common index of value. The major hazard, the extent of possible future misuse of tailings by

[3] These proposed radon emission and longevity standards for disposal of tailings from active mills are essentially identical to the corresponding standards (40 CFR Part 192, Subpart A) we have already promulgated for tailings piles at inactive sites (48 FR 590–604, January 5, 1983). Subpart A, however, contains an approximately equivalent alternative standard, expressed in terms of the radon concentration in air at the edge of the tailings pile. We developed this alternative at the request of the Department of Energy, which will perform the actions needed to comply with that standard. The concentration alternative in Subpart A requires basically the same level of control as the 20 pCi/m²s emission standard, because the radon concentration we allowed at the edge of a pile was derived from the average radon emission rate from its surface. By contrast, an ambient concentration standard applied at the site boundary could be satisfied by establishing the boundary far enough from the pile, without necessarily reducing its radon emissions. Since the special form of concentration standard in Subpart A may be readily confused with ambient concentration standards that have a very different basis and purpose, we decided not to propose such an alternative to the emission standard for active mills.

man, is almost impossible to quantify. A further complication is that the benefits of successful control accrue over a very long period of time, whereas the costs occur now. We can only roughly estimate how long control will last and how many cases of lung cancer might be avoided over the full term of effective control.

Instead of a quantitative cost-benefit analysis, we have cited examples of the impact of misuse and dispersal by wind and water in the DEIS, and have estimated the impact of radon emissions from unstabilized piles. We have then estimated the extent to which these impacts might be avoided over the long term under realistic alternative standards, and made judgments about which alternatives offer the most cost-effective reduction of these impacts. The proposed standards are based on the results of such an analysis of alternatives including a detailed consideration of their costs.

One notable conclusion from our analysis is that applying thin covers that will require active maintenance and last a shorter time results in a small saving over providing tailings piles with thick, durable covers. This conclusion follows from the initial expenditures required to undertake any significant level of disposal at mill sites. For example, the saving in cost is only 20% for Alternaive C over Alternative D. (Other things being equal, we estimate the cost of adding 1 meter of earthen cover to all existing tailings to be 36 million dollars (1981 dollars, present worth)). Alternative D, however, provides significantly greater protection than Alternative C, a five fold lower risk to individuals and an order of magnitude (about a factor of ten) greater number of cancer deaths avoided over the lifetime of the cover. This accrues from the difference in degree and longevity of radon control alone. Thick covers, which do not require continuing inspection and maintenance activities, also offer greatly increased benefits by inhibiting misuse, and increasing the longevity of the cover's effectiveness against erosional spreading.

Cost and benefit estimates for the alternative standards we considered are reported in detail in the RIA and DEIS. These are summarized in the following two tables. The estimates are based on a low-growth scenario for uranium production prepared by DOE. The low-growth scenario currently appears to be the most likely case due to the recent cancellation of reactor orders and the long lead time (14 years) for licensing and constructing new reactors.

We estimated benefits under the assumption, when appropriate, that tailings pile control systems will be partially effective longer than a standard requires. For example, if control systems are required to be effective for as long as reasonably achievable up to 1000 years, but for not less than 200 years, as under Alternative D, most of the tailings piles will be stable against erosion and casual intrusion for misuse for much longer than 1000 years. Those few piles that are susceptible to flood damage would be protected for at least 200 years, and are unlikely to suffer real damage for much longer. During the period of full control, the maximum risk for individuals living very near a tailings pile from exposure to its radon emissions would be reduced by about 95 percent from about 4 chances in 100 to about 2 chances in 1000. An estimated 1200 potential premature deaths per century would be avoided during the period of full control (assumed here to be 1,000 years), for a total of many thousands over the life of the covers.

COSTS OF ALTERNATIVE STANDARDS FOR TAILINGS CONTROL TO THE YEAR 2000

[Millions of 1981 dollars]

Alternative	Present worth costs (10 percent discount rate) [1]		Total cost
	Existing tailings	Future tailings	
A	0	6	6
B	88	228	326
C	128	259	387
D	174	311	485
E	174	325	499
F	296	444	740

[1] Cost estimates are based on a low growth industry demand scenario to the year 2000. It is assumed that 75 percent of new tailings generated at existing mills will be stored in existing piles and the other 25 percent will be placed in new, lined impoundments. We assume that the average radium content of existing and future tailings will be 500 pCi/m²s and 300 pCi/m²s, respectively. These costs are derived from the costs presented in the DEIS and the RIA based on the specific cover thickness required to meet the radon emission limits of each alternative standard.

BENEFITS OF CONTROLLING URANIUM MILL TAILINGS AT ACTIVE MILL SITES THROUGH THE YEAR 2000 [*]

Alternative standards	Stabilization			Radon control			Water protection (longevity)
	Chance of misuse	Misuse inhibited (y)	Erosion avoided (y)	Maximum risk [*] of lung cancer (percent reduction)	Deaths avoided: 100 years	Deaths avoided: Total	(y)
A	Very likely	0	0	4 in 10^2 (0)	0	0	0
B	Likely	100	Hundred	2 in 10^2 (50)	600	2,600	100
C	Less likely	Few 100	Hundreds	1 in 10^2 (80)	1,000	Several thousands	100's
D	Unlikely	1,000	Thousands	2 in 10^3 (95)	1,200	Tens of thousands	1,000
E	Unlikely	>1,000	Many thousands	2 in 10^3 (95)	1,200	Tens of thousands	>1,000
F	Very unlikely	> 1,000	Many thousands	1 in 10^4 (10>99)	1,200	Tens of thousands	>1,000

[*] These estimates inlcude the benefits resulting from control of 23 existing piles and 40 projected new piles based on the low growth uranium supply estimate.
[*] Lifetime risk of fatal cancer to an individual assumed to be living 600 meters from center of a tailings pile.

Our estimates of the number of potential lung cancer deaths due to *uncontrolled* radon emissions from two model sites provides some perspective on the health benefits from control of radon releases at differently populated sites. For a moderately populated site (identified as a rural site in the DEIS), 39 lung cancer deaths per century were projected, and for a sparsely populated site (identified as a remote site in the DEIS), 13 lung cancer deaths per century were projected. (Total lung cancer deaths from all the piles were estimated by assuming that 25% of the piles are located in "rural" areas.) Most piles are located in areas where the population falls somewhere between these two cases.

The longevity of tailings control is governed primarily by natural forces. Reasonable assurance of avoiding casual intrusion by man can be provided through the use of relatively thick and/or difficult-to-penetrate covers (such as soil, rock, or soil-cement). No standard can guarantee absolute protection against the purposeful works of man, and these proposed standards would not require such protection. Protection against natural forces requires consideration of wind and surface water erosion, and of the possibility of flood damage. Wind and surface water erosion are relatively well-understood and predictable, and are easily inhibited through the use of rock or, in some cases, vegetative surface stabilization. Similarly, a body of scientific and

engineering knowledge exists to predict the frequency and magnitude of floods for periods of many hundreds of years, and to provide the engineering controls to protect against such floods (including the possibility of moving a pile if this is more economical). We considered longevity requirements ranging from 100 to 10,000 years and have concluded that existing knowledge permits the design of economically feasible control systems for these tailings for up to periods of 1,000 years. We recognize that it may not always be practical, however, to project such performance with a high degree of certainty, because of limited engineering experience with such long time periods.

We are aware of no historical examples of societies successfully maintaining active care of decentralized materials through public institutions for periods extending to many hundreds or thousands of years. We have concluded that primary reliance on passive measures is preferable, since their long-term performance can be projected with more assurance than that of measures which rely on institutions and on continued expenditures for active maintenance.

Section 202 of the UMTRCA requires the Federal Government or the States to acquire and retain control of these tailings disposal sites under licenses. The licensor is authorized to require performance of any maintenance, monitoring, and emergency measures that are needed to protect public health and safety. We believe that these institutional provisions are essential to support any project whose objective is as long-term as are these disposal operations, and for which we have as little experience. This does not mean we believe that primary reliance should be placed on institutional controls; rather, that institutional oversight is an essential backup to passive control. For example, as long as the Federal Government or the States exercise their ownership rights and other authorities regarding these sites, they should not be inappropriately used by people. In this regard, even with the disposal actions required by these standards it would not be safe to build habitable structures on the disposal sites. Federal or State ownership of the sites is assumed to preclude such inappropriate uses.

In the proposed standard we have designed the requirement for longevity of control so as to assure that it is practical for agencies to certify that the standards are implemented in all cases. We recognize that our ability to predict the longevity of engineered designs is not always adequate to the task at hand. The proposed standard would require that control measures be carried out in a manner that provides reasonable assurance that they will last, to the extent reasonably achievable, up to 1,000 years and, in any case, for a minimum of 200 years. The widely varying characteristics of the active sites, the uncertainties involved in projecting performance of control measures over long periods of time, and the large costs involved in moving some tailings piles to provide a very high degree of assurance of longevity make this choice appropriate. The choice does not signify that there are circumstances under which the maximum term of protection contemplated by the proposed standards is not appropriate. The choice merely acknowledges that implementing agencies may in some cases have difficulty certifying that control measures that are appropriate can reasonably be expected to endure without degradation for 1,000 years. Man's ability to predict the future is notoriously limited. That fact, which on the one hand warrants our making responsible societal efforts to limit risk to future generations, also warrants our refraining from actions undertaken merely in the name of necessarily artificial levels of statistical certainty.

We selected this period of performance because we believe there is a reasonable expectation that readily achievable controls will remain effective for at least this period. Every reasonable effort should be made to design controls to achieve this expectation. However, we recognize that uncertainties increase significantly beyond a thousand years, and we conclude it would be unreasonable to require assurance that the controls will be effective for longer periods, such as up to 10,000 years.

We believe that limiting radon emissions from tailings piles serves several important functions: reducing the risk to nearby individuals; reducing the impact of radon on large populations; and furthering the goals of reliable long-term deterrence of misuse of tailings by man and control of erosion of piles by natural processes. The degree of reduction of radon emissions achieved by a disposal system is more or less directly related to the degree of abatement of each of these hazards.

Our analysis predicts significant risk to people living next to tailings piles, and field measurements confirm elevated levels of radon in air close to the piles. If radon emissions are not reduced, we estimate that individuals residing permanently near some of the piles could incur as much as three to four chances in a hundred of a fatal lung cancer in addition to normal expectations. The fact that increases in radon levels due to the piles cannot be distinguished relative to background levels further away from a pile does not mean that radon is not present or that there is no increased risk from this radon—it merely means that measurements are not capable of unambiguously detecting such levels. For individuals at greater distances the risks are smaller, but the total number of people exposed is so large and exposure continues for so long that the collective risk is clearly significant (many thousands of fatal lung cancers over the duration of emission control for all of the piles).

On January 5, 1983, EPA published disposal standards for inactive tailings piles (48 FR 590). On the basis of the record before us in that proceeding we concluded that radon emission was:

> * * * The preferred quantity to be specified by the standard because, unlike ambient air concentration at the site boundary, it is directly related to the degree of radon control achieved and therefore directly fulfills the statutory intent to reduce emissions. A site boundary standard would serve merely as an encouragement to rely on dispersion because it would not necessarily result in control of radon emissions since the boundary might be moved far from the pile. It would rely for compliance on indefinitely excluding access to the site.

We also concluded that:

> * * * A limit on a radon emission is the most direct and appropriate means for furthering the Congressional objective of adequate and reliable long-term control of tailings. Such a limit assures a sufficent earthen cover (or its equivalent) to provide an acceptable degree of stabilization and isolation of the tailings over a long period of time. Congress did not intend that EPA set standards for one generation only, or that it set standards without consideration of the long-term reliability of whatever means are available for implementing them. (Similarly, Congress anticipated that short-term institutional controls would not provide the primary basis for protection.) Although the implementing agencies will decide which specific controls to employ, this does not preclude our considering, in accordance with Congress' directive, the effect of a particular numerical limit on the maintenance of future control. Therefore, in selecting the value for radon emissions, an important consideration was that the standard promote the objectives of adequate isolation and stabilization to control both intrusion by man and erosion by natural forces.

We have reached, on a tentative basis, the same conclusions for these proposed standards for active sites.

However, during the review of the standards for inactive sites by certain Federal agencies required by Section

206(a) of the Act and Executive Order 12291, questions were raised regarding the appropriateness of the control standards for general application to all 24 inactive sites. These questions were focused on the degree to which these standards should depend upon institutional control, and on the assumption that all piles should be treated equally, regardless of the size of the nearby population. In view of these concerns, EPA requested public comments on this issue in an advanced notice of proposed rulemaking (48 FR 605; January 5, 1983). We believe that these questions are relevant as well in establishing disposal standards for mill tailings at the active sites. In Section VI below we request comment on these issues and on whether the standards should reflect different judgments.

Primary ground water protection after disposal of tailings is best provided by a well-designed cover. The requirements for closure (disposal) of surface impoundments under EPA's regulations for hazardous waste include a cover designed and constructed to: (a) Provide long-term minimization of the migration of liquids through the closed impoundent; (b) function with minimum maintenance; (c) promote drainage and minimize erosion or abrasion of the final cover; (d) accommodate settling and subsidence so that the cover's integrity is maintained; and (e) have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present (40 CFR 264.228).

EPA's policy on long-term protection of ground water is stated in the preamble of the notice establishing the above regulations (47 FR 32274):

> EPA's view of the function of a liner contrasts somewhat with that of some members of the public and the regulated community. Some have argued that liners are devices that provide a perpetual seal against any migration from a waste management unit. EPA has concluded that the more reasonable-assumption, based on what is known about the pressures placed on liners over time, is that any liner will begin to leak eventually.
>
> Others have argued that liners should be viewed as a means of retarding the movement of liquids from a unit for some period of time. While this view accords with how liners do in fact operate, EPA does not believe that this is a sound regulatory strategy for ground-water protection because it is principally designed to delay the appearance of ground-water contamination rather than to achieve a more permanent solution. Accordingly, EPA views liners as a barrier technology that can be best used to facilitate the removal of liquids from a waste management unit during its active life (including the closure period) and thereby provide a greater assurance of long-term protection at the facility.
>
> While liners may remain effective at preventing migration from [a tailings pile] until well after closure, their principal role occurs during the active life [of the pile.] After closure, EPA believes that a protective cap becomes the prime element of the liquids management strategy. A well-designed and carefully maintained cap can be quite effective at reducing the volume of liquids entering a unit and therefore can substantially reduce the potential for leachate generation at the unit for long periods.

We believe that complying with the post-closure standards we are proposing for uranium mill tailings piles will satisfy the overall objectives of EPA's SWDA regulations for hazardous waste. The SWDA regulations, however, were developed primarily for ground water protection for regions in which precipitation seeping through wastes might pose a continuing long-term hazard. In contrast, most tailings piles are in arid regions, and providing physical barriers against removal of tailings and reducing the piles' gaseous (radon) emissions to air are important concomitant objectives of our standards under UMTRCA.

Certain closure and post-closure care requirements in § 264.228 of the SWDA regulations, such as the requirements to eliminate free liquids from the waste and for the cover to be less permeable than any bottom liner or natural subsoils, may be unnecessary for tailings piles or interfere with control objectives other than ground water protection. (For example, allowing moisture into a cover increases its effectiveness as a barrier to radon release.) Other requirements in § 264.228 are not standards so much as broad objectives that are already implicit in § 264.111, which we have incorporated in the proposed standards, or tailings management rules that fall under NRC's regulatory authority. Therefore, we have not incorporated § 264.228 in the proposed standards.

The proposed rules are based on experience and an analysis of tailings management in arid regions. We know of no plans for construction of new mills in regions that are not arid, although some firms have conducted exploration in such regions. However, if uranium mining and milling is conducted in such regions, the adequacy and appropriateness of these standards may have to be reviewed, particularly the water protection requirements.

The final consideration regarding the disposal of tailings is specification of when disposal must take place. Several factors must be evaluated in this regard, including: (1) The likelihood that a mill will resume operations; (2) the specific condition of the tailings impoundment, such as the fraction of design life remaining, and environmental contamination problems, such as windblown tailings and the likelihood that significant quantities of tailings might be spread by flooding; and (3) the cost of maintaining releases from the inactive pile in conformance with the regulations which apply to operating mills prior to disposal (including maintaining radon emissions at ALARA levels). Evaluating these factors may be difficult and complex. However, although an adequate drying-out period makes possible long-term isolation of the tailings and stabilization of the piles, radon emissions will be greater during this period than before or after disposal. For this reason the regulatory agency should require, once a pile is allowed to begin to dry out, that disposal proceeds in an expeditious fashion, and that new liquids are not introduced to the pile so that a new drying-out period will be incurred.

The period required for the tailings to dry out is highly dependent on local meteorology. This precludes establishing a single fixed time for disposal of the tailings. We have concluded that the regulatory agency should exercise the responsibility of determining when disposal should occur, by site-specifically judging the advantages and detriments associated with all pertinent factors. This responsibility is governed by the need to conform to regulations established to satisfy the SWDA, by 40 CFR 190, and by the ALARA requirement on radon emissions.

NRC's closure regulations must be comparable, to the maximum extent practicable, to requirements under the SWDA, wherein short closure periods (90 and 180 days) are specified. Drying out of piles will take much longer. However, disposal should occur promptly when piles are allowed to dry out. In addition, some of the older mill sites already contain essentially completed (filled) tailings piles. The regulatory agency should promptly identify and require disposal of such tailings.

The proposed post-closure standards are intended for control of tailings piles; i.e., bulk tailings with elevated radium concentrations relative to those of common soils and rocks. Such post-closure control criteria need not apply to portions of a mill site that may contain low enough residual levels of byproduct material (tailings) to not warrant taking action for environmental or public health protection. Tailings that have been distributed over the mill site by

wind or water can readily be cleaned up. Therefore, we propose to apply the post-closure standards only where the radium concentrations exceed the criteria stated in § 192.32(b)(2). These criteria are equivalent to the final cleanup standards (40 CFR Part 192, Subpart B) for land that is affected by tailings from inactive sites. Unless special circumstances prevail that would indicate otherwise, land that satisfies the criteria should be usable without restriction.

Section 83 of the Atomic Energy Act, as amended by UMTRCA, provides that the ownership of land used for disposal of tailings shall be transferred to the United States or to the State in which it is located, unless the Nuclear Regulatory Commission determines that such transfer is not necessary.

VI. Solicitation of Comments

These proposed standards are supported by two documents, a Draft Environmental Impact Statement for the Control of Byproduct Materials from Uranium Ore Processing (40 CFR Part 192), EPA 520/1–82–022 and a Regulatory Impact Analysis of Environmental Standards for Uranium Mill Tailings at Active Sites, EPA 520/1–82–023. We invite the submission of written comments on these proposed standards and on these supporting documents. Whenever appropriate, it will be most useful if these are supported by factual material. We are also holding a public hearing. Times and addresses for both written comments and the public hearings are specified under the headings "dates" and "addresses" at the beginning of this notice.

In addition to comments on the above, we are interested in receiving comments and data on three specific matters: (1) Should the radon control standards require a specific level of control of radon from tailings prior to disposal, and, if so, how; (2) should the health and environmental goals for standards for remote sites be different from those in more populated areas, and, if so, how; and (3) should the provisions of these proposed standards for a liner under tailings (new or existing) be modified for this specific category of wastes, and, if so, how.

The proposed standards do not specify an emission rate limit nor an airborne concentration limit for radon from tailings piles during the period when tailings are being pumped into the pond, nor while it is drying out. The estimated numbers of cancer deaths attributable to uncontrolled radon emissions during the assumed 15-year operating and 5-year dry-out periods of our model sites are significant: 1.8 lung cancer deaths for our model remote site and 5.5 for our model rural site. We estimate the total cancer deaths due to emissions from all sites to the year 2000 could range from 60 to 160 if there is no control of radon prior to disposal.

We estimate that applying the most effective control methods, such as staged disposal of new tailings, would reduce these effects to about 30. Seventy percent of these residual effects would be from existing tailings, for which little improvement in current practices is possible. The DEIS contains a discussion of the effectiveness of various pre-disposal radon control methods and their costs.

In Section IV we discussed the reasons we are proposing that these pre-disposal radon releases continue to be regulated under the ALARA ("as low as reasonably achievable") principle, rather than by proposing a generally applicable numerical requirement. Alternatively, under authority of the Clean Air Act, as amended, we could consider "work practice" standards, which, for present purposes, are narrative specifications of tailings management techniques to control radon emissions during mill operations and during the dry out period preceding disposal.

During the review of the standards for the inactive sites by certain Federal agencies, questions were raised regarding the appropriateness of the control standards for general application to all 24 inactive sites. Some reviewers suggested that less restrictive standards might be appropriate for sites that are in currently sparsely populated areas. Other reviewers suggested that we consider a radon standard that applies at and beyond the fenced boundary of such a site, i.e., a standard that relies in part on institutional maintenance of control of access. In view of these concerns EPA requested public comments on these issues for the inactive sites (48 FR 605 January 5, 1983). These issues are most simply stated as: (1) Should the degree of radon control after disposal depend in part or on the size of the current local population, and (2) Should implementation of the disposal standards be permitted to depend primarily or in part on maintenance of institutional control of access (e.g., by fences)? We believe it is also necessary to examine these issues for the active sites, both in relation to the public health and environmental objectives enunciated in this Notice and with repect to the objectives of the UMTRCA. Also, are there any other forms of the standard or control methods that EPA should consider? We request comments on all of these issues with respect to these proposed standards, to aid us in determining final standards for active mills.

The primary reason to consider revising the standards as the Federal reviewers suggested is to reduce disposal costs. Savings of up to 30 percent could be realized by applying the most relaxed standards at all sites. The actual savings would be less than this since such relaxed standards would apply at only a subset of all sites. This Notice and the supporting documents—the DEIS and the RIA—provide detailed information on the costs and benefits of a wide range of alternative standards, including examples of standards that permit reliance on institutional control methods. We invite comments on whether the cost savings from applying relaxed standards at remote sites or relying primarily on institutional controls is sufficient to justify any reduced level of health and environmental protection. We solicit comments on what *criteria* the Agency could use to define population levels below which a less restrictive standard might apply, and on whether there should be different risk levels permitted to the most exposed individuals in such cases. These is no reliable way to predict what future populations will be at currently remote sites. Should the standard be predicated on the assumption that current distributions of populations adequately predict future populations, or is it sufficient to protect only current populations?

It is also important to consider the other goals (other than control of radon emissions) of these proposed standards when assessing the cost savings that could be achieved by applying less restrictive standards at remote locations. The greatest risks from radon occur when tailings are misused in and around buildings, and an objective of the proposed radon emission standard is to require a thick enough cover to discourage such misuse. Is the likelihood of misuse of tailings from remote sites greater or smaller? Prevention of spreading of tailings and protection of water, depends on either the integrity and thickness of the cover or the reliability of institutional control. Are there differences in the likelihood of success of institutional controls at remote vs. populated sites? Commenters are asked to consider each of the goals of these proposed standards when commenting on the suitability of applying less restrictive standards to tailings located in currently remote areas.

Institutional controls have been suggested that would apply a radon concentration limit at the boundary ("fenceline") of the government-owned property around a tailings pile located in a sparsely populated area. Such a standard could be satisfied largely by acquiring and maintaining control over access to land; e.g., through use of fences or other restrictions. These proposed standards can be satisfied only by generally more costly physical methods (such as applying thick earthen covers) that control tailings and their emissions with minimal reliance on institutional methods. EPA is particularly interested in receiving comments regarding the adequacy of a standard which places primary reliance on the maintenance of institutional as opposed to passive control to meet the long-term disposal objectives of UMTRCA.

The primary standard for ground water protection under the SWDA is a requirement for a liner. Because the SWDA covers many kinds of wastes, those regulations provide a mechanism for exceptions from this requirement. However, uranium mill tailings are a well-characterized waste that is produced in relatively well-characterized regions of the country (primarily arid western sites). Should the proposed requirements for liners be modified for these mill tailings sites, and if so, how? How should the exemption procedure be applied to this category of wastes? Should all uranium mill tailings be placed on liners? If so, what specifications are appropriate for such liners? If not, what types of exceptions are appropriate? Finally, should existing tailing piles be exempted from a liner requirement if new tailings are placed on them? We invite comments on each of these subissues.

Finally, in establishing standards for remedial actions at inactive uranium processing sites, we provided a procedure for applying "supplemental standards" where circumstances may require some adjustment in our final standards. Because of the varied conditions at the designated sites and the limited experience with remedial actions, we felt our standards for inactive sites might be too strict in some circumstances. We have not proposed "supplemental standards" as a part of this rulemaking. However, we are soliciting comments on the need for such standards. Is there a need for supplemental standards because of differences in conditions at these active sites? If so, what form should such supplemental standards take?

Regulatory Impact Analysis

Under Executive Order 12291, we must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. We have classified this proposed rule as minor, since it will not cause significant incremental costs above those which must be incurred for compliance with existing regulations. We have prepared a Regulatory Impact Analysis (RIA), however, since there are wide variations in views regarding the need for environmental controls in the uranium industry. The RIA provides an additional basis for our conclusions. To meet the general reguirements of the order, an RIA must show that:

- There is adequate information concerning the need for and consequences of the proposed action;
- The potential benefits to society outweigh the potential costs; and
- Of all the altnerative approaches to the given regulatory objective, the proposed action will maximize net benefits to society.

There is a need for the proposed standard beyond the fact that Congress directed the Agency to develop them. Since uranium milltailings are essentially a waste product with no value, there is no market to assure that mill operators on their own accord will isolate the tailings and provide health protection to the public. Consequently, the Government must intervene to protect the public from the hazards associated with the tailings. Federal Government intevention is necessary because some mills are licensed by state authorities while others are licensed by the NRC directly. Four of the seven states with currently licensed mills are NRC Agreement States and have devloped their own licensing regulations for uranium mills. Therefore, relying on State regulations would address only about one-half of the tailings problem. Furthermore, the Act requires that regulations for mill tailings developed by the Agreement States be "equivalent, to the extent practicable, or more stringent than standards" promulgated by NRC and EPA. Therefore, the State regulations are also dependent on the EPA standards.

The RIA examines the benefits and costs of selected tailings disposal methods for both existing and new tailings piles, on a model pile basis. As discussed earlier, most of the benefits of tailings disposal cannot be quantified. The benefit we are best able to estimate is the number of lung cancer deaths avoided by controlling the radon emanation from tailings piles. Since the other benefits of disposal—prevention of misuse, ground water protection and prevention of the surface spread of tailings—cannot be quantified (let alone monetized), we could not make a numerical determination, within the traditional benefit-cost analysis framework, that the societal benefits outweigh the societal costs. Instead, we have made a qualitative judgment that this is the case, based on our assessment of the long-term continuing train of benefits to society from isolating these hazardous materials from man and the environment.

We performed a cost-effectiveness analysis of the alternative disposal methods to determine the optimal level of control for disposal of mill tailings. To perform this analysis, we developed an index which quantifies the relative effectiveness of the disposal methods in providing designated classes of control which correspond to the benefit categories. We evaluated the changes in incremental cost of alternative levels of control and determined which level would be optimal. Once this level was determined, we chose values for these proposed environmental standards which would require this level of control.

In the RIA, we developed 22 cases for analyzing the industry-wide costs and economic impacts associated with tailings disposal. Each case represented a different combination of disposal methods applied to both existing and new tailings. The estimated economic impacts include potential mill closures (on a model mill basis) and uranium price increases. We estimated the impacts for each case according to different industry demand projections, several financial scenarios, and different assumptions on the ability of companies to pass-through tailings disposal costs to their customers. The results from this analysis are used to represent the costs and impacts of the proposed standards.

We estimate that compliance with the proposed standards, if other regulatory requirements did not exist, would cost the uranium milling industry about 175 million dollars for all tailings which exist today at licensed sites. If we include all those tailings which we estimate will be generated by the year 2000, under low-growth projection conditions the total cost to the uranium milling industry would be from 400 to 700 million dollars. These costs are present worth estimates (discounted at a 10 percent rate) expressed on a 1981 constant dollar basis. The range in cost is due to different assumptions on what actions are needed to meet requirements for ground water protection for new

tailings at existing mills. The range of industry costs becomes 500 million to 750 million dollars under baseline projection conditions. Due to recent cancellations of nuclear power plants, lack of orders for new plants, and the long lead time (14 years) for licensing and construction, we believe the low-growth scenario is the most likely.

We estimate that increases in the price of uranium could range from 2 to 8 percent. In light of the currently poor economic condition of the industry and the threat of foreign competition, it is unlikely that mills will be able to pass-through substantial portions of the disposal costs. Using our models, we estimate that if mills are forced to absorb the entire cost of disposal, one small model mill may cease operation, depending on the implementation of ground water protection requirements. We further estimate that under the conditions of a more favorable cash-flow or a limited price pass-through, this single mill closure would be avoided. On the other hand, with no pass-through and a lower cash-flow, two small model mills and a large model mill may close.

These costs and economic impacts are not incremental costs of the proposed standards, since much of this cost would probably occur in the absence of the standards due to other regulatory requirements. These other requirements are NRC licensing regulations and State regulations. We did not estimate the costs imposed by these other regulations because that would require a site-specific investigation. Since our standards are required by Congress to be of general application, we deciced to develop a generic analysis based on model facilities. Therefore, we could not estimate the net impact of the proposed standards.

However, these proposed standards are less restrictive than existing NRC regulations. Therefore, costs of implementation of these proposed standards are likely to be less than implementation on the current NRC regulations. For example, the thickness of earthen cover to achieve the 20 pCi/m^2s proposed herein is estimated to range from 2 to 3 meters. The thickness to achieve the NRC regulation of 2 pCi/m^2s is estimated to range from 4 to 5 meters, and the NRC regulations specify a minimum thickness to 3 meters. These proposed standards specify a design lifetime of 1,000 years, but in any case at least 200 years. The cost of providing long-term protection under these proposals will be less than under the NRC regulations, which specify a minimum design lifetime of 1,000 years. While actual disposal costs will be highly site specific, it is reasonable to assume that these proposed standards lead to lower costs than current regulations.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. We believe the analysis discussed above complies with the intent of the Order. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at the docket cited above under "addresses."

Regulatory Flexibility Analysis

This regulation would not have a significant impact on a substantial number of small entities, as specified under Section 605 of the Regulatory Flexibility Act (RFA). Therefore, we have not performed a Regulatory Flexibility Analysis. The basis for this finding is that of the 27 licensed uranium mills, only one qualifies as a small entity and this mill will not be impacted by the standards. Almost all the mills are owned by large corporations. Three of the mills are partly-owned by companies that could qualify as small businesses, according to the Small Business Administration generic small entity definition of 500 employees. However, under the RFA, a small business is one that is independently owned and operated. Since these three mills are not independently owned by small businesses, they are not small entities.

List of Subjects in 40 CFR Part 192

Environmental protection, Radiation protection, Uranium.

Dated: April 20, 1983.

New Subparts D and E are proposed to be added to 40 CFR Chapter I, Subchapter F, Part 192, Health and Environmental Protection Standards for Uranium Mill Tailings, to read as follows:

Subpart D—Standards for Management of Uranium Byproduct Materials Pursuant to Section 84 of the Atomic Energy Act of 1954, as Amended

Sec.

192.30 Applicability.
192.31 Definitions and cross-references.
192.32 Standards.
192.33 Corrective action programs.
192.34 Effective date.

Subpart E—Standards for Management of Thorium Byproduct Materials Pursuant to Section 84 of the Atomic Energy Act of 1954, as Amended

Sec.

192.40 Applicability.
192.41 Provisions.
192.42 Substitute provisions.
192.43 Effective date.

Authority: Section 275 of the Atomic Energy Act of 1954, 42 U.S.C. 2022, as added by the Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. 95-604, as amended.

Subpart D—Standards for Management of Uranium Byproduct Materials Pursuant to Section 84 of the Atomic Energy Act of 1954, as Amended

§ 192.30 Applicability.

This subpart applies to the management of uranium byproduct materials under Section 84 of the Atomic Energy Act of 1954 (henceforth designated "the Act"), as amended, during and following processing of uranium ores, and to restoration of disposal sites following any use of such sites under Section 83(b)(1)(B) of the Act.

§ 192.31 Definitions and cross-references.

References in this subpart to other parts of the Code of Federal Regulations are to those parts as codified on January 1, 1983.

(a) Unless otherwise indicated in this subpart, all terms shall have the same meaning as in Title II of the Uranium Mill Tailings Radiation Control Act of 1978, Subparts A and B of this part, or Parts 260, 261, and 264 of this chapter. For the purposes of this subpart, the terms "waste," "hazardous waste," etc., as used in Parts 260, 261, and 264 of this chapter shall apply to byproduct material.

(b) *Uranium byproduct material* means the tailings or wastes produced by the extraction or concentration of uranium from any ore processed primarily for its source material content. Ore bodies depleted by uranium solution extraction operations which remain underground do not constitute "byproduct material" within this definition.

(c) *Control* means any action intended to stabilize, inhibit future misuse of, or reduce emissions or effluents from uranium byproduct materials.

(d) *Licensed site* means the area contained within the boundary of a location under the control of persons generating or storing uranium byproduct materials under a license issued pursuant to Section 84 of the Act. For purposes of this subpart, "licensed site" is equivalent to "regulated unit" in Subpart F of Part 264 of this chapter.

(e) *Disposal site* means a site selected pursuant to Section 83 of the Act.

(f) *Disposal area* means the region within the perimeter of uranium byproduct materials to which the post-

closure requirements of § 192.32(b)(1) of this subpart apply.

(g) *Regulatory agency* means the U.S. Nuclear Regulatory Commission.

(h) *Closure period* means the period of time beginning with the cessation, with respect to a waste impoundment, of uranium ore processing operations and ending with completion of a closure plan that satisfies the requirements of § 192.32(b) of this subpart.

(i) *Existing portion* means that land surface area of an existing surface impoundment on which significant quantities of uranium byproduct materials have been placed prior to promulgation of this standard.

§ 192.32 Standards.

(a) *Standards for application during processing operations and prior to the end of the closure period.* (1) Surface impoundments (except for an existing portion) subject to this subpart must be designed in such manner as to conform to the requirements of § 264.221 of this chapter, except that the requirements of § 264.228 referenced in § 264.221 do not apply.

(2) Uranium byproduct materials shall be managed so as to conform to the ground water protection standard in § 264.92 of this chapter, except that:

(i) To the list of hazardous constituents referenced in § 264.93 of this chapter are added the chemical elements molybdenum and uranium,

(ii) To the concentation limits provided in Table 1 of § 264.94 of this chapter are added the radioactivity limits in Table A of this subpart,

(iii) Monitoring programs required to establish the standards required under § 264.92 shall be completed within one (1) year of promulgation,

(iv) The functions and responsibilities designated in Part 264 of this chapter as those of the "Regional Administrator" with respect to "facility permits" shall be carried out by the regulatory agency, except that no exemptions of hazardous constituents under § 264.93(b) and (c) of this chapter and no alternate concentration limits established under § 264.94(b) and (c) of this chapter shall be final unless EPA has concurred therein.

(3) Nothing in this section shall be deemed to alter or affect the applicability of the provisions of Part 190 of this chapter, "Environmental Radiation Protection Standards for Nuclear Power Operations," Part 440 of this chapter, "Ore Mining and Dressing Point Source Category: Effluent Limitations Guidelines and New Source Performance Standards, Subpart C, Uranium, Radium, and Vanadium Ores Subcategory," and any other applicable environmental and public health protection standards, regulations, or guidelines. In addition, the regulatory agency shall make every effort to maintain radiation doses from radon emissions from surface impoundments of uranium byproduct materials as far below the Federal Radiation Protection Guides as is practicable at each licensed site.

(b) *Standards for application after the closure period.* (1) Uranium byproduct material subject to this subpart shall be managed so as to comply with the closure performance standards in § 264.111 of this chapter with respect to nonradiological hazards and disposal of such materials shall provide for control of radiological hazards designed [6] to

(i) Be effective for one thousand years, to the extent reasonably achievable, and, in any case, for at least 200 years, and,

(ii) Provide reasonable assurance that releases of radon-222 from uranium byproduct materials to the atmosphere will not exceed an average [7] release rate of 20 picocuries per square meter per second.

(2) Section 192.32(b)(1) shall not apply to any portion of a licensed and/or disposal site in which the concentration of radium-226 in land averaged over an area of 100 square meters exceeds the background level by less than—

(i) 5pCi/g, averaged over the first 15 cm of soil below the surface, and

(ii) 15pCi/g, averaged over 15 cm thick layers of soil more than 15 cm below the surface.

§ 192.33 Corrective action program.

If the ground water standards of § 192.32(a)(2) are exceeded at any licensed site, a corrective action program as specified in § 264.100 of this chapter shall be put into operation as soon as is practicable, and in no event later than one (1) year after the date of a noncompliance determination by the regulatory agency.

§ 192.34 Effective date.

Subpart D shall be effective 60 days after promulgation.

TABLE A

	PCi/liter
Combined radium-226 and radium-228	5
Gross alpha-particle activity (excluding radon and uranium)	15

Subpart E—Standards for Management of Thorium Byproduct Materials Pursuant to Section 84 of the Atomic Energy Act of 1954, as Amended

§ 192.40 Applicability.

This subpart applies to the management of thorium byproduct materials under Section 84 of the Atomic Energy Act of 1954, as amended, during and following processing of thorium ores, and to restoration of disposal sites following any use of such sites under Section 83(b)(1)(B) of the Act.

§ 192.41 Provisions.

The provisions of Subpart D of this part, including §§ 192.31, 192.32, and 192.33, shall apply to thorium byproduct material except that:

(a) Provisions applicable to the element uranium shall apply instead to the element thorium;

(b) Provisions applicable to radon-222 shall apply instead to radon-220; and

(c) Provisions applicable to radium-226 shall apply to radium-228.

§ 192.42 Substitute provisions.

The regulatory agency may, with the concurrence of EPA, substitute for any provisions of § 192.41 of this subpart any provisions it deems more practical that will provide at least an equivalent level of proteciton for human health and the environment.

§ 192.43 Effective Date.

Subpart E shall be effective 60 days after promulgation.

[FR Doc. 83-11507 Filed 4-28-83; 8:45 am]

BILLING CODE 6560-50-M

[6] The standard applies to design. Monitoring for radon-222 after installation of an appropriately designed cover is not required.

[7] This average shall apply over the entire surface of the disposal area and over at least a one-year period. Radon will come from both uranium byproduct materials and from materials covering them. Radon emissions from the covering materials should be estimated as part of developing a closure plan for each site. The standard, however, applies only to emissions from uranium byroduct materials to the atmosphere.

federal register

Friday
April 29, 1983

Part VII

Department of Agriculture

Agricultural Marketing Service

Wheat and Wheat Foods Research and Nutrition Education; Wheat Industry Council Budget for Fiscal Year 1984

Budget

Part VII

Department of Agriculture

Agricultural Marketing Service

Wheat and Wheat Foods Research and Nutrition Education; Wheat Industry Council Budget for Fiscal Year 1971

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. WR-1]

Wheat and Wheat Foods Research and Nutrition Education; Wheat Industry Council Budget for Fiscal Year 1984

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of the wheat industry council budget for fiscal year 1984.

SUMMARY: This notice presents the proposed July 1983 through June 1984 budget of the Wheat Industry Council. Publication of budget information in the **Federal Register** is required by the Wheat and Wheat Foods Research and Nutrition Education Act. The purpose is to allow the wheat end product manufacturers, who are required to pay assessments on purchases of processed wheat to fund a wheat research and nutrition education program, an opportunity to reserve the right to seek a refund of assessments paid.

FOR FURTHER INFORMATION CONTACT: Lowry Mann, Livestock, Meat, Grain, and Seed Division, AMS, USDA, Washington, D.C. 20250, Phone: (202) 447–2650.

SUPPLEMENTARY INFORMATION: The Wheat and Wheat Foods Research and Nutrition Education Act of 1977 (7 U.S.C. 3401–17) authorized a research and nutrition education program for wheat and wheat foods. Formal rulemaking procedures, including a public hearing, were followed in developing the Wheat and Wheat Foods Research and Nutrition Education Order which provides the framework for the program.

In a March-1989 referendum wheat end product manufacturers approved the Wheat and Wheat Foods Research and Nutrition Education Order. The Order provides for a program of research and nutrition education for wheat and wheat-based foods to be administered by a 20-member Wheat Industry Council. The Order requires that all nonexempt wheat end product manufacturers be assessed up to 5 cents per hundredweight of processed wheat purchased to finance the program. The Order limits the assessments to 1 cent per hundredweight during the first 2 years of the program. The assessment will remain at the 1 cent level for fiscal year 1984 (July 1983 through June 1984). Wheat end product manufacturers who purchase less than 2,000 hundredweight of processed wheat per year, those who are defined as retail bakers, and processed wheat used in the manufacture of exempt end products are not assessed.

The Wheat and Wheat Foods Research and Nutrition Education—Rules and Regulations require all nonexempt wheat end product manufacturers to register with the Wheat Industry Council, Suite 203, 6000 Executive Boulevard, Rockville, Maryland 20852, phone: (301) 984–1300. Assessments are due and payable to the Wheat Industry Council on or before the 30th day following the end of each firm's quarterly reporting period.

Wheat end product manufactures who wish to reserve the right to request refunds of assessments paid during the Council's upcoming fiscal year must submit such notification to the Wheat Industry Council by registered or certified mail within 60 days after publication of this notice in the **Federal Register.** In order to receive a refund of assessments paid, an end product manufacturer must first reserve that right, then pay the assessment, complete the refund portion of the assessment-refund form, and submit the completed form to the Council within 60 days after the end of the quarter or other reporting period during which the assessment obligation accrued.

This document includes a summary of the Wheat Industry Council's plans and projects for research and nutrition education: to communicate factural information to consumers as well as nutrition and health professionals about the nutritional properties of wheat-based foods, to improve and enhance the quality, and to make the most efficient use of American wheat, processed wheat and wheat end products to ensure an adequate diet for the people of the United States.

Using a theme which emphasizes the contributions made by wheat foods to a "healthy" diet, the Council will target its information via general and special media outlets:

- Network, syndicated, cable, and major market (local) television;
- Network, syndicated, and major market radio;
- Daily newspapers, news wires, feature syndicate, and suburban/shoppers press;
- Magazines (news, women, men's sports, senior citizens, and trade magazines).

The consumer—women 18–49 years of age, active adults 25–54 years of age and consumers 65 and over—and food/nutrition professionals will be the primary audiences.

The key communication elements to be used will be spokesperson media tour, regional nutritionists, and food scientists appearing in major markets, video news features, cable television segments, consumer fact sheets, and brochures.

Through these targeted program efforts, the Council will strive to improve consumer attitudes and awareness of the role of wheat foods in the diet. The Wheat Industry Council budget for Fiscal year 1984 is as follows:

WHEAT INDUSTRY COUNCIL

[July 1, 1983–June 30, 1984 Budget]

Income	$900,000
Program expenses	604,150
Personnel costs:	
Salaries	123,500
Fringe benefits	14,350
Program costs:	
Press and mat releases (includes photography): Write, produce, distribute	30,00
Press materials	30,000
Spokesperson media activity: Training, placement of national and regional spokespersons in ten markets	77,000
Media features: Cable television segments (2), TV PSA's (2), video news features (2), radio news features (2); scripting, producing, editing	112,000
Nutrition education materials: Writing and producing brochures, fact sheets	22,000
Professional advisory groups: Special contacts and meetings, program development	20,000
Agency supervision, national media placement adminstration and reporting	72,000
Program expenses (out-of-pocket): Agency phone, postage, clipping service	24,000
Scientific advisory committee: Two meetings, publication of report	50,000
Memberships and subscriptions	1,500
Postage	3,000
Telephone	5,000
Travel/Expenses	15,000
Printing/Artwork	4,800
Industry Relations Expenses	65,700
Personnel costs:	
Salaries	15,500
Fringe Benefits	3,200
Industry relations costs:	
Newsletters, communications	26,000
Print and mail budget	5,000
Compliance	9,000
Travel/expenses	7,000
Administrative Expenses	230,150
Personnel costs:	
Salaries	38,000
Fringe benefits	6,550
Administrative costs:	
Rent	23,700
Insurance, liability	1,500
Telephone	4,000
Office equipment/rentals	27,600
Office supplies/xeroxing	5,700
Printing/artwork	4,500
Postage	3,000
Lockbox	500
Council meetings	26,400
Travel/expenses	4,000
Legal fees	2,000
Memberships and subscriptions	500
Audit	2,200
USDA—Oversight charges	50,000
Repayment of referendum costs	30,000
Total expenses:	$900,000

Done at Washington, D.C., April 26, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-11452 Filed 4-28-83; 8:45 am]

BILLING CODE 3410-02-M

federal register

Friday
April 29, 1983

Part VIII

General Services Administration

Department of Defense

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Postal Service

Proposed Uniform Federal Accessibility Standards; Invitation for Comment

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF DEFENSE

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

POSTAL SERVICE

Uniform Federal Accessibility Standards

AGENCIES: General Services Administration, Department of Defense, Department of Housing and Urban Development, United States Postal Service.

ACTION: Invitation for comment on a Proposed Uniform Federal Accessibility Standards Document.

SUMMARY: The General Services Administration (GSA), the Department of Defense (DOD), the Department of Housing and Urban Development (HUD), and the United States Postal Service (USPS) jointly propose to issue a uniform federal standards document for facility access by physically handicapped people. The four agencies, which are the only agencies authorized to issue standards under the Architectural Barriers Act, currently issue standards which vary in certain respects from each other and from standards recommended for privately constructed facilities.

Should all four agencies adopt the same, or substantially the same uniform standards document, nationwide uniformity among federal requirements would be promoted. In addition, since the four agencies' proposal closely follows the standards recommended by the American National Standards Institute for private use, the adoption of this proposal would promote nationwide uniformity of accessibility standards, so that builders and architects could employ virtually the same accessibility standards regardless of whether they performed their work on a federal or nonfederal project.

DATES: Comments must be received on or before June 13, 1983.

ADDRESS: Written comments should be sent to the Assistant Commissioner for Design and Construction, Public Buildings Service, General Services Administration, 18th and F Streets, NW., Washington, D.C. 20405. Comments received will be available for public inspection at the above address in Room 3044, from 9 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kathleen Fields, General Services Administration (GSA), 18th and F Streets, NW, Room 3044, Washington, D.C. 20405; 202–566–0038; Claiborne D. Haughton, Equal Opportunity and Safety Policy, Department of Defense (DOD), The Pentagon, Room 3E763, Washington, D.C. 20301; 202–695–0105; Margaret Milner, Department of Housing and Urban Development (HUD)), 451 7th Street, SW, Room 9220, Washington, D.C. 20410; 202–755–6454; and Louis E. Childers, Real Estate and Buildings Department, U.S. Postal Service (USPS), 475 L'Enfant Plaza West, SW, Washington, D.C. 20260; 202–245–4226.

SUPPLEMENTARY INFORMATION:

A. Background

This proposal grows out of an effort by the four standard setting agencies to establish uniformity in the standards they promulgate under the Architectural Barriers Act (the Act), Pub. L. No. 90–480, as amended, 42 U.S.C. 4151 *et seq.*, for the design, construction, or alteration of federal and federally-funded buildings and other facilities, as required by law, so as to make them accessible to the physically handicapped.

In support of their efforts, the Director of the Office of Management and Budget on June 22, 1981, requested the head of each of the four standard-setting agencies and the other federal agency members of the Architectural and Transportation Barriers Compliance Board (ATBCB) to designate a representative to participate in a Task Force which would consider the development of uniform federal accessibility standard. The other agencies represented on the Task Force were the Department of Health and Human Services (the agency that the standard-setting agencies are required by the act to consult with before issuing accessibility standards), the Department of Justice, the Department of Transportation, the Department of Education, the Department of Interior, the Department of Labor, and the Veterans Administration.

Early in the developmental process, the Task force determined that the proposed uniform standards would, wherever possible, be consistent with both the standards published by the American National Standards Institute, Inc. (ANSI) for general use, and with the minimum guidelines and requirements for federal standards published by the ATBCB. The proposed adoption in the uniform standards of any particular provision contained in the minimum guidelines and requirements should not, of course, be taken as waiving any agency's objection that the Board's adoption of the provision may have exceeded the Board's legal authority.

ANSI is a private, national organization that publishes recommended standards. Generally, these standards are developed through an approval process that responds to the comments of the NASI membership. The original accessibility standards adopted by the Federal Government, and most state governments, were derived from a document known as ANSI A117.1–1961, or "Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published in 1961. Departures from the ANSI's 1961 recommendations gradually developed, however as the state-of-the-art improved in designing and constructing accessible facilities. In 1980, after five years of development and the participation of more than fifty organizations, ANSI published new accessibility standards, known as ANSI A117.1–1980. The 1980 ANSI document has generally been accepted by the private sector and has been recommended for use in model building codes by the Council of American Building Officials. The four standard-setting agencies generally encountered no difficulty in aligning their proposed Uniform Federal Accessibility Standards with the Standards now recommended by ANSI.

In format, the proposed standards follow ANSI A117.1–1980. This is in keeping with the agencies' objective to conform federal requirements to those most commonly used in private practice or by state and local governments. The technical requirements of the proposed standards meet or exceed the technical specifications contained in the "Minimum Guidelines and Requirements for Accessible Design" ("minimum guidelines and requirements") published by the Architectural and Transportation Barriers Compliance Board (ATBCB) in the **Federal Register** of August 4, 1982 (47 FR 33862).

B. Provisions of the Proposal

The proposed uniform standards are compiled in a technical document which is composed of twelve parts and an appendix.

The first part of the proposed document briefly states the reasons for developing the proposed uniform standards and the intent of achieving uniformity with ANSI A117.1–1980. Here and throughout the document the text

has been underlined wherever it differs from, or adds to, ANSI A117.1–1980.

The second part identifies the authority under which the standard-setting agencies have jointly developed the proposal.

The third part contains miscellaneous instructions and definitions to facilitate use of the standards. In general, this section is the same as ANSI, but with several definitions added for greater clarity.

Parts four through twelve consist of the proposed uniform standards. These are largely derived from the ANSI A 117.1–1980. The departures from ANSI would delete certain parts, modify certain parts, and add certain requirements which would either reflect the unique nature of certain buildings and facilities subject to the Act or which would be in the interest of improved safety or accessibility for handicapped people.

The parts of ANSI A117.1–1980 which were deleted include: window requirements; external door opening force limits; and the use of tactile warnings other than at doors to hazardous areas. These provisions, which have also been deleted from the minimum guidelines and requirements, are not supported by sufficient research, can be replaced by more cost-effective provisions or could impose serious administrative or design problems.

C. Specifications Supplementary To the ATBCB's Minimum Guidelines and Requirements

In some instances, the proposed standards go beyond the specifications contained in the minimum guidelines and requirements to present additional details necessary to guide designers. Where this supplementary material has been developed, the primary source other than the accumulated experience of the standard-setting agencies was the ANSI A117.1–1980. The principal sections reserved by the minimum guidelines and requirements but covered by the proposed uniform standards are Section 4.10.8 *Elevators* and 4.30 *Signage* (Sections 1190.31(0) *Signage* and 1190.100(c)(2) *Elevators* in the minimum guidelines and requirements.

In addition, the minimum guidelines and requirements reserve Subpart E, *Special Building anf Facility Types of Elements*, for future development. The Architectural Barriers Act recognizes the particular expertise of each of the four standard-setting agencies for specific building types, and the ATBCB has stated its intention to rely on that expertise in developing these additional provisions. Accordingly, the four standard-setting agencies and the other agency members of the ATBCB, with the participation of ATBCB staff, have developed provisions to govern design of special building and facility types and have included those provisions in the proposed uniform standards at Sections 4.1.1(10) *Accessible Sites and Exterior Facilities;* 4.1.4 *Use Groups:* 4.34 *Dwelling Units;* 5 *Restaurants and Cafeterias;* 6 *Transportation;* 7 *Health Care;* 8 *Mercantile,* 9 *Libraries;* 10 *Postal Facilities* and 11 *historic Preservation.* The classifications in 4.1.4 *Use Groups* are based on the system used in the National Fire Protection Association Life Safety Code, a universally-accepted document.

Section 12 of these proposed standards presents certain alternatives to standards for new construction that may be used for alterations and rehabilitation work. These alternatives are restricted to those situations where it is not feasible to apply new construction standards because of existing conditions of building or site. The alternatives reflect solutions to the problems most commonly encountered in work on existing buildings, and represent practices that have proven to be satisfactory under actual conditions.

D. Conclusion

If these uniform standards are adopted, each agency intends to take appropriate action, in accordance with its own procecdures for rulemaking, including the Administrative Procedure Act where appropriate, to incorporate the uniform standards in its rules, regulations, or other directives.

In consideration of the foregoing, the four standard-setting agencies invite public comment on the following proposed "Uniform Federal Accessibility Standards." An appropriate notice will be published in the **Federal Register** if the proposal is adopted.

Dated: November 27, 1982.

Ray Kline,

Deputy Administrator, General Services.

Dated: December 21, 1982.

Lawrence J. Korb,

Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, Department of Defense.

Dated: December 2, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing/Deputy Federal Housing Commissioner, Department of Housing and Urban Development.

Dated: November 8, 1982.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration, United States Postal Service.

BILLING CODE 6820-23-M, 3810-10-M, 4210-01-M, 7710-12-M

PROPOSED

UNIFORM FEDERAL ACCESSIBILITY STANDARDS

General Services Administration
Department of Defense
Department of Housing and Urban Development
United States Postal Service

UNIFORM FEDERAL ACCESSIBILITY STANDARD

1. PURPOSE

2. GENERAL
2.1 Authority
2.2 Provisions for Adults and Children

3. MISCELLANEOUS INSTRUCTIONS AND DEFINITIONS
3.1 Graphic Conventions
3.2 Dimensional Tolerances
3.3 Notes
3.4 General Terminology
3.5 Definitions

4. ACCESSIBLE ELEMENTS AND SPACES
4.1 Minimum Requirements
4.2 Space Allowances and Reach Ranges
4.3 Accessible Route
4.4 Protruding Objects
4.5 Ground and Floor Surfaces
4.6 Parking and Passenger Loading Zones
4.7 Curb Ramps
4.8 Ramps
4.9 Stairs
4.10 Elevators
4.11 Platform Lifts
4.12 Windows
4.13 Doors
4.14 Entrances
4.15 Drinking Fountains and Water Coolers
4.16 Water Closets
4.17 Toilet Stalls
4.18 Urinals
4.19 Lavatories, Sinks, and Mirrors
4.20 Bathtubs
4.21 Shower Stalls
4.22 Toilet Rooms
4.23 Bathrooms, Bathing Facilities, and Shower Rooms
4.24 Sinks
4.25 Storage
4.26 Handrails, Grab Bars, and Tub and Shower Seats
4.27 Controls and Operating Mechanisms
4.28 Alarms
4.29 Tactile Warnings
4.30 Signage
4.31 Telephones
4.32 Seating, Tables, and Work Surfaces
4.33 Assembly Areas
4.34 Dwelling Units

5. Restaurants and Cafeterias
6. Transportation
7. Health Care
8. Mercantile
9. Libraries
10. Postal Facilities
11. Historic Preservation
12. Alterations

Appendix

1. PURPOSE

This document sets standards for facility accessibility by the physically handicapped for Federal and federally-funded facilities. These standards are to be applied during the design, construction, and alteration of buildings and facilities to the extent required by the Architectural Barriers Act of 1968, as amended.

The technical provisions of these standards are the same as those of the American National Standard Institute's document A117.1-1980, except as noted in this text. Passages differing from ANSI A117.1-1980 are indicated by underscoring.

2. GENERAL

2.1 AUTHORITY. These standards are jointly developed by the General Services Administration, the Department of Housing and Urban Development, the Department of Defense, and the United States Postal Service, under the authority of sections 2, 3, 4, and 4a, respectively, of the Architectural Barriers Act of 1968, as amended, Pub. L. No. 90-480, 42 U.S.C. 4151 et seq.

2.2 PROVISIONS FOR ADULTS AND CHILDREN. The specifications in these standards are based upon adult dimensions and anthropometrics. If buildings, facilities, or portions thereof serve children primarily, the administrative authority should adjust dimensions and other provisions to make them suitable for children.

3. MISCELLANEOUS INSTRUCTIONS AND DEFINITIONS.

3.1 GRAPHIC CONVENTIONS. Graphic conventions are shown in Table 1. Dimensions that are not marked "minimum" or "maximum" are absolute, unless otherwise indicated in the text or captions.

3.2 DIMENSIONAL TOLERANCES. All dimensions are subject to conventional building industry tolerances for field conditions.

3.3 NOTES. The text of these standards does not contain notes or footnotes. Additional information, explanations, and advisory materials are located in the Appendix. Paragraphs marked with an asterisk have related, nonmandatory material in the Appendix. In the Appendix, the corresponding paragraph numbers are preceded by an A.

3.4 GENERAL TERMINOLOGY.

Comply with. Meet one or more specifications of this standard.

if, if...then. Denotes a specification that applies only when the conditions described are present.

Table 1
Graphic Conventions

Convention	Description
	Typical dimension line showing U.S. customary units (in inches) above the line and SI units (in millimeters) below
	Dimensions for short distances indicated on extended line
	Dimension line showing alternate dimensions required
	Direction of approach
max	Maximum
min	Minimum
.....	Boundary of clear floor area
	Centerline

may. Denotes an option or alternative.

shall. Denotes a mandatory specification or requirement.

should. Denotes an advisory specification or recommendation.

3.5 DEFINITIONS. The following terms shall, for the purpose of these standards, have the meaning indicated in this section.

Access Aisle. An accessible pedestrian space between elements such as parking spaces, seating, and desks, that provides clearances appropriate for use of the elements.

Accessible. Describes a site, building, facility, or portion thereof that complies with these standards and that can be approached, entered, and used by physically disabled people.

Accessible Element. Part of an accessible route or accessible functional space; an item specified by these standards (for example, telephone, controls, and the like).

Accessible Route. A continuous unobstructed path connecting all accessible elements and spaces in a building or facility that can be negotiated by a severely disabled person using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures.

Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps, and lifts.

Adaptability. The ability of certain building elements, such as kitchen counters, sinks, and grab bars, to be altered so as to accommodate the needs of either the disabled or nondisabled, or to accommodate the needs of persons with different types or degrees of disability.

Addition. An expansion, extension, or increase in the gross floor area of a building or facility.

Administrative Authority. A governmental agency that adopts or enforces regulations and standards for the design, construction, or operation of buildings and facilities.

Alteration. As applied to a building or structure, means a change or rearrangement in the structural parts or in the means of egress or in moving from one location or position to another. It does not include normal maintenance, repair, reroofing, interior decoration, or changes to mechanical and electrical systems.

Assembly Area. A room or space accommodating fifty or more individuals for religious, recreational, educational, political, social, or amusement purposes, or for the consumption of food and drink, including all connected rooms or spaces with a common means of egress and ingress. Such areas as conference rooms would have to be accessible in accordance with other parts of this standard but would not have to meet all of the criteria associated with assembly areas.

Automatic Door. A door equipped with a power-operated mechanism and controls that open and close the door automatically upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch mounted on or near the door itself (see power-assisted door).

Children. People below the age of twelve (that is, elementary school age and younger).

Circulation Path. An exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings.

Clear. Unobstructed.

Common Use. Refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, residents of an apartment building, the occupants of an office building, or the guests of such residents or occupants).

Coverage. The extent or range of accessibility that a particular administrative authority adopts and requires.

Cross Slope. The slope of a pedestrian way that is perpendicular to the direction of travel (see running slope).

Curb Ramp. A short ramp cutting through a curb or built up to it.

Detectable. Perceptible by one or more of the senses.

Disability. A limitation or loss of use of a physical, mental, or sensory body part or function.

Dwelling Unit. A single unit of residence which provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping, and the like. A single family home is a dwelling unit, and dwelling units are to be found in such housing types as townhouses and apartment buildings.

Egress, means of. A path of exit that meets all applicable code specifications of the regulatory building agency having jurisdiction over the building or facility.

Element. An architectural or mechanical component of a building, facility, space, or site, e.g., telephone, curb ramp, door, drinking fountain, seating, water closet.

Emergency. Refers to facilities resulting from or anticipating unforeseen combinations of circumstances, for example, storm shelters, bomb shelters, and comparable refuges.

Extraordinary repair. The replacement or renewal of any element of an existing building or facility for purposes other than normal maintenance.

Facility. A building, structure, or area, including the site on which such building, structure or area is located, wherein specific services are provided or activities performed. An element of the transportation system (stairway, bridge, etc.) which is constructed independently of such buildings, structures, or areas, and that merely provides access to them, shall not itself be considered a facility and shall not be subject to the standards set forth unless it is the sole means of access to such facilities.

Full and Fair Cash Value. Full and fair cash value is calculated for the estimated date on which work will commence on a project and means:

(1) The assessed valuation of a building or facility as recorded in the assessor's office of the municipality and as equalized at one hundred percent (100%) valuation.
(2) The replacement cost,
(3) The fair market value.

Functional Spaces. The rooms and spaces in a building or facility that house the major activities for which the building or facility is intended.

Handicapped. Those with significant limitations in using specific parts of the environment.

Housing. A building, facility, or portion thereof, excluding inpatient health care facilities, that contains one or more dwelling units or sleeping accommodations. Housing may include, but is not limited to, one and two-family dwellings, apartments, group homes, hotels, motels, dormitories, and mobile homes.

Marked Crossing. A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

Multifamily Dwelling. Any building containing more than two dwelling units.

Operable Part. A part of a piece of equipment or appliance used to insert or withdraw objects, or to activate, deactivate, or adjust the equipment or appliance (for example, coin slot, pushbutton, handle).

Power-assisted Door. A door with a mechanism that helps to open the door, or relieve the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself. If the switch or door is released, such doors immediately begin to close or close completely within 3 to 30 seconds (see automatic door).

Principal Entrance. An entrance intended to be used by the residents or users to enter or leave a building or facility. This may include, but is not limited to, the main entrance.

Public Use. Describes interior or exterior rooms or spaces that are made available to the general public. Public use may be pro-

vided at a building or facility that is privately or publicly owned.

Ramp. A walking surface in an accessible space that has a running slope greater than 1:20.

Reasonable Number. A number that is sufficient to accommodate the disabled users of a site, building, facility, or element. For the purposes of these standards, reasonable numbers are specified in Section 4, Accessible Elements and Spaces.

Reconstruction. The act or process of reproducing by new construction the exact form and detail of a vanished building, structure, or object, or a part thereof, as it appeared at a specific period of time.

Restoration. The act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later works or by replacement of missing earlier work.

Running Slope. The slope of a pedestrian way that is parallel to the direction of travel (see cross slope).

Service Entrance. An entrance intended primarily for delivery of services.

Signage. Verbal, symbolic, tactile, and pictorial information.

Site. A parcel of land bounded by a property line or a designated portion of a public right-of-way.

Site Improvement. Landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and the like, added to a site.

Sleeping Accommodations. Rooms in which people sleep, for example, dormitory and hotel or motel guest rooms.

Space. A definable area, e.g., toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby.

Structural impracticability. Changes having little likelihood of being accomplished without removing or altering a load-bearing structural member and/or incurring an increased cost of 50 percent or more of the value of the element of the building or facility involved.

Tactile. Describes an object that can be perceived using the sense of touch.

Tactile Warning. A standardized surface texture applied to or built into walking surfaces or other elements to warn visually impaired people of hazards in the path of travel.

Temporary. Applies to facilities that are not of permanent construction but are extensively used or essential for public use for a given (short) period of time, for example, temporary classrooms or classroom buildings at schools and colleges, or facilities around a major construction site to make passage accessible, usable, and safe for everybody. Structures directly associated with the actual processes of major construction, such as porto potties, scaffolding, bridging, trailers, and the like, are not included. Temporary as applied to elements means installed for less than 6 months and not required for safety reasons.

Vehicular Way. A route intended for vehicular traffic, such as a street, driveway, or parking lot.

Walk. An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

Walking Aid. A device used by a person who has difficulty walking (for example, a cane, crutch, walker, or brace).

4. ACCESSIBLE ELEMENTS AND SPACES

4.1 MINIMUM REQUIREMENTS.

4.1.1 ACCESSIBLE SITES AND EXTERIOR FACILITIES: NEW CONSTRUCTION. An accessible site shall meet the following minimum requirements:

(1) At least one accessible route complying with 4.3 shall be provided within the boundary of the site from public transportation stops, accessible parking spaces, accessible passenger loading zones if provided, and public streets or sidewalks to an accessible building entrance.

(2) At least one accessible route complying with 4.3 shall connect

accessible buildings, facilities, elements, and spaces that are on the same site.

(3) All objects that protrude from surfaces or posts into circulation paths shall comply with 4.4.

(4) Ground surfaces along accessible routes and in accessible spaces shall comply with 4.5.

(5) (a) If parking spaces are provided for employees or visitors in public use buildings and facilities, or both, then accessible spaces, complying with 4.6, shall be provided in conformance with the following table:

Total Parking in Lot	Required Minimum number of accessible spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	*
1001 and over	**

* 2 percent of total.
** 20 plus 1 for each 100 over 1000.

EXCEPTION: The total number of accessible parking spaces may be distributed among parking lots, if greater accessibility is acheived.

EXCEPTION: This does not apply to parking provided for official government vehicles owned or leased by the government and used exclusively for government purposes.

(b) If passenger loading zones are provided, then at least one passenger loading zone shall comply with 4.6.5.

(c) Parking spaces for side lift vans are accessible parking spaces and may be used to meet the requirements of this paragraph.

(d) Parking spaces at accessible housing complying with Section 4.6 shall be provided in accordance with the following:

(1) Where parking is provided for all residents, one accessible parking space shall be provided for each accessible dwelling unit; and

(2) Where parking is provided for only a portion of the residents, an accessible parking space shall be provided on request of the occupant of an accessible dwelling unit;

(3) Where parking is provided for visitors, 2% of the spaces, or at least one, shall be accessible.

(e) Parking spaces at health care facilities complying with Section 4.6 shall be provided in accordance with the following:

(1) General health care facilities, employee and visitor parking: Comply with the Table 4.1.1(5)(a);

(2) Outpatient facilities: 10% of the total number of parking spaces provided;

(3) Spinal cord injury facilities, employee and visitor parking: 20% of total parking spaces provided.

(6) Stairs connecting levels that are not connected by an elevator shall comply with 4.9.

(7) All passenger elevators shall comply with 4.10.

ALTERNATIVE: Accessible ramps or accessible platform lifts may be used in lieu of an elevator.

(8) At least one door or gate to accessible spaces and elements and all doors that are part of accessible routes shall comply with 4.13.

(9) If drinking fountains are provided, approximately 50% of the total, but always at least one, shall comply with 4.15.

(10) If public toilet facilities are provided, at least one toilet room at each facility shall comply with 4.22. If bathing facilities are provided, at least one bathroom shall comply with 4.23. If toilet and bathing facilities are provided for both sexes, at least one of toilet rooms and bathrooms, bathing facilities, or shower rooms complying with 4.22 and 4.23 shall be provided for each sex.

(11) Tactile warnings: Reserved.

(12) All signs shall comply with 4.30. Elements and spaces of accessible facilities which shall be identified by the International Symbol of Accessibility are:

(a) Parking spaces designated as reserved for physically handicapped people;
(b) passenger loading zones;
(c) accessible entrances;
(d) accessible toilet and bathing facilities.

(13) If public telephones are provided, they shall comply with 4.31.

(14) If fixed or built-in seating, tables, or work surfaces are provided in accessible spaces, at least one of the seating spaces, tables, or work surfaces shall comply with 4.32.

(15) If places of assembly are provided, they shall comply with 4.33 and 4.1.2.

4.1.2 ACCESSIBLE BUILDINGS: NEW CONSTRUCTION. Accessible buildings and facilities shall meet the following minimum requirements:

(1) At least one accessible route complying with 4.3 shall connect accessible building or facility entrances with all accessible spaces and elements within the building or facility.

(2) All objects that overhang circulation paths shall comply with 4.4.

(3) Ground and floor surfaces along accessible routes and in accessible rooms and spaces shall comply with 4.5.

(4) Stairs connecting levels that are not connected by an elevator shall comply with 4.9. This requirement is not mandatory within dwelling facilities.

(5) At least one accessible passenger elevator, ramp, or lift shall serve each accessible level in multistory buildings and facilities.

EXCEPTION: Accessible ramps or accessible platform lifts may be used in lieu of an elevator.

(6) Windows. Reserved.

(7) Doors:

(a) At each accessible entrance to a building or facility, at least one door shall comply with 4.13.

(b) Within a building or facility, at least one door at each accessible space shall comply with 4.13.

(c) Each door that is an element of an accessible route shall comply with 4.13.

(d) Each door required by 4.3.10, Egress, shall comply with 4.13.

EXCEPTION: In multiple story buildings and facilities where at-grade egress from each floor is impossible, either of the following is permitted.

(1) The provision within each story of approved fire and smoke partitions that create horizontal exits, or,

(2) The provision within each floor of areas of refuge approved by agencies having authority for safety.

(8) At least one principal entrance at each grade floor level to a building or facility shall comply with 4.14, Entrances. When a building or facility has entrances which normally serve any of the following functions: transportation facilities, passenger loading zones, accessible parking facilities, taxi stands, public streets and sidewalks, accessible interior vertical access, then at least one of the entrances serving each such function shall comply with 4.14, Entrances. Because entrances also serve as emergency exits, whose proximity to all parts of buildings and facilities is essential, it is preferable that all or most exits be accessible.

(9) If drinking fountains or water coolers are provided, approximately 50% of those provided on each floor shall comply with 4.15 and shall be on an accessible route. If only one drinking fountain or water cooler is provided on any floor, it shall comply with 4.15.

(10) If toilet facilities are provided, then each public and common use toilet room shall comply with 4.22. Other toilet rooms shall be adaptable. If bathing facilities are provided, then each public and common use bathroom shall comply with 4.23. Accessible toilet rooms and bathing facilities shall be on an accessible route.

(11) If storage facilities such as cabinets, shelves, closets, and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with 4.25. Additional storage may be provided outside of the dimensions shown in Fig. 38.

(12) Controls and operating mechanisms in accessible spaces, along accessible routes, or as parts of accessible elements (for example, light switches and dispenser controls) shall comply with 4.27.

(13) If emergency warning systems are provided, then they shall include both audible alarms complying with 4.28.2 and visual alarms complying with 4.28.3. In facilities with sleeping accommodations, the sleeping accommodations shall have an alarm system complying with 4.28.4. Emergency warning systems in health care facilities may be modified to suit standard health care alarm design practice.

(14) Tactile warnings shall be provided at hazardous conditions as specified in 4.29.3.

(15) If signs are provided, they shall comply with 4.30. In addition, permanent signage that identifies rooms and spaces shall also comply with 4.30.4.

EXCEPTION: The provisions of 4.30.4 are not mandatory for temporary information on room and space signage, such as current occupant's name, provided the permanent room or space identification complies with 4.30.4.

(16) Public Telephones:

(a) If public telephones are provided, then accessible public telephones shall comply with 4.31, Telephones, and the following table:

Number of public telephones provided on each floor:	Number of telephones required to be accessible:*
1 or more single unit installations	1 per floor
1 bank**	1 per floor
2 or more banks**	1 per bank. Accessible unit may be installed as a single unit in proximity (either visible or with signage) to the bank. At least one public telephone per floor shall meet the requirements for a forward reach telephone.***

* Additional public telephones may be installed at any height. Unless otherwise specified, accessible telephones may be either forward or side reach telephones.

** A bank consists of two or more adjacent public telephones, often installed as a unit.

*** EXCEPTION: For exterior installations only, if dial tone first service is not available, then a side reach telephone may be installed instead of the required forward reach telephone (i.e., one telephone in proximity to each bank shall comply with 4.31).

(b) At least one of the public telephones complying with 4.31, Telephones, shall be equipped with a volume control. The installation of additional volume controls is encouraged and these may be installed on any public telephone provided.

(17) If fixed or built-in seating, tables, or work surfaces are provided in accessible spaces, at least 5 percent, but always at least one, of seating spaces, tables, or work surfaces shall comply with 4.32.

(18) Assembly areas:

(a) If places of assembly are provided, they shall comply with the following table:

Capacity of Seating & Assembly Areas	Number of Required Wheelchair Locations
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	*
over 1,000	**

* 2 percent of total
** 20 plus 1 for each 100 over 1,000.

(b) Assembly areas with audio-amplification systems shall have a listening system complying with 4.32 to assist a reasonable number of people but no fewer than two, with severe hearing loss. For assembly areas without amplification systems and for spaces used primarily as meeting and conference rooms, a permanently installed or portable listening system shall be provided. If portable systems are used for conference or meeting rooms, the system may serve more than one room.

4.1.3 Accessible Housing. Accessible housing shall comply with the requirements of sections 4.1 and 4.34 except as noted below:

(1) Elevators: Where provided, elevators shall comply with section 4.10. Elevators or other accessible means of vertical movement are not required in residential facilities when:

(a) No accessible dwelling units are located above or below the

accessible grade level; and

(b) Common areas and amenities for use of residents and visitors are available at the accessible grade level.

(2) Entrances: Entrances complying with Section 4.14 shall be provided as necessary to achieve access to and egress from buildings and facilities.

EXCEPTION: In projects consisting of one-to-four family dwellings where accessible entrances would be extraordinarily costly due to site conditions or local code restrictions, accessible entrances are required only to those buildings containing accessible dwelling units.

(3) Kitchens: In projects where the number of accessible units is determined by local needs assessments, units with accessible kitchens may be provided on a proportional basis in accordance with needs identified by the local assessment.

(4) Common Areas: At least one of each type of common area and amenity in each project shall be accessible, and shall be located on an accessible route to any accessible dwelling unit.

4.1.4 Use Groups.

Buildings and facilities shall comply with this standard to the extent noted in this section for various occupancy use groups, unless otherwise modified by a special application section or excepted by a military exclusion. Occupancy use groups, and the facilities covered under each category, include but are not necessarily limited to the listing which follows:

(1) General Exceptions: Accessibility is not required to elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks, lookout galleries, electrical and telephone closets, and general utility rooms.

(2) Military Exclusions.
The following facilities need not be designed to be accessible, but accessibility is recommended since the intended use of the facility may change with time.

(a) Unaccompanied personnel housing, closed messes, vehicle and aircraft maintenance facilities, where all work is performed by able-bodied military personnel, and, in general, all facilities which are intended for use or occupancy by able-bodied military personnel only.

(b) Those portions of Reserve and National Guard facilities which are not open to the public.

(c) Military family housing, although the design of family housing should consider accessibility and provide it in common areas such as walks, streets, parking and play areas. Design of entrances shall consider accessibility.

(d) Where the number of accessible spaces required is determinded by the design capacity of a facility (such as parking or assembly areas), the number of able bodied military persons used in determining the design capacity need not be counted when computing the number of accessible spaces required.

(3) Assembly.

Places of assembly include, but are not limited to, all buildings used for gathering together 50 or more persons for such purposes as deliberation, worship, entertainment, amusement, or awaiting transportation. Assembly occupancies include:

Facility		Application
Assembly Halls Auditoriums Bowling Lanes Churches Club Rooms Conference Rooms Courtrooms Dance Halls Drinking Establishments Exhibition Halls Gymnasiums	Mortuary Chapels Motion Picture Theaters Museums Passenger Stations, terminals of air, surface, underground and marine public transportation Pool Rooms Recreation Piers Restaurants Skating Rinks Theaters	All must comply with these standards except that balconies and bleachers with fixed seats need not comply if suitable accessible seating is provided elsewhere in the facility.

(4) Educational.

Educational occupancies include all buildings used for the gathering of groups of 6 or more persons for purposes of instruction. Educational occupancies include:

Facilities		Application
Academies Child Care Facilities Colleges Kindergartens	Nursery Schools Schools Universities	All must comply with these standards except that balconies and bleachers with fixed seats need not comply if suitable accessible seating is provided elsewhere in the facility.

(5) Health Care.

Health care occupancies are those used for purposes such as medical or other treatment or care of persons suffering from physical or mental illness, disease or infirmity; for the care of infants, convalescents or aged persons. Health care occupancies provide sleeping facilities for the occupants and are occupied by persons who are mostly incapable of self preservation because of age, physical or mental disability, or because of security measures not under the occupant's control.

Facilities	Application
Health Care Facilities	
Hospitals	10% of patient rooms available and all common use areas

Nursing Homes	50% of patient rooms available in intermediate care facilities; 10% for skilled nursing facilities; and all common use areas
Department of Defense Facilities	Consult latest edition of Manual 4270.1-M
Residential-Custodial Care	
Nurseries	100% of care providing areas
Homes for the Aged e.g., Nursing Homes	50% of patient rooms available and all common use areas
Mentally Retarded Care Institutions	50% of patient rooms available and all common use areas

(6) Penal Occupancies.

Penal occupancies are those used to house occupants under some degree of restraint or security. Penal occupancies are occupied by persons who are mostly incapable of self preservation because of security measures not under the occupant's control.

Facilities	Application
Penal institutions, reformatories, and jails	5% of residential units available and all common use and visitor areas.

(7) Housing (Residential).

Residential occupancies are ones in which sleeping accommodations are provided for normal residential purposes and include all buildings designed to provide sleeping accommodations. Accessible sleeping accommodations and dwelling units shall be provided according to the following:

Facilities	Application
Hotels, motels, and dormitories	5% of the total, or at least one unit
Multifamily Housing	
Federally Assisted	5% of the total, or at least one unit, in projects of 15 or more dwelling units, or as indicated by local needs assessments conducted by local governing bodies or States.

Federally Owned	5% of the total, or at least one unit
One & two Family Housing	
Federally Assisted, Rental	5% of the total, or at least one unit, in projects of 15 or more dwelling units, or as indicated by local needs assessments conducted by local governing bodies or States.
Federally Assisted, Homeownership	To be determined by home buyer
Federally Owned	5% of the total or at least one unit

(8) Mercantile.

Mercantile occupancies include stores, markets, and other rooms, buildings, or structures for the display and sale of merchandise. Included in this occupancy group are:

Facilities		Application
Auction Rooms Department Stores Drugstores	Shopping Centers Supermarkets	Employee work areas and those areas open to the general public must comply with these standards.

(9) Business.

Business occupancies are those used for the transaction of business (other than that covered under Mercantile), for the keeping of accounts and records, and similar purposes. Included in this occupancy group are:

Facilities		Application
City Halls Courthouses Dentist's Offices Doctor's Offices General Offices (Ambulatory)	Libraries Outpatient Clinics (Ambulatory) Town Halls Postal Facilities for Customer Service only	Office areas and those areas open to use by the public must comply with these standards.

(10) Industrial.

Industrial occupancies include factories making products of all kinds and properties devoted primarily to operations such as processing, assembling, mixing, packaging, finishing or decorating, and repairing, including, among others, the following:

Facilities		Application
Creameries	Postal Mail Processing Facilities	Office areas and public service areas shall comply. Those areas which will not result in employment of physically handicapped persons need not comply with this standard.
Dry Cleaning Plants	Power Plants	
Factories of all kinds	Pumping Stations	
Gas Plants	Refineries	
Laboratories	Sawmills	
Laundries	Smokehouses	
	Vehicle Maintenance Facilities	

(11) Storage.

Storage includes all buildings or structures utilized primarily for the storage or sheltering of goods, merchandise, products, vehicles, or animals. Included in this occupancy group are:

Facilities		Application
Warehouses	Cold Storage	Office areas and public service areas shall comply. Those areas which will not result in employment of physically handicapped persons need not comply with this standard.
Truck and Marine Terminals	Hangars	
Bulk Oil Storage	Barns	
Grain Elevators	Freight Terminals	
	Stables	
Parking Garages		Accessible spaces and required routes to other buildings on site, etc.

4.1.5 Special Applications. Scope and use group application may be modified by the following:

(1) Assembly

5: Restaurants and Cafeterias
6: Transportation Facilities

(2) Educational

(3) Health Care

7: Health Care

(4) Penal Occupancies

(5) Housing (Residential)

4.34: Dwelling Units

(6) Mercantile

8: Mercantile

(7) Business

9: Libraries

(8) Industrial

10: Postal Facilities

(9) Storage

(10) Historic Buildings

11: Historic Buildings

4.1.6 ACCESSIBLE BUILDINGS: ADDITIONS. Each addition to an existing building shall comply with 4.1.1 to 4.1.5 of Section 4.1, Minimum Requirements, except as follows:

(1) Entrances. If a new addition to a building or facility does not have an entrance, then at least one entrance in the existing building or facility shall comply with 4.14, Entrances.

(2) Accessible route. If the only accessible entrance to the addition is located in the existing building or facility, then at least one accessible route shall comply with 4.3, Accessible Route, and shall provide access through the existing building or facility to all rooms, elements, and spaces in the new addition.

(3) Toilet and bathing facitities. If there are no toilet rooms and bathing facilities in the addition and these facilities are provided in the existing building, then at least one toilet and bathing facility in the existing building shall comply with 4.22, Toilet Rooms, or 4.23, Bathrooms, Bathing Facilities, and Shower Rooms.

(4) Elements spaces, and common areas. If elements, spaces, or common areas are located in the existing building and they are not provided in the addition, then consideration should be given to making those elements, spaces, and common areas accessible in the existing building.

(5) EXCEPTIONS: Mechanical rooms, storage areas, and other such minor additions which normally are not frequented by the public or employees of the facility are excepted from 4.1.6.

(6) Housing: (Reserved).

4.1.7 ACCESSIBLE BUILDINGS: ALTERATIONS.

(1) General. Alterations to existing buildings or facilities shall comply with the following:

(a) If existing elements, spaces, essential features, or common areas are altered, then each such altered element, space, feature, or area shall comply with the applicable provisions of 4.1.1 to 4.1.5 of Section 4.1, Minimum Requirements.

(b) If power-driven vertical access equipment (e.g., escalator) is planned or installed where none existed previously, or if new stairs (other than stairs installed to meet emergency exit requirements) requiring major structural changes are planned or installed where none existed previously, then a means of accessible vertical access shall be provided that complies with 4.7, Curb Ramps; 4.8, Ramps; 4.10, Elevators; or 4.11, Platform Lifts; except to the extent where it is structurally impracticable in transit facilities.

(c) If alterations of single elements when considered together, amount to an alteration of a space of a building or facility, the entire space shall be made accessible.

(2) Where a building or facility is vacated and it is totally altered, then it shall be altered to comply with 4.1.1 to 4.1.5 of Section 4.1, Minimum Requirements, except to the extent where it is structurally impracticable.

(3) Where substantial alteration occurs to a building or facility, then each element or space that is altered or added shall comply with the applicable provisions of 4.1.1 to 4.1.5 of Section 4.1,

Minimum Requirements, except to the extent where it is structurally impracticable and the altered building or facility shall contain:

(a) At least one accessible route complying with 4.3, Accessible Route, and 4.1.7(a);

(b) At least one accessible entrance complying with 4.14, Entrances. If additional entrances are altered then they shall comply with 4.1.7(a); and

(c) The following toilet facilities, whichever is greater:

(i) At least one toilet facility for each sex in the altered building complying with 4.22, Toilet Rooms, and 4.23, Bathrooms, Bathing Facilities, and Shower Rooms.

(ii) At least one toilet facility for each sex on each substantially altered floor, where such facilities are provided, complying with 4.22, Toilet Rooms; and 4.23, Bathrooms, Bathing Fcailities, and Shower Rooms. In making the determination as to what constitutes "substantial alteration," the agency issuing standards for the facitity shall consider the total cost of all alterations (including but not limited to electrical, mechanical, plumbing, and structural changes) for a building or facility within any twelve (12) month period. For guidance in implementing this provision, an alteration to any building or facilty is to be considered substantial if the total cost for this twelve month period amounts to 50% or more of the full and fair cash value of the building as defined at 3.5.

(d) EXCEPTION. If the cost of the elements and spaces required by 4.1.7(3)(a), (b), or (c) exceeds 15% of the total cost of all other alterations, then a schedule may be established by the standard-setting and/or funding agency to provide the required improvements within a 5 year period.

(e) EXCEPTION. If the alteration is limited solely to the electrical, mechanical, or plumbing system and does not involve the alteration of any elements and spaces required to be accessible under these standards, then 4.1.7(3) does not apply.

(f) EXCEPTION. Consideration be shall given to providing accessible elements and spaces in each altered building or facilty complying with:

(i) 4.6, Parking and Passenger Loading Zones,
(ii) 4.15, Drinking Fountains and Water Coolers,
(iii) 4.25, Storage,
(iv) 4.28, Alarms,
(v) 4.31, Telephones,
(vi) 4.32, Seating, Tables, and Work Surfaces,
(vii) 4.33, Assembly Areas,

(g) EXCEPTION. Mechanical rooms and other spaces which normally are not frequented by the public or employees of the of the facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from 4.1.7.

(4) Housing. (Reserved).

Fig. 1
Minimum Clear Width
for Single Wheelchair

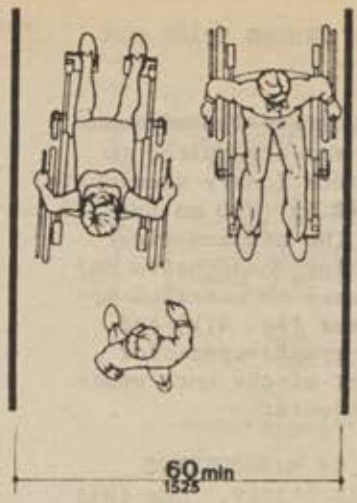
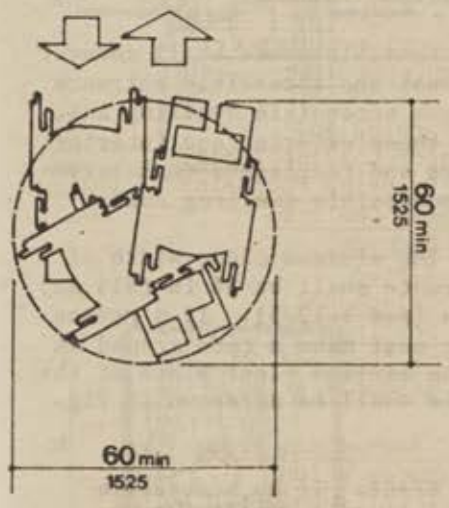
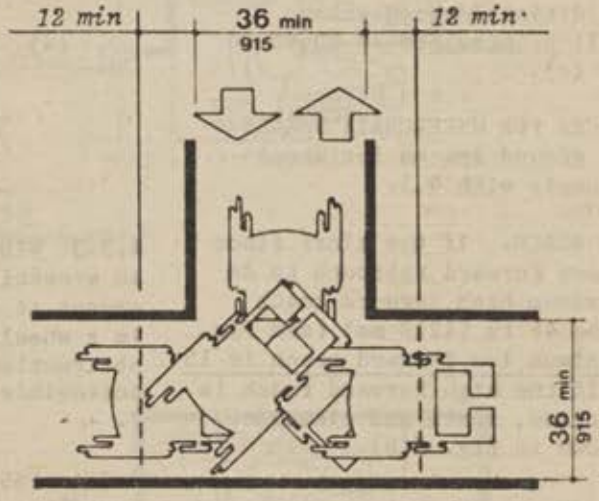


Fig. 2
Minimum Clear Width
for Two Wheelchairs



(a)
60-in (1525-mm) -Diameter Space



(b)
T-Shaped Space for 180° Turns

Fig. 3
Wheelchair Turning Space

4.2: SPACE ALLOWANCE AND REACH RANGES

4.2.1* WHEELCHAIR PASSAGE WIDTH. The minimum clear width for single wheelchair passage shall be 32 in (815 mm) at a point and 36 in (915 mm) continuously (see Fig. 1).

4.2.2 WIDTH FOR WHEELCHAIR PASSING. The minimum width for two wheelchairs to pass is 60 in (1525 mm) (see Fig. 2).

4.2.3* WHEELCHAIR TURNING SPACE. The space required for a wheelchair to make a 180 degree turn is a clear space of 60 in (1525 mm) diameter (see Fig. 3(a)) or a T-shaped space (see Fig. 3(b)).

4.2.4* CLEAR FLOOR OR GROUND SPACE FOR WHEELCHAIRS.

4.2.4.1 SIZE AND APPROACH. The minimum clear floor or ground space required to accommodate a single, stationary wheelchair occupant is 30 in by 48 in (760 mm by 1220 mm) (see Fig. 4(a)). The minimum clear floor or ground space for wheelchairs may be positioned for forward or parallel approach to an object (see Fig. 4(b) and (c)). Clear floor or ground space for wheelchairs may be part of the knee space required under some objects.

4.2.4.2 RELATIONSHIP OF MANEUVERING CLEARANCE TO WHEELCHAIR SPACES. One full unobstructed side of the clear floor or ground space for a wheelchair shall adjoin or overlap an accessible route or adjoin another wheelchair clear floor space. If a clear floor space is located in an alcove or otherwise confined on all or part of three sides, additional maneuvering clearances shall be provided as shown in Figs. 4(d) and (e).

4.2.4.3 SURFACES FOR WHEELCHAIR SPACES. Clear floor or ground spaces for wheelchairs shall comply with 4.5.

4.2.5 FORWARD REACH. If the clear floor space only allows forward approach to an object, the maximum high forward reach allowed shall be 48 in (1220 mm) (see Fig. 5(a)). The minimum low forward reach is 15 in (380 mm). If the high forward reach is over an obstruction, reach and clearances shall be as shown in Fig. 5(b).

4.2.6 SIDE REACH. If the clear floor space allows parallel approach by a person in a wheelchair, the maximum high side reach allowed shall be 54 in (1370 mm) and the low side reach shall be no less than 9 in (230 mm) above the floor (Fig. 6(a) and (b)). If the side reach is over an obstruction, the reach and clearances shall be as shown in Fig. 6(c).

4.3: ACCESSIBLE ROUTE.

4.3.1* GENERAL. All walks, halls, corridors, aisles, and other spaces that are part of an accessible route shall comply with 4.3.

4.3.2 LOCATION.

(1) At least one accessible route within the boundary of the site shall be provided from public transportation stops, accessible parking, and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve.

(2) At least one accessible route shall connect accessible buildings, facilities, elements, and spaces that are on the same site.

(3) At least one accessible route shall connect accessible building or facility entrances with all accessible spaces and elements and with all accessible dwelling units within the building or facility.

(4) An accessible route shall connect at least one accessible entrance of each accessible dwelling unit with those exterior and interior spaces and facilities that serve the accessible dwelling unit.

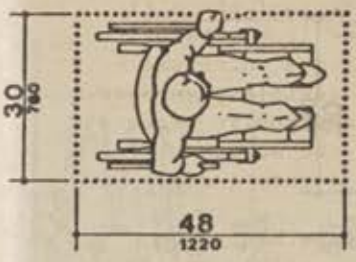
4.3.3 WIDTH. The minimum clear width of an accessible route shall be 36 in (915 mm) except at doors (see 4.13.5). If a person in a wheelchair must make a turn around an obstruction, the minimum clear width of the accessible route shall be as shown in Fig. 7.

4.3.4 PASSING SPACE. If an accessible route has less than 60 in (1525 mm) clear width, then passing spaces at least 60 in by 60 in (1525 mm by 1525 mm) shall be located at reasonable intervals not to exceed 200 ft (61 m). A T-intersection of two corridors or walks is an acceptable passing place.

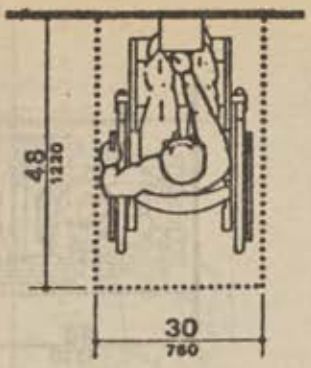
4.3.5 HEAD ROOM. Accessible routes shall comply with 4.4.2.

4.3.6 SURFACE TEXTURES. The surface of an accessible route shall comply with 4.5.

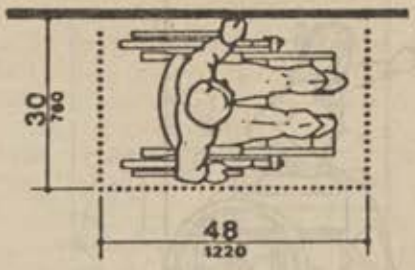
4.3.7 SLOPE. An accessible route with a running slope greater than 1:20 is a ramp and shall comply with 4.8. Nowhere shall the cross slope of an accessible route exceed 1:50.



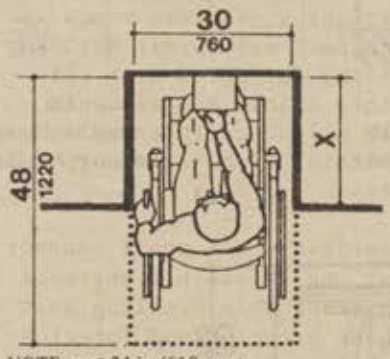
(a)
Clear Floor Space



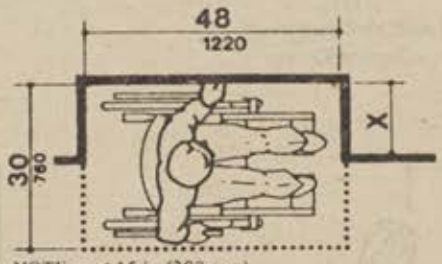
(b)
Forward Approach



(c)
Parallel Approach

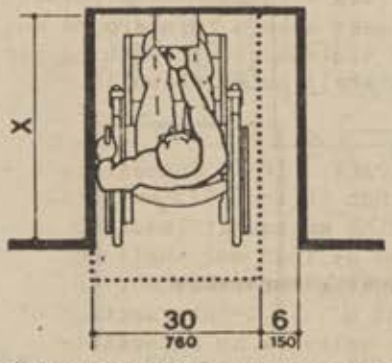


NOTE: x < 24 in (610 mm).

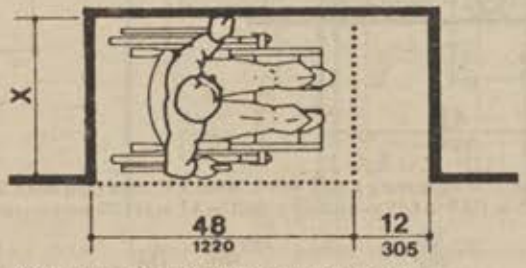


NOTE: x < 15 in (380 mm).

(d)
Clear Floor Space in Alcoves



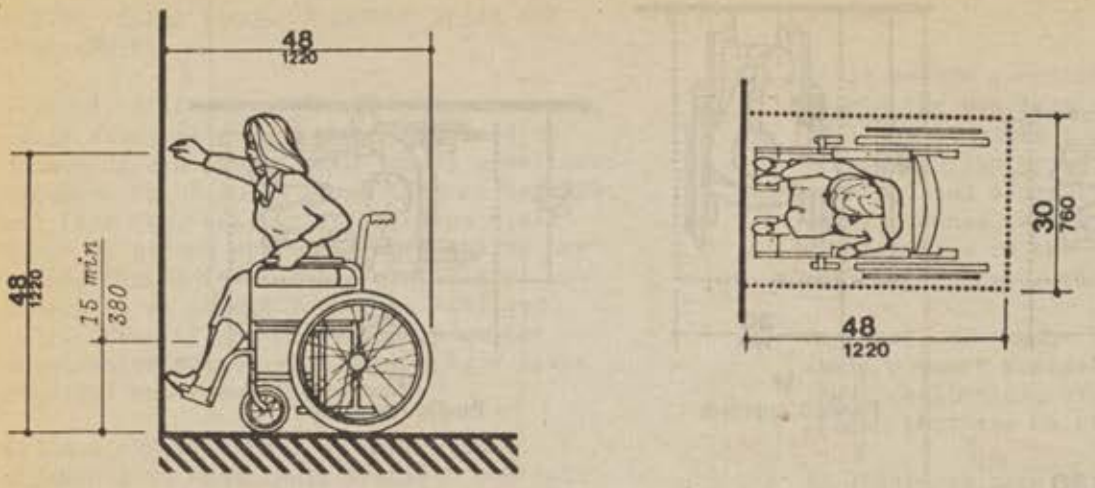
NOTE: If x > 24 in (610 mm), then an additional maneuvering clearance of 6 in (150 mm) shall be provided as shown.



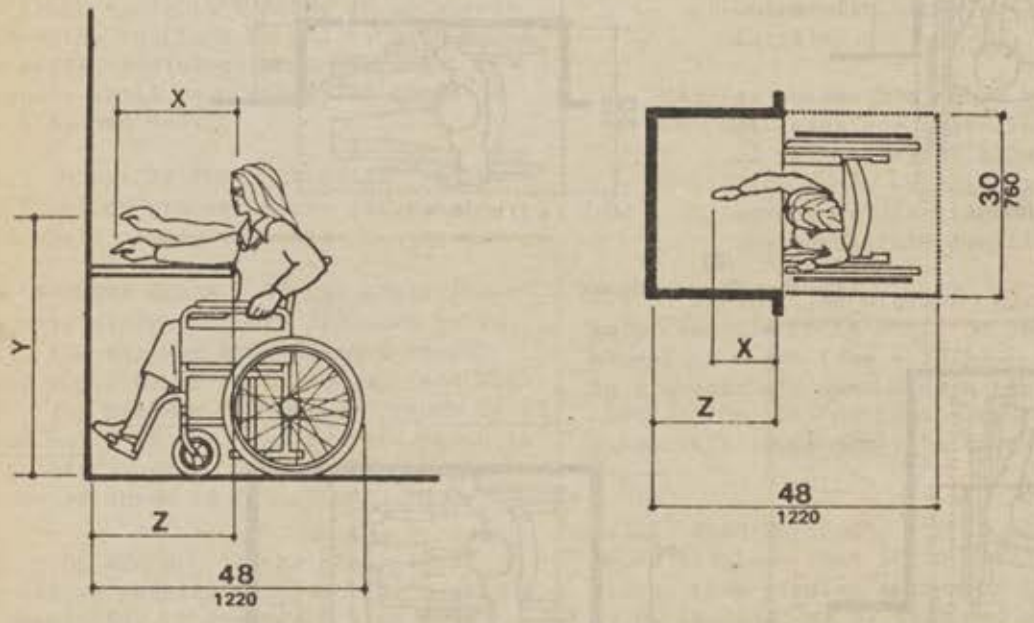
NOTE: If x > 15 in (380 mm), then an additional maneuvering clearance of 12 in (305 mm) shall be provided as shown.

(e)
Additional Maneuvering Clearances for Alcoves

Fig. 4
Minimum Clear Floor Space for Wheelchairs



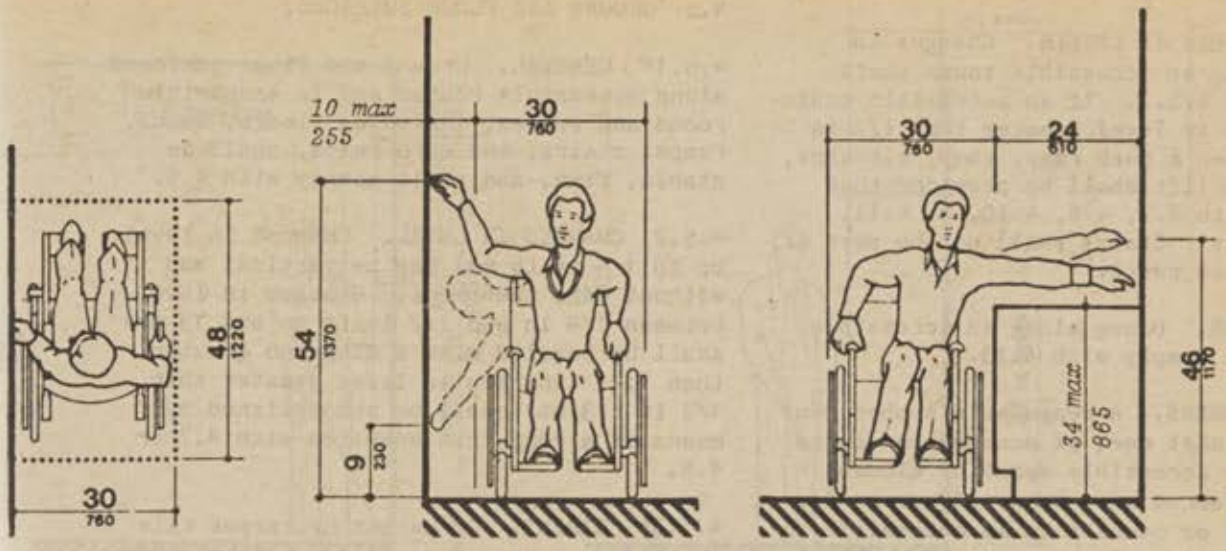
(a)
High Forward Reach Limit



NOTE: x shall be ≤25 in (635 mm); z shall be ≥x. When x < 20 in (510 mm), then y shall be 48 in (1220 mm) maximum. When x is 20 to 25 in (510 to 635 mm), then y shall be 44 in (1120 mm) maximum.

(b)
Maximum Forward Reach over an Obstruction

Fig. 5
Forward Reach

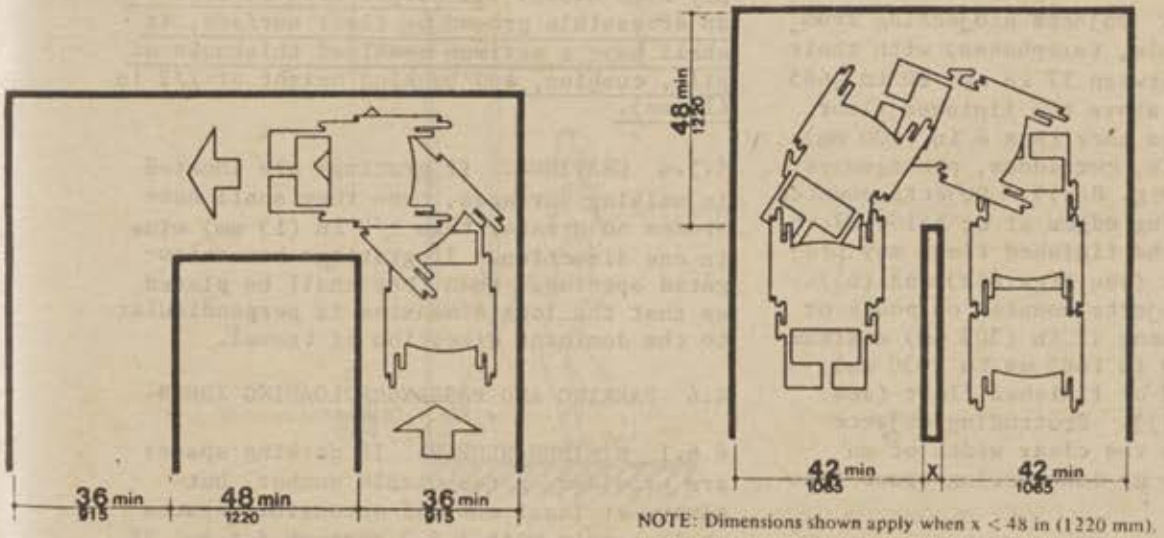


(a)
Clear Floor Space
Parallel Approach

(b)
High and Low
Side Reach Limits

(c)
Maximum Side Reach
over Obstruction

Fig. 6
Side Reach



NOTE: Dimensions shown apply when x < 48 in (1220 mm).

(a)
90° Turn

(b)
Turns around an Obstruction

Fig. 7
Width of Accessible Route

4.3.8 CHANGES IN LEVELS. Changes in levels along an accessible route shall comply with 4.5.2. If an accessible route has changes in level greater than 1/2 in (13 mm), then a curb ramp, ramp, elevator, or platform lift shall be provided that complies with 4.7, 4.8, 4.10, or 4.11, respectively. Stairs shall not be part of an accessible route.

4.3.9 DOORS. Doors along an accessible route shall comply with 4.13.

4.3.10* EGRESS. A reasonable number, but always at least one, of accessible routes serving any accessible space or element shall also serve as a means of egress for emergencies or connect to an accessible place of refuge. Such accessible routes and places of refuge shall comply with the requirements of the administrative authority having jurisdiction. Where fire code provisions require more than one means of egress from any space or room, then more than one accessible means of egress shall also be provided for handicapped people.

4.4 PROTRUDING OBJECTS.

4.4.1* GENERAL. Objects projecting from walls (for example, telephones) with their leading edges between 27 in and 80 in (685 mm and 2030 mm) above the finished floor shall protrude no more than 4 in (100 mm) into walks, halls, corridors, passageways, or aisles (see Fig. 8(a)). Objects mounted with their leading edges at or below 27 in (685 mm) above the finished floor may protrude any amount (see Fig. 8(a) and (b)). Free-standing objects mounted on posts or pylons may overhang 12 in (305 mm) maximum from 27 in to 80 in (685 mm to 2030 mm) above the ground or finished floor (see Fig. 8(c) and (d)). Protruding objects shall not reduce the clear width of an accessible route or maneuvering space (see Fig. 8(e)).

4.4.2 HEAD ROOM. Walks, halls, corridors, passageways, aisles, or other circulation spaces shall have 80 in (2030 mm) minimum clear head room (see Fig. 8(a)). If vertical clearance of an area adjoining an accessible route is reduced to less than 80 in (nominal dimension), provide a barrier to warn blind or visually-impaired persons.

4.5 GROUND AND FLOOR SURFACES.

4.5.1* GENERAL. Ground and floor surfaces along accessible routes and in accessible rooms and spaces, including floors, walks, ramps, stairs, and curb ramps, shall be stable, firm, and shall comply with 4.5.

4.5.2 CHANGES IN LEVEL. Changes in level up to 1/4 in (6 mm) may be vertical and without edge treatment. Changes in level between 1/4 in and 1/2 in (6 mm and 13 mm) shall be beveled with a slope no greater than 1:2. Changes in level greater than 1/2 in (13 mm) shall be accomplished by means of a ramp that complies with 4.7 or 4.8.

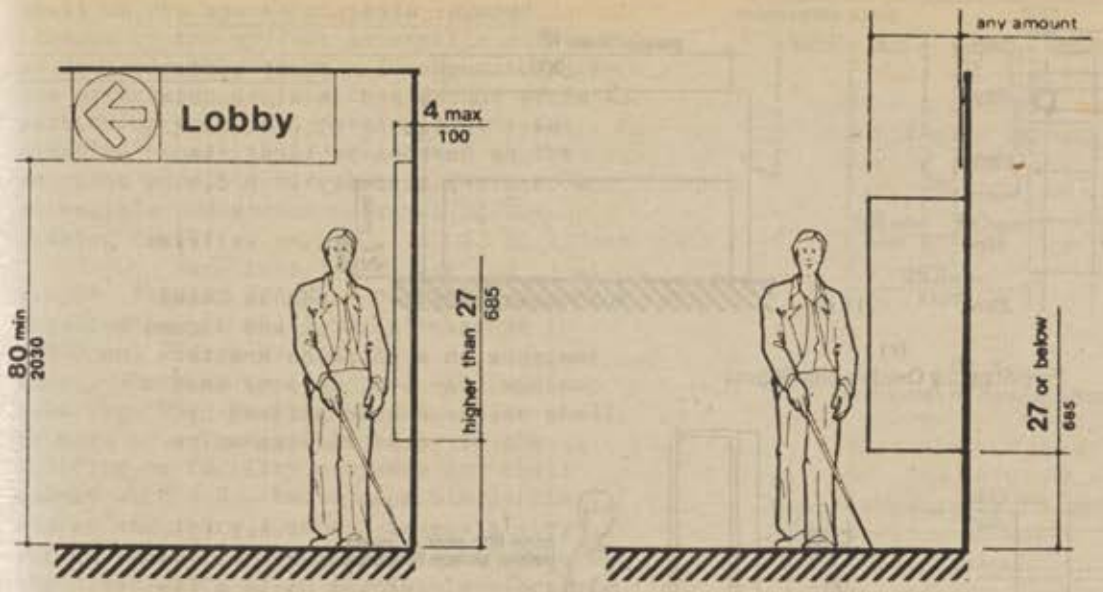
4.5.3* CARPET. If carpet or carpet tile is used on a ground or floor surface, then it shall be securely attached; have a firm cushion, pad, or backing or no cushion or pad; and have a level loop, textured loop, level cut pile, or level cut/uncut pile texture. The maximum pile height shall be 1/2 in (13 mm). Exposed edges of carpet shall be fastened to floor surfaces and have trim along the entire length of the exposed edge. Carpet edge trim shall comply with 4.5.2. If carpet tile is used on an accessible ground or floor surface, it shall have a maximum combined thickness of pile, cushion, and backing height of 1/2 in (13 mm).

4.5.4 GRATINGS. If gratings are located in walking surfaces, then they shall have spaces no greater than 1/2 in (13 mm) wide in one direction. If gratings have elongated openings, then they shall be placed so that the long dimension is perpendicular to the dominant direction of travel.

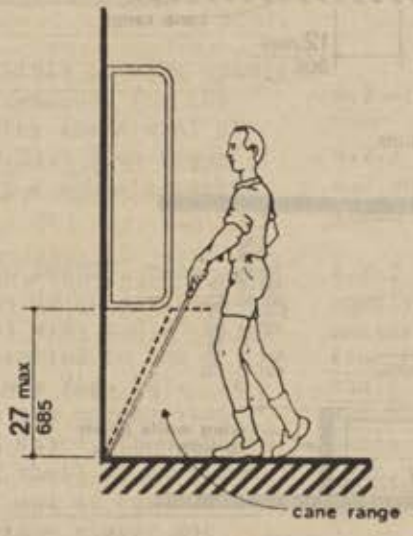
4.6 PARKING AND PASSENGER LOADING ZONES.

4.6.1 MINIMUM NUMBER. If parking spaces are provided, a reasonable number, but always at least one, of accessible spaces shall comply with 4.6.2 through 4.6.4. If passenger loading zones are provided, a reasonable number, but always at least one, of passenger loading zones shall comply with 4.6.5.

4.6.2 LOCATION. Parking spaces for disabled people and accessible passenger loading zones that serve a particular building

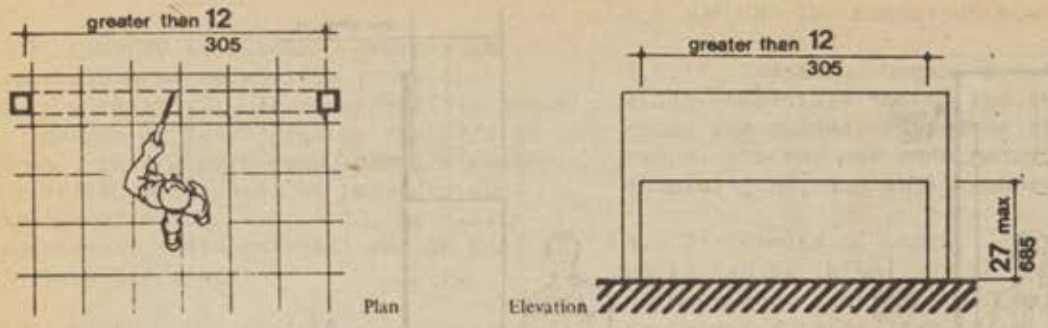


(a)
Walking Parallel to a Wall

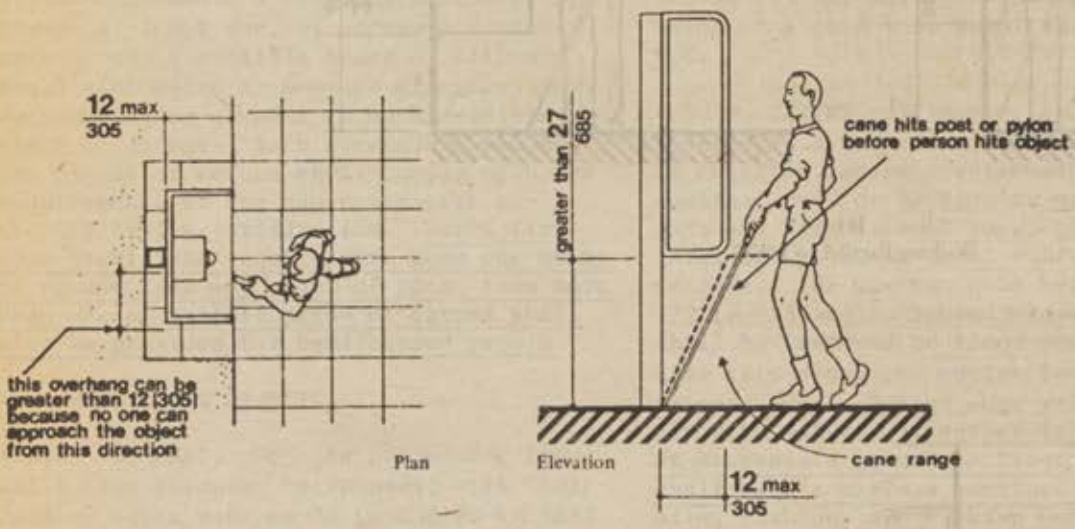


(b)
Walking Perpendicular to a Wall

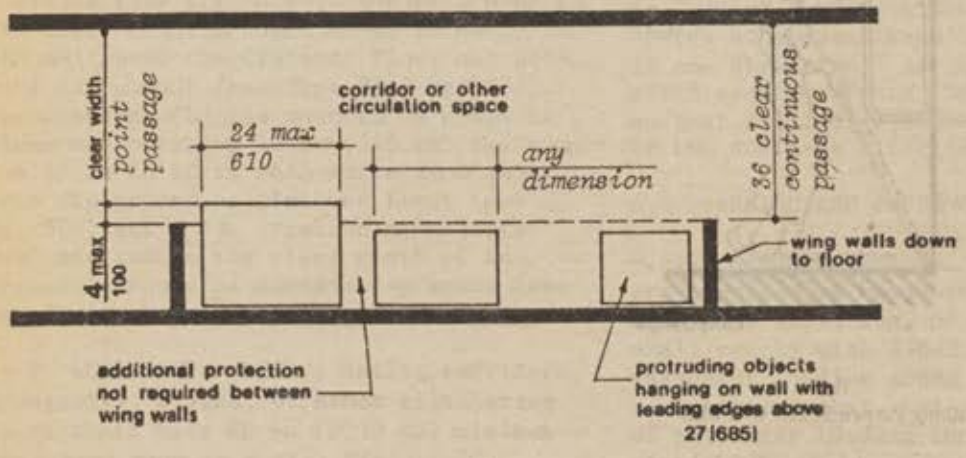
Fig. 8
Protruding Objects



(c)
Free-Standing Overhanging Objects



(d)
Objects Mounted on Posts or Pylons



(e)
Example of Protection around Wall-Mounted Objects and Measurements of Clear Widths

Fig. 8
Protruding Objects (*Continued*)

shall be the spaces or zones located closest to the nearest accessible entrance on an accessible route. In separate parking structures or lots that do not serve a particular building, parking spaces for disabled people shall be located on the shortest possible circulation route to an accessible pedestrian entrance of the parking facility.

4.6.3* PARKING SPACES. Parking spaces for disabled people shall be at least 96 in (2440 mm) wide and shall have an adjacent access aisle 60 in (1525 mm) wide minimum (see Fig. 9). Parking access aisles shall be part of an accessible route to the building or facility entrance and shall comply with 4.3. Two accessible parking spaces may share a common access aisle. Parked vehicle overhangs shall not reduce the clear width of an accessible circulation route. Parking spaces and access aisles shall be level with surface slopes not exceeding 1:50 in all directions.

EXCEPTION: If accessible parking spaces for vans designed for handicapped persons are provided, each should have an adjacent access aisle at least 96 in (2440 mm) wide complying with 4.5, Ground and Floor Surfaces.

4.6.4* SIGNAGE. Accessible parking spaces shall be designated as reserved for the disabled by a sign showing the symbol of accessibility (see 4.30.5). Such signs shall not be obscured by a vehicle parked in the space.

4.6.5 PASSENGER LOADING ZONES. Passenger loading zones shall provide an access aisle at least 60 in (1525 mm) wide and 20 ft (6 m) long adjacent and parallel to the vehicle pull-up space (see Fig. 10). If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with 4.7 shall be provided. Vehicle standing spaces and access aisles shall be level with surface slopes not exceeding 1:50 in all directions.

4.6.6 VERTICAL CLEARANCE: Provide minimum vertical clearances of 114 in at accessible passenger loading zones and along vehicle access routes to such areas from site entrances. If accessible van parking spaces are provided, then the minimum vertical clearance should be 114 in.

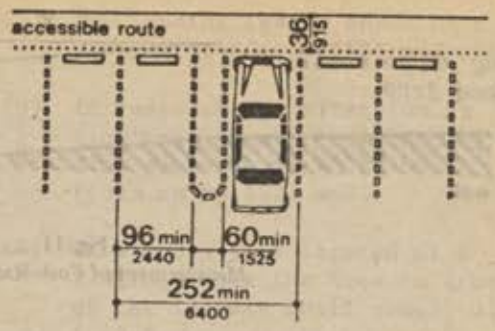


Fig. 9
Dimensions of Parking Spaces

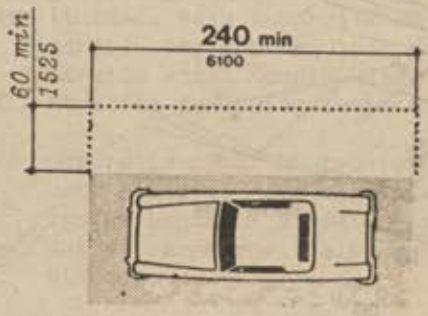


Fig. 10
Access Aisle at Passenger Loading Zones

4.7 CURB RAMPS.

4.7.1 LOCATION. Curb ramps complying with 4.7 shall be provided wherever an accessible route crosses a curb.

4.7.2 SLOPE. Slopes of curb ramps shall comply with 4.8.2. The slope shall be measured as shown in Fig. 11. Transitions from ramps to walks, gutters, or streets shall be flush and free of abrupt changes. Maximum slopes of adjoining gutters, road surface immediately adjacent to the curb ramp, or accessible route shall not exceed 1:20.

4.7.3 WIDTH. The minimum width of a curb ramp shall be 36 in (915 mm), exclusive of flared sides.

4.7.4 SURFACE. Surfaces of curb ramps shall comply with 4.5.

4.7.5 SIDES OF CURB RAMPS. If a curb ramp is located where pedestrians must walk

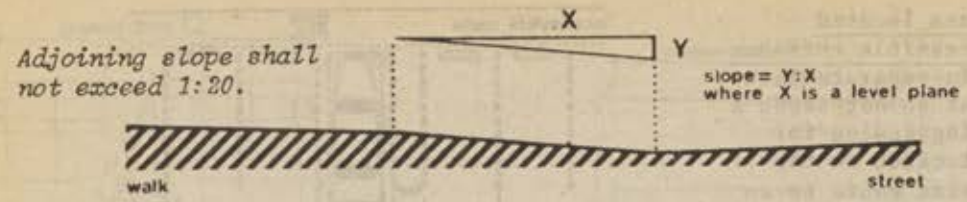
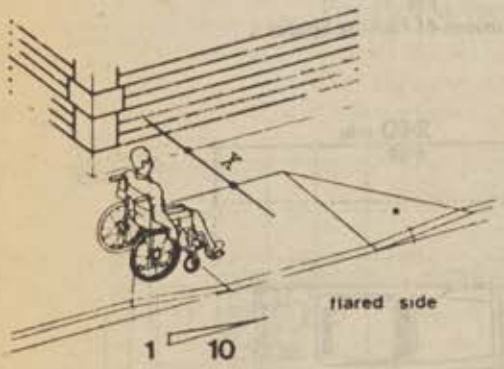
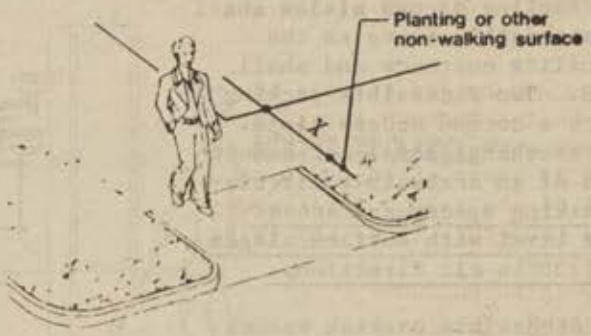


Fig. 11
Measurement of Curb Ramp Slopes



(a)
Flared Sides



(b)
Returned Curb

Fig. 12
Sides of Curb Ramps

If X is less than 48 in, then the slope of the flared side shall not exceed 1:12.

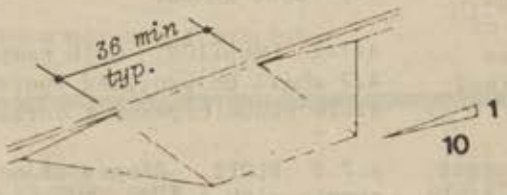


Fig. 13
Built-Up Curb Ramp

across the ramp, or where it is not protected by handrails or guardrails, then it shall have flared sides; the maximum slope of the flare shall be 1:10 (see Fig. 12(a)). Curb ramps with returned curbs may be used where pedes- trians would not normally walk across the ramp (see Fig. 12(b)).

4.7.6 BUILT-UP CURB RAMPS. Built-up curb ramps shall be located so that they do not project into vehicular traffic lanes (see Fig. 13).

4.7.7 WARNING TEXTURES. Removed and Reserved.

4.7.8 OBSTRUCTIONS. Curb ramps shall be located or protected to prevent their obstruction by parked vehicles.

4.7.9 LOCATION AT MARKED CROSSINGS. Curb ramps at marked crossings shall be wholly contained within the markings, excluding any flared sides (see Fig. 15).

4.7.10 DIAGONAL CURB RAMPS. If diagonal (or corner type) curb ramps have returned curbs or other well defined edges, such edges shall be parallel to the direction of pedestrian flow. The bottom of diagonal curb ramps shall have 48 in (1220 mm) minimum clear space as shown in Figs. 15 (c) and (d). If diagonal curb ramps are provided at marked crossings, the 48 in (1220 mm) clear space shall be within the markings (see Figs. 15(c) and (d)). If diagonal curb ramps have flared sides, they shall also have at least a 24 in (610 mm) long segment of straight curb located on each side of the curb ramp and within the marked crossing (see Fig. 15(c)).

4.7.11 ISLANDS. Any raised islands in crossings shall be cut through level with the street or have curb ramps at both sides and a level area at least 48 in (1220 mm) long in the part of the island intersected by the crossings (see Fig. 15(a) and (b)).

4.7.12 UNCURBED INTERSECTIONS. Removed and reserved.

4.8 RAMPS.

4.8.1* GENERAL. Any part of an accessible route with a slope greater than 1:20 shall be considered a ramp and shall comply with 4.8.

4.8.2* SLOPE AND RISE. The least possible slope shall be used for any ramp. The maximum slope of a ramp in new construction shall be 1:12. The maximum rise for any run shall be 30 in (760 mm) (see Fig. 16). Curb ramps and ramps to be constructed on existing sites or in existing buildings or facilities may have slopes and rises as shown in Table 2 if space limitations prohibit the use of a 1:12 slope or less (see Section 5.1).

4.8.3 CLEAR WIDTH. The minimum clear width of a ramp shall be 36 in (915 mm).

4.8.4 LANDINGS. Ramps shall have level landings at the bottom and top of each run. Landings shall have the following features:

(1) The landing shall be at least as wide as the ramp run leading to it.

(2) The landing length shall be a minimum of 60 in (1525 mm) clear.

(3) If ramps change direction at landings, the minimum landing size shall be 60 in by 60 in (1525 mm by 1525 mm).

(4) If a doorway is located at a landing, then the area in front of the doorway shall comply with 4.13.6.

4.8.5* HANDRAILS. If a ramp run has a rise greater than 6 in (250 mm) or a horizontal projection greater than 72 in (1830 mm), then it shall have handrails on both sides. Handrails are not required on curb ramps. Handrails shall comply with 4.26.2 and shall have the following features:

(1) Handrails shall be provided along both sides of ramp segments. The inside handrail on switchback or dogleg ramps shall always be continuous.

(2) If handrails are not continuous, they shall extend at least 12 in (305 mm) beyond the top and bottom of the ramp segment and shall be parallel with the floor or ground surface.

(3) The clear space between the handrail and the wall shall be 1-1/2 in (38 mm).

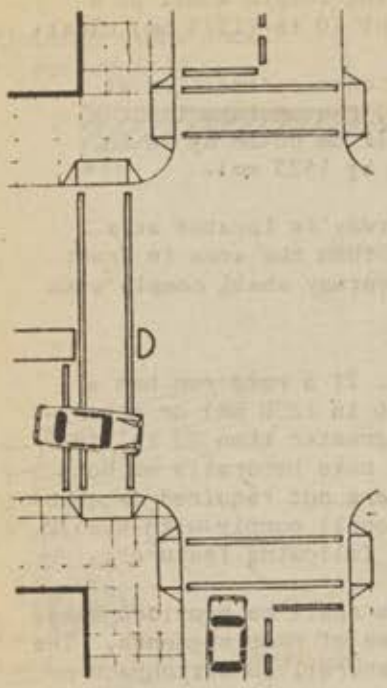
(4) Gripping surfaces shall be continuous.

(5) Top of handrail gripping surfaces shall be mounted between 32 in and 34 in (815 mm and 865 mm) above ramp surfaces.

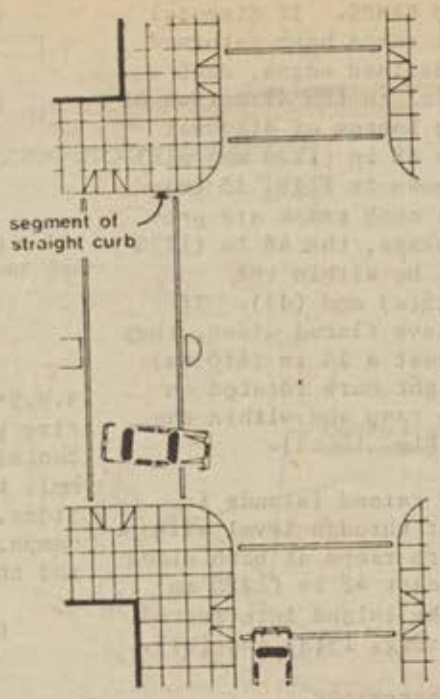
(6) Ends of handrails shall be either rounded or returned smoothly to floor, wall, or post.

(7) Handrails shall not rotate within their fittings.

4.8.6 CROSS SLOPE AND SURFACES. The cross slope of ramp surfaces shall be no greater than 1:50. Ramp surfaces shall comply with 4.5.



(a)



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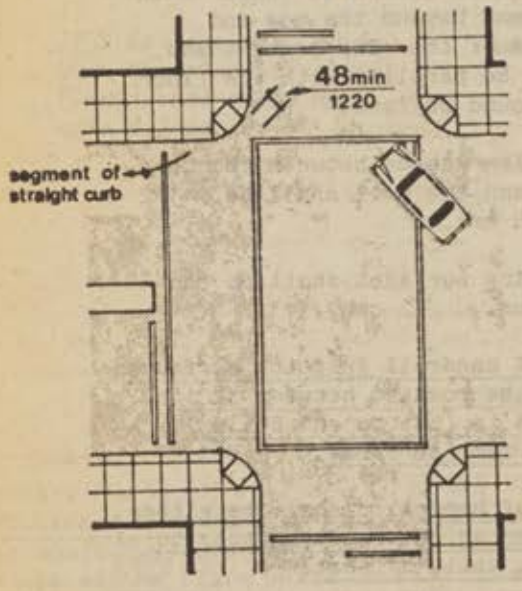
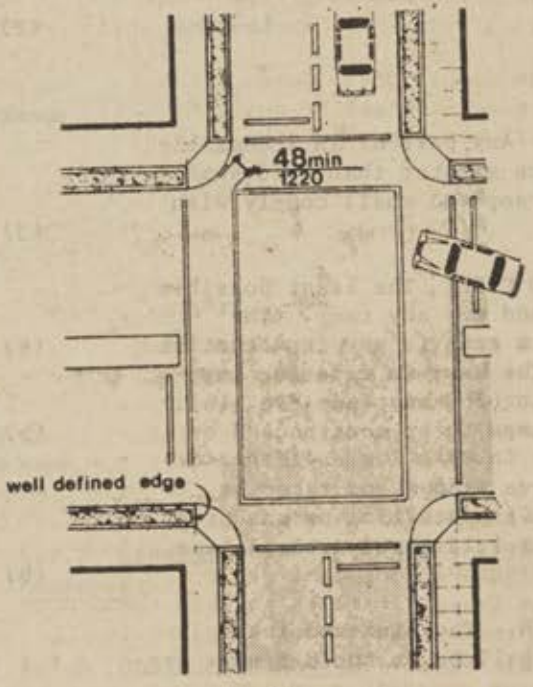
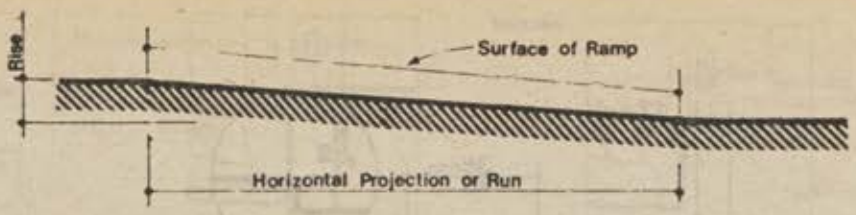


(c)



(d)

Fig. 15
Curb Ramps at Marked Crossings



	Maximum Rise		Maximum Horizontal Projection	
Slope	in	mm	ft	m
1:12	30	760	30	9
1:16	30	760	40	12
1:20	30	760	50	15

Fig. 16
Components of a Single Ramp Run and Sample Ramp Dimensions

4.8.7 EDGE PROTECTION. Ramps and landings with drop-offs shall have curbs, walls, railings, or projecting surfaces that prevent people from slipping off the ramp. Curbs shall be a minimum of 2 in (50 mm) high (see Fig. 17).

4.8.8 OUTDOOR CONDITIONS. Outdoor ramps and their approaches shall be designed so that water will not accumulate on walking surfaces.

4.9 STAIRS.

4.9.1 MINIMUM NUMBER. Stairs connecting levels not connected by an elevator shall comply with 4.9. These specifications are not mandatory for stairs within dwelling units.

4.9.2 TREADS AND RISERS. On any given flight of stairs, all steps shall have uniform riser heights and uniform tread widths. Stair treads shall be no less than 11 in (280 mm) wide, measured from riser to riser (see Fig. 18(a)). Open risers are not permitted on accessible routes.

4.9.3 NOSINGS. The undersides of nosings shall not be abrupt. The radius of curvature at the leading edge of the tread shall be no greater than 1/2 in (13 mm). Risers shall be sloped or the underside of the nosing shall have an angle not less than 60 degrees from the horizontal. Nosings shall project no more than 1-1/2 in (38 mm) (see Fig. 18).

4.9.4 HANDRAILS. Stairways shall have handrails at both sides of all stairs. Handrails shall comply with 4.26 and shall have the following features:

(1) Handrails shall be continuous along both sides of stairs. The inside handrail on switchback or dogleg stairs shall always be continuous (see Fig. 19(a) and (b)).

(2) If handrails are not continuous, they shall extend at least 12 in (305 mm) beyond the top riser and at least 12 in (305 mm) plus the width of one tread beyond the bottom riser. At the top, the extension shall be parallel with the floor or ground surface. At the bottom, the handrail shall continue to slope for a distance of the width of one tread from the bottom riser; the remainder of the extension shall be horizontal (see Fig. 19(c) and (d)). Handrail extensions shall comply with 4.4.

(3) The clear space between handrails and wall shall be 1-1/2 in (38 mm).

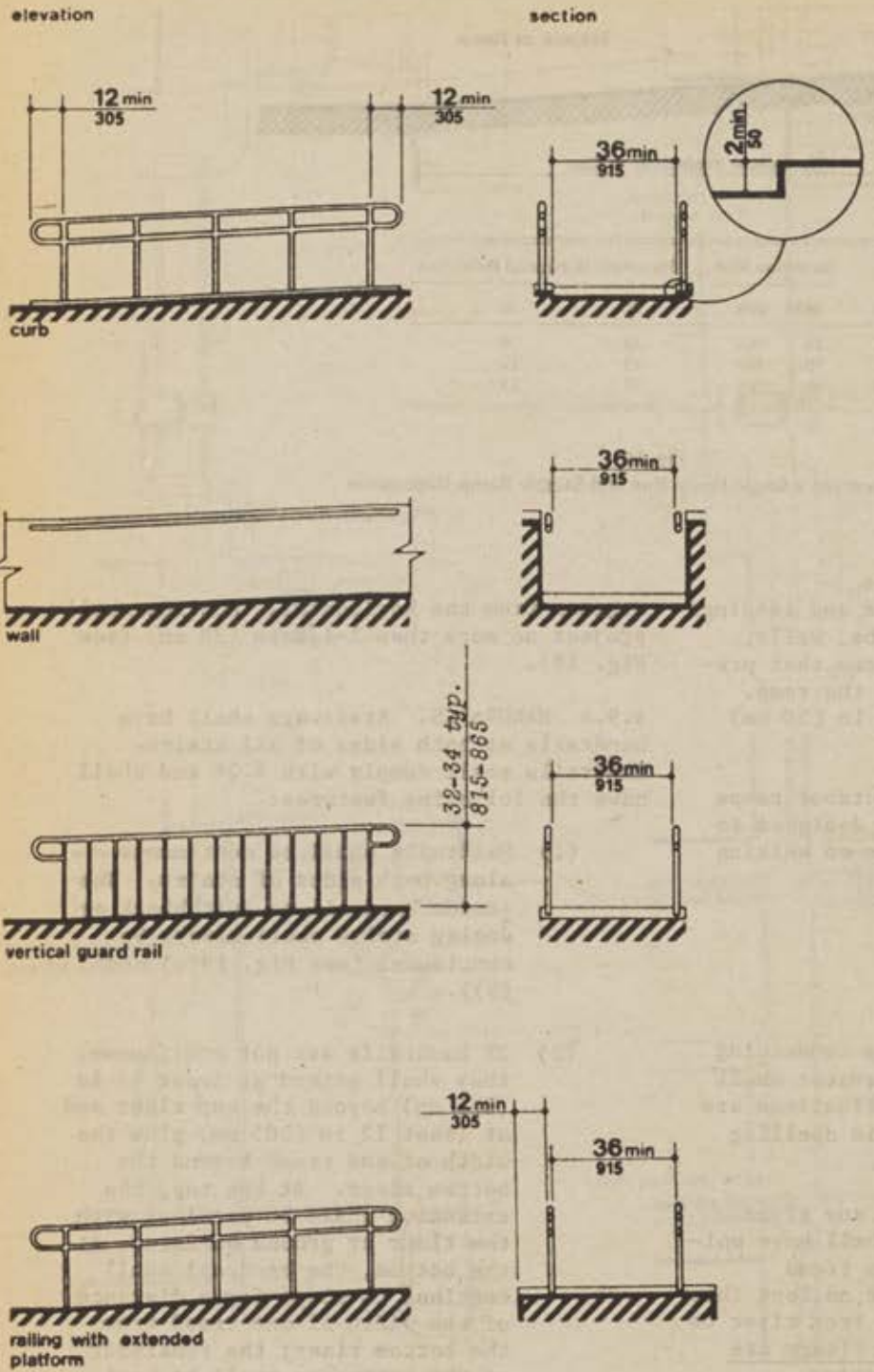
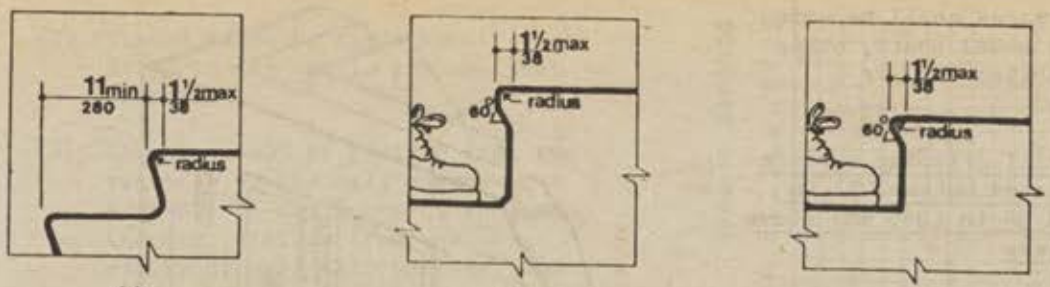


Fig. 17
Examples of Edge Protection and Handrail Extensions

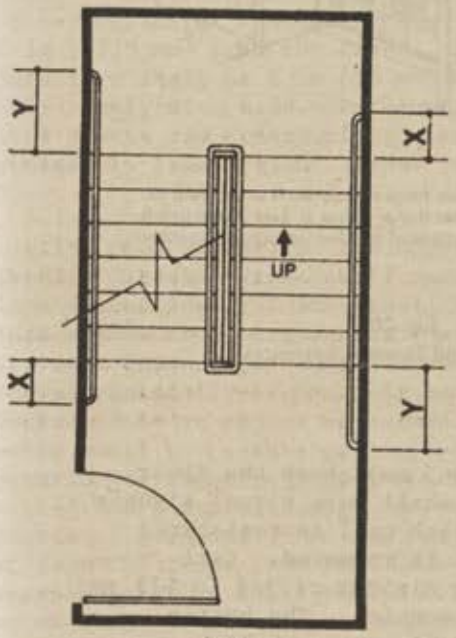


(a)
Flush Riser

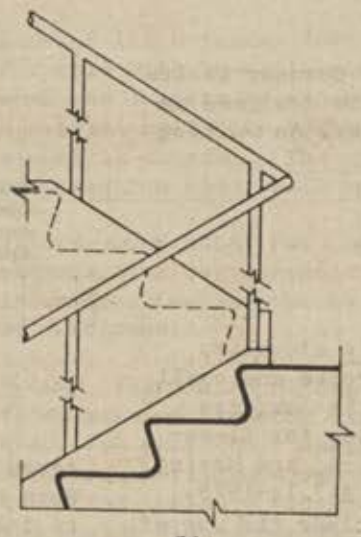
(b)
Angled Nosing

(c)
Rounded Nosing

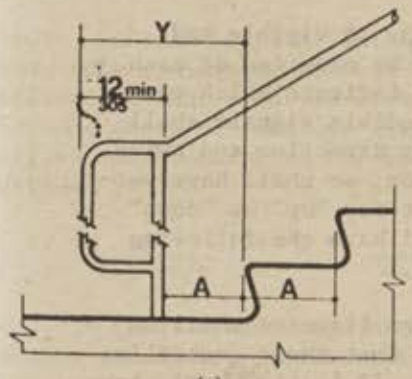
Fig. 18
Usable Tread Width and Examples of Acceptable Nosings



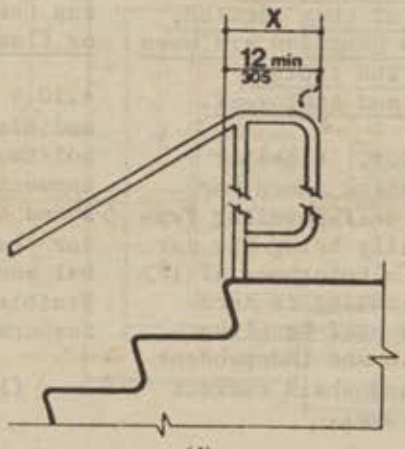
(a)
Plan



(b)
Elevation of Center Handrail



(c)
Extension at Bottom of Run



(d)
Extension at Top of Run

Fig. 19
Stair Handrails

(4) Gripping surfaces shall be uninterrupted by newel posts, other construction elements, or obstructions.

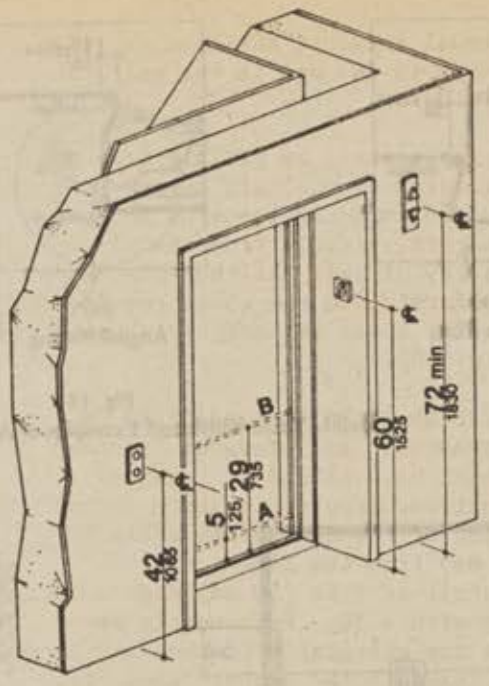
(5) Top of handrail gripping surface shall be mounted between 32 in (815 mm) and 34 in (865 mm) above stair surfaces.

(6) Ends of handrails shall be either rounded or returned smoothly to floor, wall, or post.

(7) Handrails shall not rotate within their fittings.

4.9.5 TACTILE WARNINGS AT STAIRS. Removed and Reserved.

4.9.6 OUTDOOR CONDITIONS. Outdoor stairs and their approaches shall be designed so that water will not accumulate on walking surfaces.



NOTE: The automatic door reopening device is activated if an object passes through either line A or line B. Line A and line B represent the vertical locations of the door reopening device not requiring contact.

Fig. 20
Hoistway and Elevator Entrances

4.10 ELEVATORS.

4.10.1 GENERAL. Accessible elevators shall be on an accessible route and shall comply with 4.10 and with the American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, ANSI A17.1-1978 and A17.1a-1979. This standard does not preclude the use of residential or fully enclosed wheelchair lifts when appropriate and approved by administrative authorities. Freight elevators shall not be considered as meeting the requirements of this section, unless the only elevators provided are used as combination passenger and freight elevators for the public and employees.

4.10.2 AUTOMATIC OPERATION. Elevator operation shall be automatic. Each car shall be equipped with a self-leveling feature that will automatically bring the car to floor landings within a tolerance of 1/2 in. (13 mm) under rated loading to zero loading conditions. This self-leveling feature shall be automatic and independent of the operating device and shall correct the overtravel or undertravel.

4.10.3 HALL CALL BUTTONS. Call buttons in elevator lobbies and halls shall be centered at 42 in (1065 mm) above the floor. Such call buttons shall have visual signals to indicate when each call is registered and when each call is answered. Call buttons shall be a minimum of 3/4 in (19 mm) in the smallest dimension. The button designating the up direction shall be on top (see Fig. 20). Buttons shall be raised or flush.

4.10.4 HALL LANTERNS. A visible and audible signal shall be provided at each hoistway entrance to indicate which car is answering a call. Audible signals shall sound once for the up direction and twice for the down direction, or shall have verbal annunciators that say "up" or "down". Visible signals shall have the following features.

(1) Hall lantern fixtures shall be mounted so that their centerline is at least 72 in (1830 mm) above the lobby floor.

(2) Visual elements shall be at least 2-1/2 in (64 mm) in the smallest dimension.

(3) Signals shall be visible from the vicinity of the hall call button. In-car lanterns located in cars, visible from the vicinity of hall call buttons, and conforming to the above requirements, shall be acceptable (see Fig. 20).

4.10.5 RAISED OR INDENTED CHARACTERS ON HOISTWAY ENTRANCES. All elevator hoistway entrances shall have raised or indented floor designations provided on both jambs. The centerline of the characters shall be 60 in (1525 mm) from the floor. Such characters shall be 2 in (50 mm) high and shall comply with 4.30. Permanently applied plates are acceptable if they are permanently fixed to the jambs. (See Fig. 20).

4.10.6* DOOR PROTECTIVE AND REOPENING DEVICE. Elevator doors shall open and close automatically. They shall be provided with a reopening device that will stop and reopen a car door and hoistway door automatically if the door becomes obstructed by an object or person. The device shall be capable of completing these operations without requiring contact for an obstruction passing through the opening at heights of 5 in and 29 in (125 mm and 735 mm) from the floor (see Fig. 20). Door reopening devices shall remain effective for at least 20 seconds. After such an interval, doors may close in accordance with the requirements of ANSI A17.1-1978 and A17.1a-1979.

4.10.7* DOOR AND SIGNAL TIMING FOR HALL CALLS. The minimum acceptable time from notification that a car is answering a call until the doors of that car start to close shall be calculated from the following equation:

$$T = \frac{D}{1.5\ ft/s} \quad or \quad T = \frac{D}{445\ mm/s}$$

where T = total time in seconds and D = distance (in feet or millimeters) from a point in the lobby or corridor 60 in (1525 mm) directly in front of the farthest call button controlling that car to the centerline of its hoistway door (see Fig. 21). For cars with in-car lanterns, T begins when the lantern is visable from the vicinity of hall call buttons and an audible signal is sounded. The minimum acceptable notification time shall be 5 seconds.

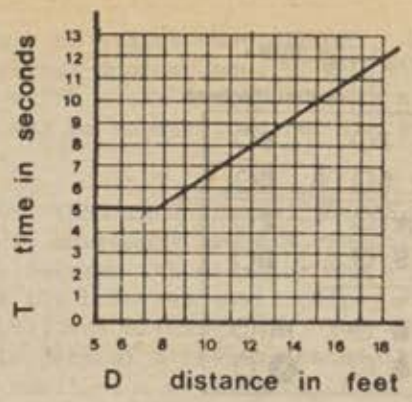


Fig. 21
Graph of Timing Equation

4.10.8 DOOR DELAY FOR CAR CALLS. The minimum time for elevator doors to remain fully open in response to a car call shall be 3 seconds.

4.10.9 FLOOR PLAN OF ELEVATOR CARS. The floor area of elevator cars shall provide space for wheelchair users to enter the car, maneuver within reach of controls, and exit from the car. Acceptable door opening and inside dimensions shall be as shown in Fig. 22. The clearance between the car

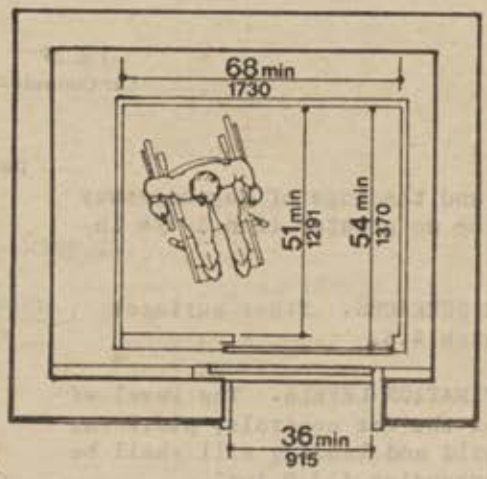
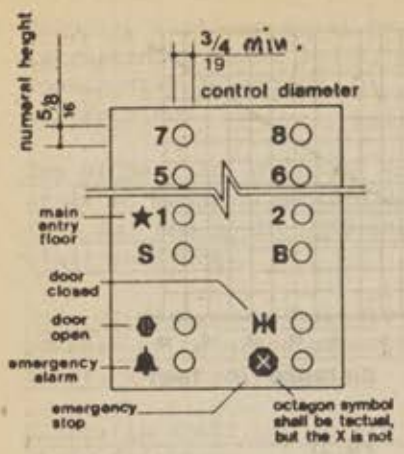
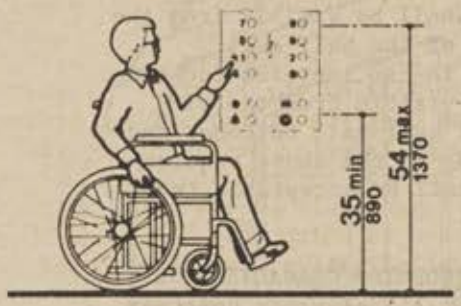


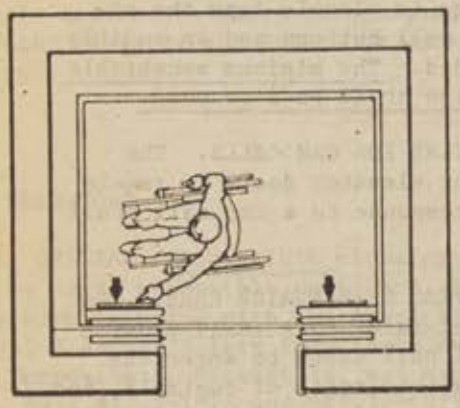
Fig. 22
Minimum Dimensions of Elevator Cars



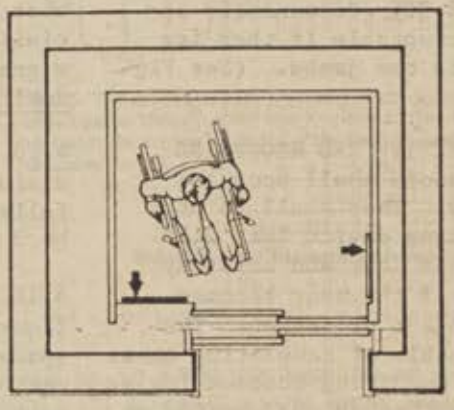
(a)
Panel Detail



(b)
Control Height



(c)
Alternate Locations of Panel
with Center Opening Door



(d)
Alternate Locations of Panel
with Side Opening Door

Fig. 23
Car Controls

platform sill and the edge of any hoistway landing shall be no greater than 1-1/4 in (32 mm).

4.10.10 FLOOR SURFACES. Floor surfaces shall comply with 4.5.

4.10.11 ILLUMINATION LEVELS. The level of illumination at the car controls, platform, and car threshold and landing sill shall be at least 5 footcandles (53.8 lux).

4.10.12* CAR CONTROLS. Elevator control panels shall have the following features:

(1) Buttons. All control buttons shall be at least 3/4 in (19 mm) in their smallest dimension. They may be raised or flush.

(2) Tactile and Visual Control Indicators. All control buttons shall be designated by raised or indented standard alphabet characters for letters, arabic characters for numerals, or standard symbols as shown in Fig.

23(a), and as required in ANSI A17.1-1978 and A17.1a-1979. Raised and indented characters and symbols shall comply with 4.30. The call button for the main entry floor shall be designated by a raised or indented star at the left of the floor designation (see Fig. 23(a)). All raised or indented designations for control buttons shall be placed immediately to the left of the button to which they apply. Applied plates, permanently attached, are an acceptable means to provide raised or indented control designations. Floor buttons shall be provided with visual indicators to show when each call is registered. The visual indicators shall be extinguished when each call is answered.

(3) Height. All floor buttons shall be no higher than 48 in (1220 mm), unless there is a substantial increase in cost, in which case the maximum mounting height may be increased to 54 in (1370 mm), above the floor. Emergency controls, including the emergency alarm and emergency stop, shall be grouped at the buttom of the panel and shall have their centerlines no less than 35 in (890 mm) above the floor (see Fig. 23(a) and (b).

(4) Location. Controls shall be located on a front wall if cars have center opening doors, and at the side wall or at the front wall next to the door if cars have side opening doors (see Fig. 23(c) and (d)).

4.10.13* CAR POSITION INDICATORS. In elevator cars, a visual car position indicator shall be provided above the car control panel or over the door to show the position of the elevator in the hoistway. As the car passes or stops at a floor served by the elevators, the corresponding numerals shall illuminate and an audible signal shall sound. Numerals shall be a minimum of 1/2 in (13 mm) high. The audible signal shall be no less than 20 decibels with a frequency no higher than 1500 Hz. An automatic verbal announcement of the floor number at which a car stops or which a car passes may be substituted for the audible signal.

4.10.14* EMERGENCY COMMUNICATIONS. If provided, emergency two-way communication systems between the elevator and a point outside the hoistway shall comply with ANSI A17.1-1978 and A17.1a-1979. The highest operable part of a two-way communication system shall be a maximum of 48 in (1220 mm) from the floor of the car. It shall be identified by raised or recessed symbol and lettering complying with 4.30 and located adjacent to the device. If the system uses a handset, then the length of the cord from the panel to the handset shall be at least 29 in (735 mm). If the system is located in a closed compartment, the compartment door hardware shall conform to 4.27, Controls and Operating Mechanisms. The emergency intercommunication system shall not require voice communication.

4.11 PLATFORM LIFTS.

4.11.1 LOCATION. Platform lifts may be used as a part of an accessible route if no other alternative is feasible.

4.11.1 OTHER REQUIREMENTS. If platform lifts are used, they shall comply with 4.2.4, 4.5, 4.27, and the applicable safety regulations of administrative authorities having jurisdiction.

4.12 WINDOWS.

RESERVED.

4.13 DOORS.

4.13.1 GENERAL. All doors to accessible spaces and elements and along accessible routes shall comply with the requirements of 4.13.

4.13.2 REVOLVING DOORS AND TURNSTILES. Revolving doors or turnstiles shall not be the only means of passage at an accessible entrance or along an accessible route. An accessible door shall be provided adjacent to the turnstile or revolving door and shall be so designed as to facilitate the same use pattern.

4.13.3 GATES. Gates, including ticket gates, shall meet all applicable specifications of 4.13.

4.13.4 DOUBLE-LEAF DOORWAYS. If doorways have two manually operated door leaves, then at least one leaf shall meet the specifications in 4.13.5 and 4.13.6. That leaf shall be an active leaf.

4.13.5 CLEAR WIDTH. Doorways shall have a minimum clear opening of 32 in (815 mm) with the door open 90 degrees, measured between the face of the door and the stop (see Fig. 24(a), (b), (c), and (d)). Openings more than 24 in (610 mm) in depth shall comply with 4.2.1 and 4.3.3 (see Fig. 24(e)).

EXCEPTION: Where existing elements prohibit strict compliance in alteration work, the latch side stop may project into this clear opening 5/8 in (16 mm) maximum.

EXCEPTION: Doors not requiring full user passage, such as shallow closets, may have the minimum clear opening reduced to 20 in. (510 mm) minimum.

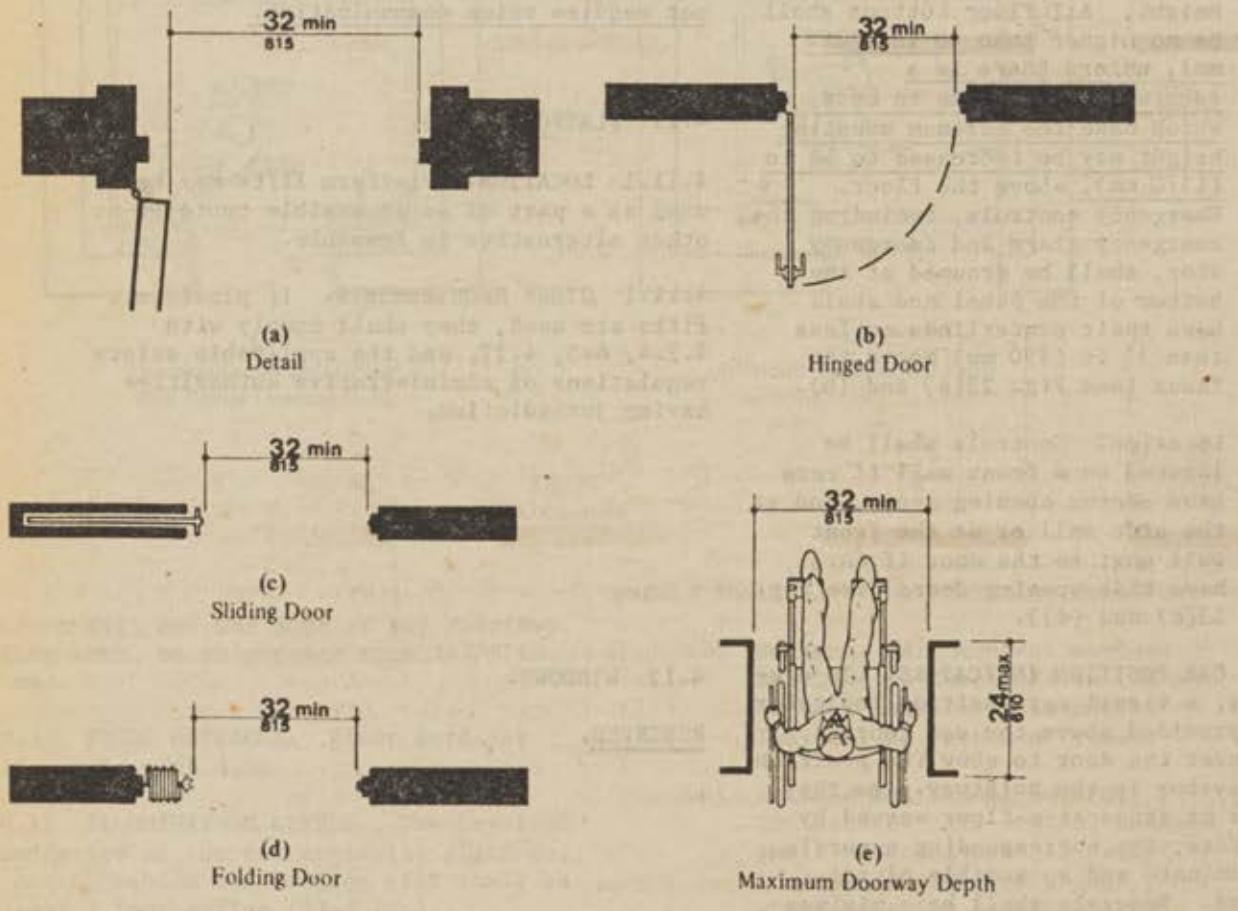
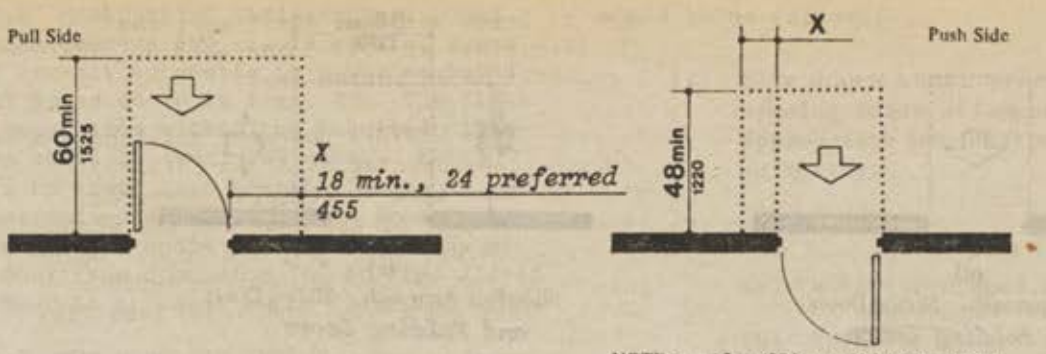
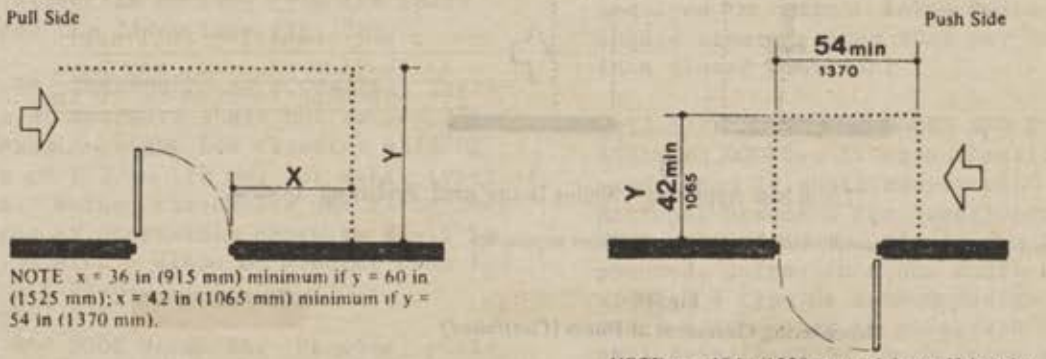


Fig. 24
Clear Doorway Width and Depth



NOTE: x = 12 in (305 mm) if door has both a closer and latch.

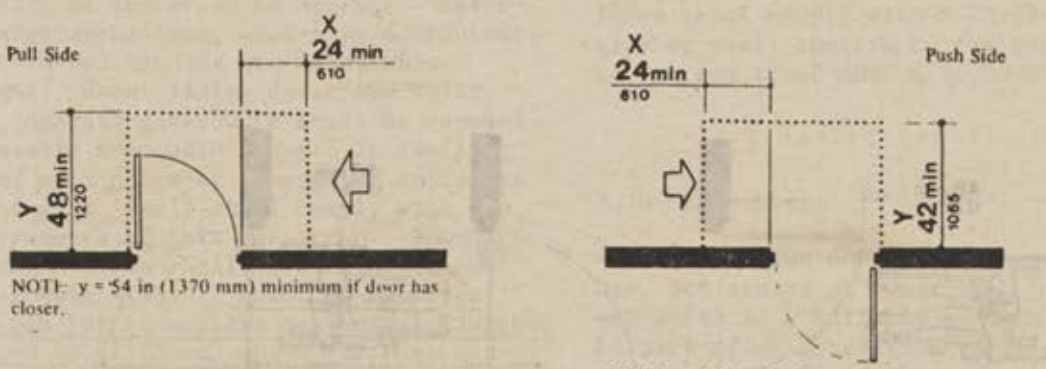
(a)
Front Approaches – Swinging Doors



NOTE: x = 36 in (915 mm) minimum if y = 60 in (1525 mm); x = 42 in (1065 mm) minimum if y = 54 in (1370 mm).

NOTE: y = 48 in (1220 mm) minimum if door has both a latch and closer.

(b)
Hinge Side Approaches – Swinging Doors



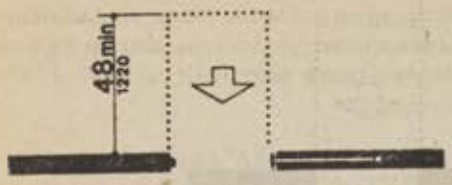
NOTE: y = 54 in (1370 mm) minimum if door has closer.

NOTE: y = 48 in (1220 mm) minimum if door has closer.

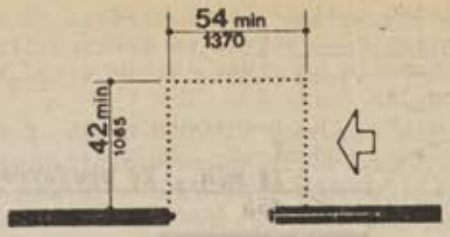
(c)
Latch Side Approaches Swinging Doors

NOTE: All doors in alcoves shall comply with the clearances for front approaches.

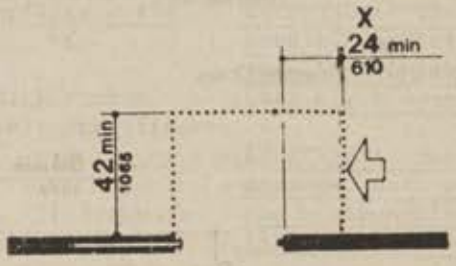
Fig. 25
Maneuvering Clearances at Doors



(d)
Front Approach – Sliding Doors
and Folding Doors



(e)
Slide Side Approach – Sliding Doors
and Folding Doors



(f)
Latch Side Approach – Sliding Doors *and Folding Doors*

NOTE: All doors in alcoves shall comply with the clearances for front approaches.

Fig. 25
Maneuvering Clearances at Doors (*Continued*)

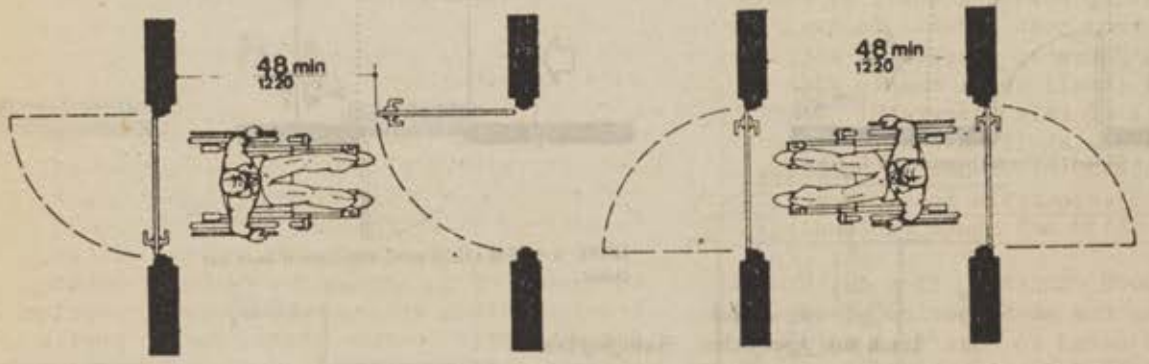


Fig. 26
Two Hinged Doors in Series

4.13.6 MANEUVERING CLEARANCES AT DOORS. Minimum maneuvering clearances for doors that are not automatic or power assisted shall be as shown in Figs. 25. The floor or ground area within the required clearances shall be level and clear. Entry doors to acute care hospital bedrooms for in-patients shall be exempted from the requirement for space at the latch side of the door (see dimension "x" in Fig. 25) if the door is at least 44 in (1120 mm) wide.

4.13.7 TWO DOORS IN SERIES. The minimum space between two hinged or pivoted doors in series shall be 48 in (1220 mm) plus the width of any door swinging into the space. Doors in series shall swing either in the same direction or away from the space between the doors (see Fig. 26).

4.13.8* THRESHOLDS AT DOORWAYS. Thresholds at doorways shall not exceed 3/4 in (19 mm) in height for exterior sliding doors or 1/2 in (13 mm) for other types of doors. Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:2 (see 4.5.2).

4.13.9* DOOR HARDWARE. Handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. Lever-operated mechanisms, push-type mechanisms, and U-shaped handles are acceptable designs. When sliding doors are fully open, operating hardware shall be exposed and usable from both sides. In dwelling units, only doors at accessible entrances to the unit itself shall comply with the requirements of this paragraph. Doors to hazardous areas shall have hardware complying with 4.29.3. Mount no hardware required for accessible door passage higher than 48 in (1220 mm) above finished floor.

4.13.10* DOOR CLOSERS. If a door has a closer, then the sweep period of the closer shall be adjusted so that from an open position of 70 degrees, the door will take at least 3 seconds to move to a point 3 in (75 mm) from the latch, measured to the leading edge of the door.

4.13.11* DOOR OPENING FORCE. The maximum force for pushing or pulling open a door shall be as follows:

(1) Fire doors shall have the minimum opening force allowable by the appropriate administrative authority.

(2) Other doors.

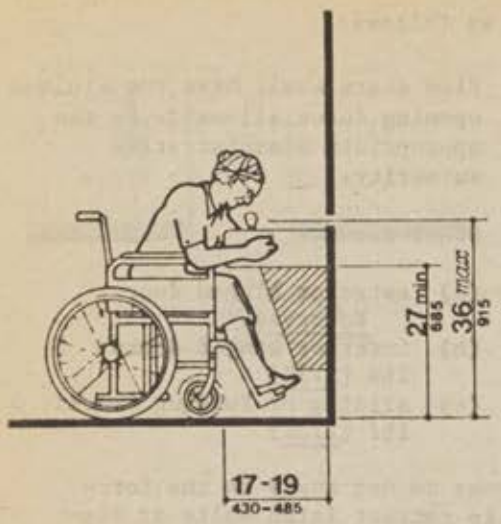
(a) exterior hinged doors; Reserved.
(b) interior hinged doors: 5 lbf (2.3K)
(c) sliding or folding doors: 5 lbf (2.3K)

These forces do not apply to the force required to retract latch bolts or disengage other devices that may hold the door in a closed position.

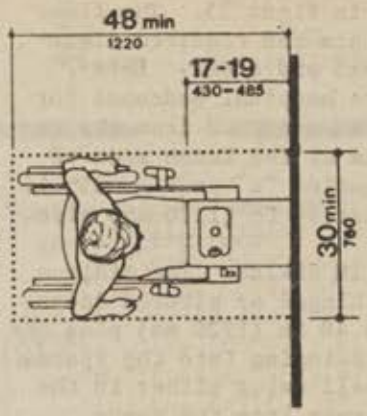
4.13.12* AUTOMATIC DOORS AND POWER-ASSISTED DOORS. If an automatic door is used, then it shall comply with American National Standard for Power-Operated Doors, ANSI A156.10-1979. Slowly opening, low-powered, automatic doors shall be considered a type of custom design installation as described in paragraph 1.1.1 of ANSI A156.10-1979. Such doors shall not open to back check faster than 3 seconds and shall require no more than 15 lbf (6.8K) to stop door movement. If a power-assisted door is used, its door-opening force shall comply with 4.13.11 and its closing shall conform to the requirements in section 10 of ANSI A156.10-1979.

4.14 Entrances.

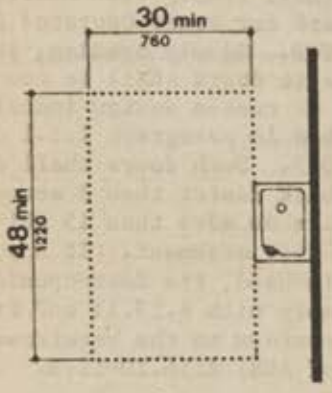
4.14.1 MINIMUM NUMBER. A reasonable number, but always at least one, of principal entrances to a building or facility shall be part of an accessible route and shall comply with 4.3. Such entrances shall be connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks if available (see 4.3.2(1)). They shall also be connected by an accessible route to all accessible spaces or elements within the building or facility.



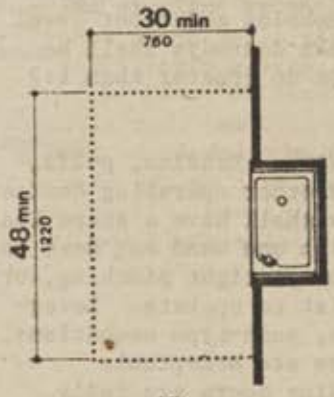
(a)
Spout Height and
Knee Clearance



(b)
Clear Floor Space



(c)
Free-Standing
Fountain or Cooler



(d)
Built-In
Fountain or Cooler

Fig. 27
Drinking Fountains and Water Coolers

4.14.2 SERVICE ENTRANCES. A service entrance shall not be the sole accessible entrance unless it is the only entrance to a building or facility (for example, in a factory or garage).

4.15 DRINKING FOUNTAINS AND WATER COOLERS.

4.15.1 MINIMUM NUMBER. If drinking fountains or water coolers are provided, a reasonable number, but always at least one shall comply with 4.15 and shall be on an accessible route.

4.15.2 SPOUT HEIGHT. Spouts shall be no higher than 36 in (915 mm), measured from the floor or ground surfaces to the spout outlet (see Fig. 27(a)).

4.15.3 SPOUT LOCATION. The spouts of drinking fountains and water coolers shall be at the front of the unit and shall direct the water flow in a trajectory that is parallel or nearly parallel to the front

of the unit. The spout shall provide a flow of water at least 4 in (100 mm) high so as to allow the insertion of a cup or glass under the flow of water.

4.15.4 CONTROLS. Controls shall comply with 4.27.4.

4.15.5 CLEARANCES.

(1) Wall- and post-mounted cantilevered units shall have a clear knee space between the bottom of the apron and the floor or ground at least 27 in (685 mm) high, 30 in (760 mm) wide, and 17 in to 19 in (430 mm to 485 mm) deep (see Fig. 27(a) and (b)). Such units shall also have a minimum clear floor space 30 in by 48 in (760 mm by 1220 mm) to allow a person in a wheelchair to approach the unit facing forward.

(2) Free-standing or built-in units not having a clear space under them shall have a clear floor space at least 30 in by 48 in (760 mm by 1220 mm) that allows a person in a wheelchair to make a parallel approach to the unit (see Fig. 27(c) and (d)). This clear floor space shall comply with 4.2.4.

4.16 WATER CLOSETS.

4.16.1 GENERAL. Accessible water closets shall comply with 4.16. For water closets in accessible dwelling units, see 4.34.5.2.

4.16.2 CLEAR FLOOR SPACE. Clear floor space for water closets not in stalls shall comply with Fig. 28. Clear floor space may be arranged to allow either a left-handed or right-handed approach.

4.16.3* HEIGHT. The height of water closets shall be 17 in to 19 in (430 mm to 485 mm), measured to the top of the toilet seat (see Fig. 29). Seats shall not be sprung to return to a lifted position.

4.16.4* GRAB BARS. Grab bars for water closets not located in stalls shall comply with Fig. 29 and 4.26.

4.16.5 FLUSH CONTROLS. Flush controls shall be hand operated or automatic and shall comply with 4.27.4. Controls for flush valves shall be mounted on the wide side of toilet areas no more than 44 in (1120 mm) above the floor.

4.16.6 DISPENSERS. Toilet paper dispensers shall be installed within reach, as shown in Fig. 29(b). Dispensers that control delivery or that do not permit continuous paper flow, shall not be used.

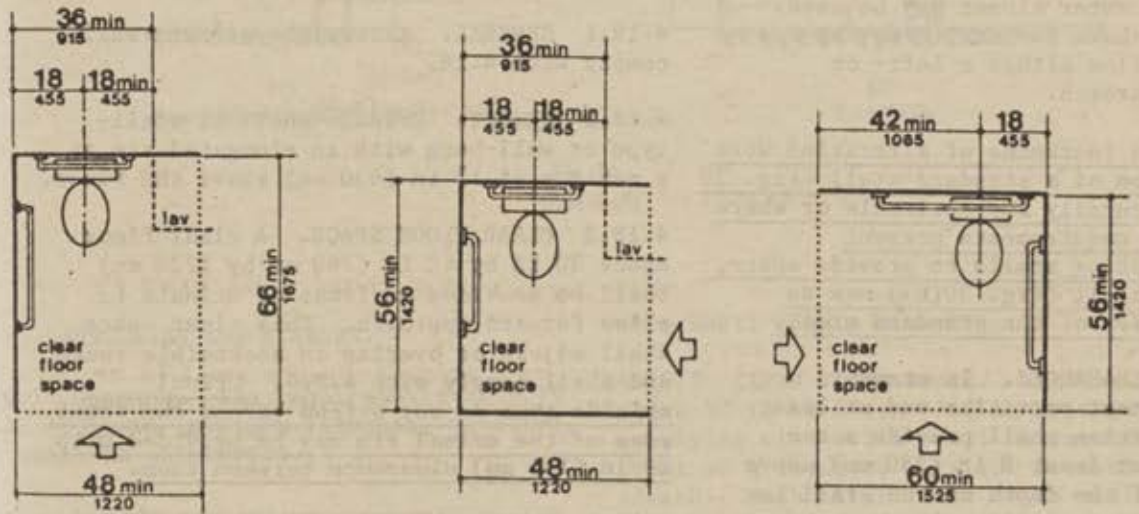
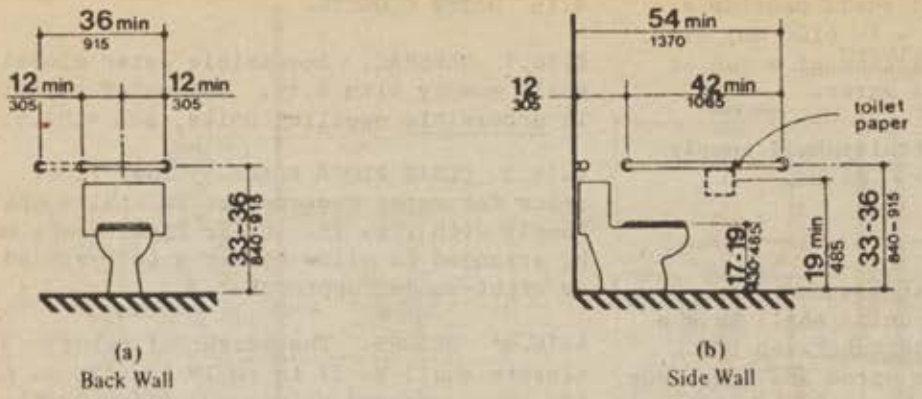


Fig. 28
Clear Floor Space at Water Closets



(a)
Back Wall

(b)
Side Wall

Fig. 29
Grab Bars at Water Closets

4.17 TOILET STALLS.

4.17.1 LOCATION. Accessible toilet stalls shall be on an accessible route and shall meet the requirements of 4.17.

4.17.2 WATER CLOSETS. Water closets in stalls shall comply with 4.16.

4.17.3 SIZE AND ARRANGEMENT. The size and arrangement of toilet stalls shall comply with Fig. 30(a). Toilet stalls with a minimum depth of 56 in (1420 mm) (see Fig. 30(a)) shall have wall-mounted water closets. If the depth of toilet stalls is increased at least 3 in (75 mm), then a floor-mounted water closet may be used. Arrangements shown for stalls may be reversed to allow either a left- or right-hand approach.

EXCEPTION: In instances of alteration work where provision of a standard stall (Fig. 30 (a)) is structurally impracticable or where plumbing code requirements prevent combining existing stalls to provide space, an alternate stall (Fig. 30(b)) may be provided in lieu of the standard stall.

4.17.4 TOE CLEARANCES. In standard stalls, the front partition and at least one side partition shall provide a toe clearance of at least 9 in (230 mm) above the floor. If the depth of the stall is greater than 60 in (1525 mm), then the toe clearance is not required.

4.17.5* DOORS. Toilet stall doors shall comply with 4.13. If toilet stall approach is from the latch side of the stall door, clearance between the door side of the stall and any obstruction may be reduced to a minimum of 42 in (1065 mm).

4.17.6 GRAB BARS. Grab bars complying with the length and positioning shown in Fig. 30(a), (b), (c), and (d) shall be provided. Grab bars may be mounted with any desired method as long as they have a gripping surface at the locations shown and do not obstruct the required clear floor area. Grab bars shall comply with 4.26.

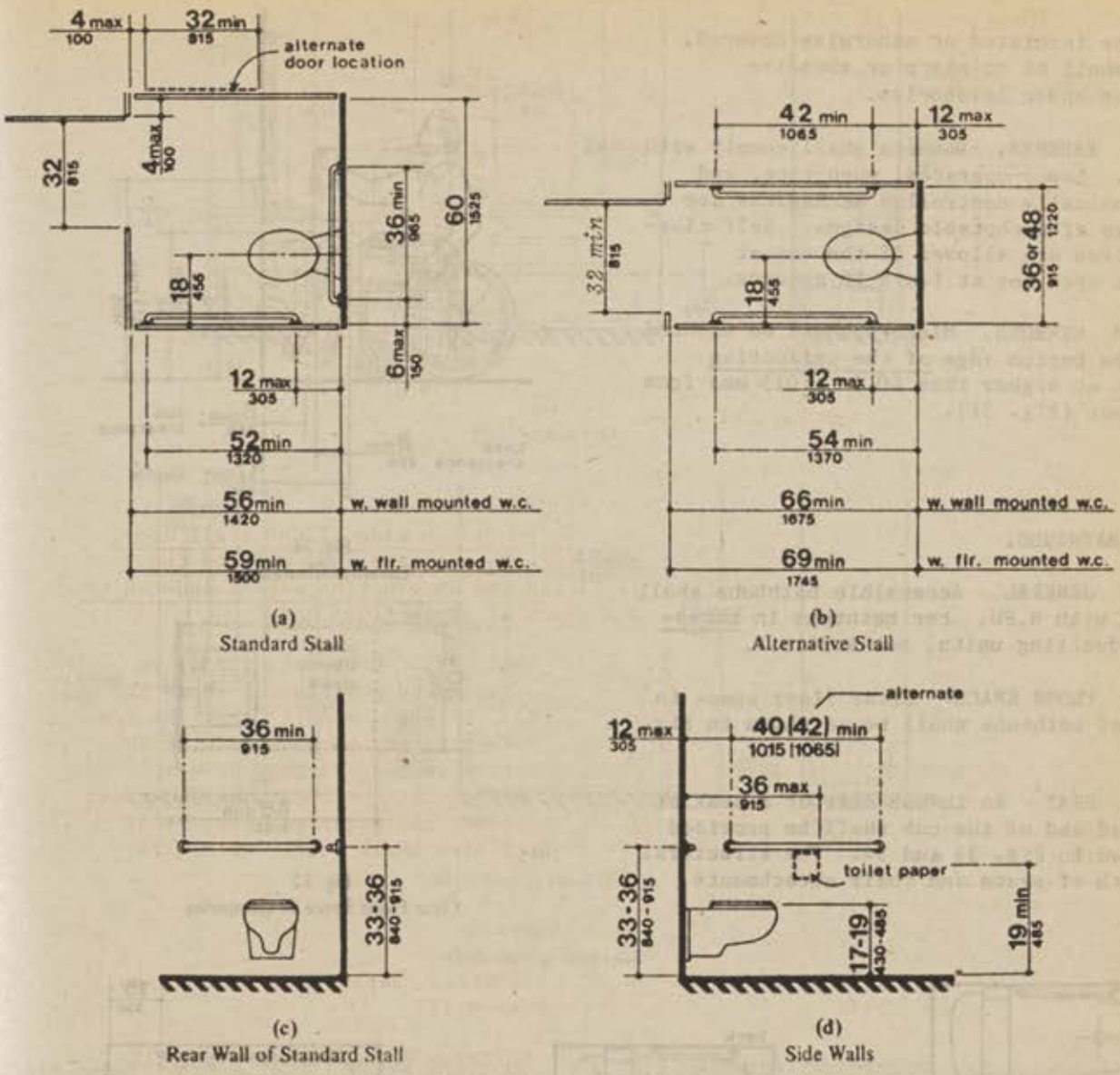
4.18 URINALS.

4.18.1 GENERAL. Accessible urinals shall comply with 4.18.

4.18.2 HEIGHT. Urinals shall be stall-type or wall-hung with an elongated rim at a maximum of 17 in (430 mm) above the floor.

4.18.3 CLEAR FLOOR SPACE. A clear floor space 30 in by 48 in (760 mm by 1220 mm) shall be provided in front of urinals to allow forward approach. This clear space shall adjoin or overlap an accessible route and shall comply with 4.2.4. Urinal shields that do not extend beyond the front edge of the urinal rim may be provided with 29 in (735 mm) clearance between them.

4.18.4 FLUSH CONTROLS. Flush controls shall be hand operated or automatic, and shall comply with 4.27.4, and shall be mounted no more than 44 in (1120 mm) above the floor.



(a) Standard Stall

(b) Alternative Stall

(c) Rear Wall of Standard Stall

(d) Side Walls

Fig. 30
Toilet Stalls

4.19 LAVATORIES AND MIRRORS.

4.19.1 GENERAL. The requirements of 4.19 shall apply to lavatory fixtures, vanities, and built-in lavatories.

4.19.2 HEIGHT AND CLEARANCES. Lavatories shall be mounted with the rim or counter surface no higher than 34 in (865 mm) above the finished floor. Provide a clearance of at least 29 in (735 mm) from the floor to the bottom of the apron. Knee and toe ance shall comply with Fig. 31.

4.19.3 CLEAR FLOOR SPACE. A clear floor space 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 shall be provided in front of a lavatory to allow forward approach. Such clear floor space shall adjoin or overlap an accessible route and shall extend a maximum of 19 in (485 mm) underneath the lavatory (see Fig. 32).

4.19.4 EXPOSED PIPES AND SURFACES. Hot water and drain pipes under lavatories

shall be insulated or otherwise covered. There shall be no sharp or abrasive surfaces under lavatories.

4.19.5 FAUCETS. Faucets shall comply with 4.27.4. Lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs. Self-closing valves are allowed if the faucet remains open for at least 10 seconds.

4.19.6* MIRRORS. Mirrors shall be mounted with the bottom edge of the reflecting surface no higher than 40 in (1015 mm) from the floor (Fig. 31).

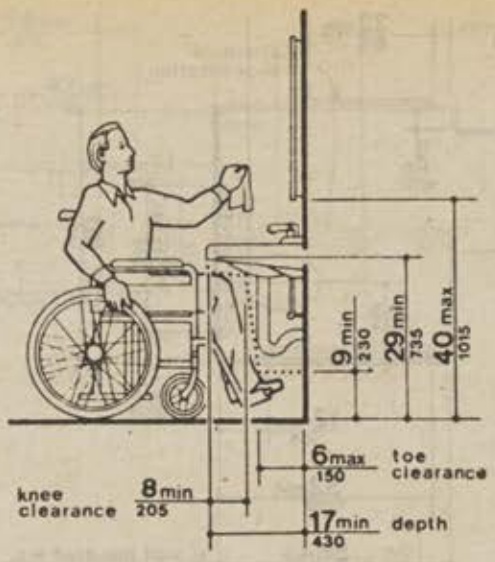


Fig. 31
Lavatory Clearances

4.20 BATHTUBS.

4.20.1 GENERAL. Accessible bathtubs shall comply with 4.20. For bathtubs in accessible dwelling units, see 4.34.5.4.

4.20.2 FLOOR SPACE. Clear floor space in front of bathtubs shall be as shown in Fig. 33.

4.20.3 SEAT. An in-tub seat or a seat at the head end of the tub shall be provided as shown in Fig. 33 and 34. The structural strength of seats and their attachments

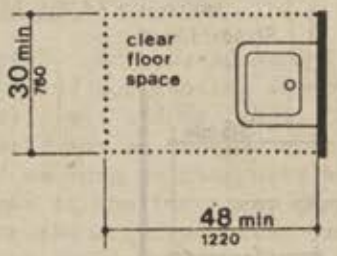
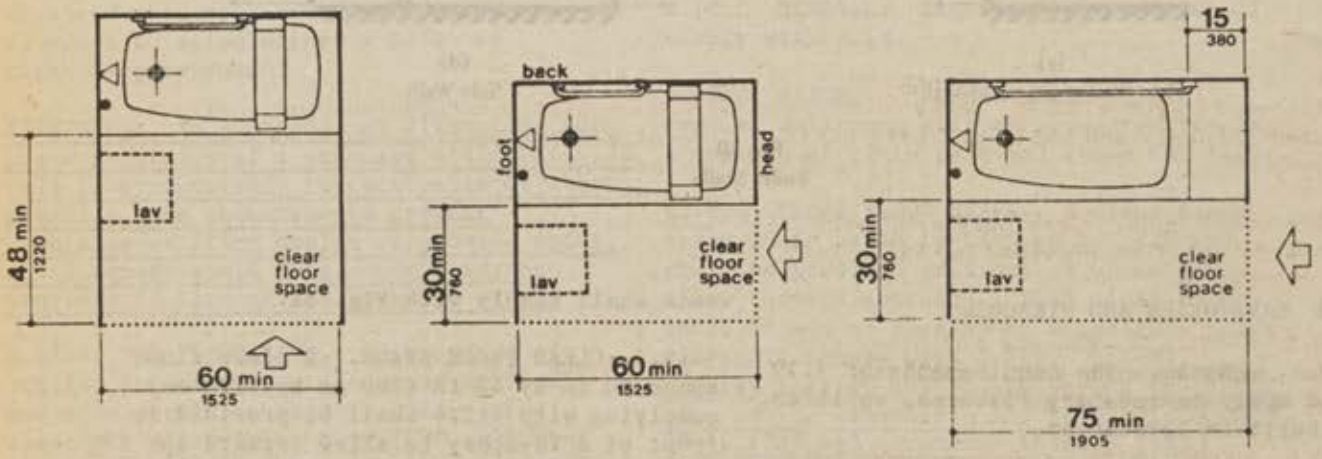


Fig. 32
Clear Floor Space at Lavatories

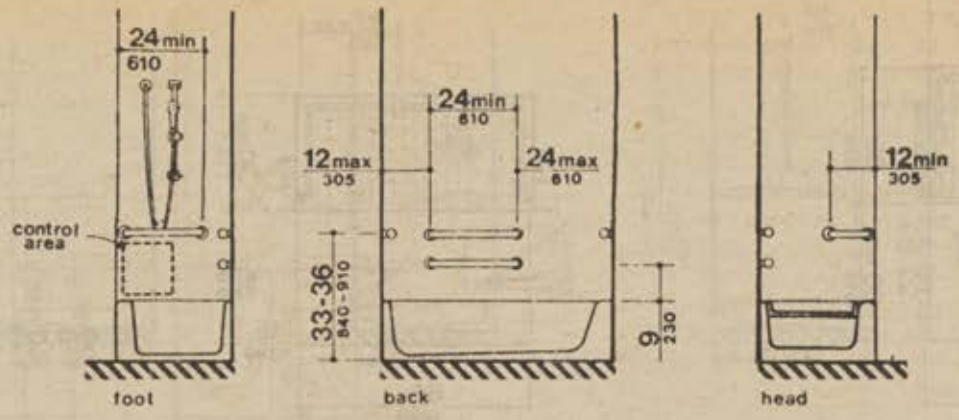


(a)
With Seat in Tub

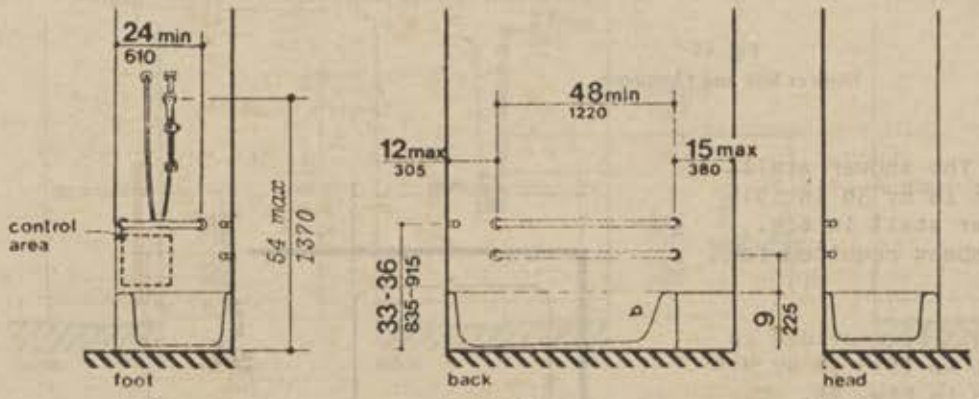
(b)
With Seat at Head of Tub

SYMBOL KEY:
● Shower controls
◁ Shower head
✦ Drain

Fig. 33
Clear Floor Space at Bathtubs



(a)
With Seat in Tub



(b)
With Seat at Head of Tub

Fig. 34
Grab Bars at Bathtubs

shall comply with 4.26.3. Seats shall be mounted securely and shall not slip during use.

4.20.4 GRAB BARS. Grab bars complying with 4.26 shall be provided as shown in Fig. 33 and 34.

4.20.5 CONTROLS. Faucets and other controls complying with 4.27.4 shall be located as shown in Fig. 34.

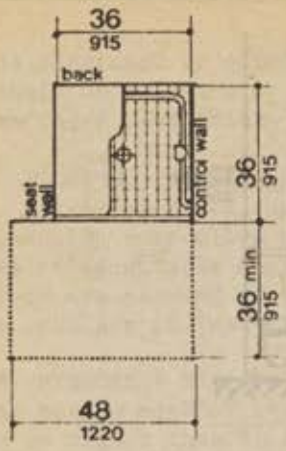
4.20.6 SHOWER UNIT. A shower spray unit with a hose at least 60 in (1525 mm) long that can be used as a fixed shower head or as a hand-held shower shall be provided.

4.20.7 BATHTUB ENCLOSURES. If provided, enclosures for bathtubs shall not obstruct controls or transfer from wheelchairs onto bathtub seats or into tubs. Enclosures on bathtubs shall not have tracks mounted on their rims.

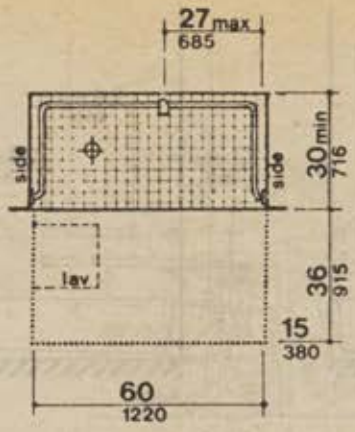
4.21 SHOWER STALLS.

4.21.1* GENERAL. Accessible shower stalls shall comply with 4.21. For shower stalls in accessible dwelling units, see 4.34.5.5.

4.21.2 SIZE AND CLEARANCES. Shower stall size and clear floor space shall comply



(a)
36-in by 36-in
(915-mm by 915-mm) Stall



(b)
30-in by 60-in
(760-mm by 1525-mm) Stall

Fig. 35
Shower Size and Clearances

with Fig. 35(a) or (b). The shower stall in Fig. 35(a) shall be 36 in by 36 in (915 mm by 915 mm). The shower stall in Fig. 35(b) will fit into the space required for a bathtub.

4.21.3 SEAT. A seat shall be provided in shower stalls 36 in by 36 in (915 mm by 915 mm) and shall be as shown in Fig. 36. The seat shall be mounted 17 in to 19 in (430 mm to 485 mm) from the bathroom floor and shall extend the full depth of the stall. The seat shall be on the wall opposite the controls. The structural strength of seats and their attachments shall comply with 4.26.3.

4.21.4 GRAB BARS. Grab bars complying with 4.26 shall be provided as shown in Fig. 37.

4.21.5 CONTROLS. Faucets and other controls complying with 4.27.4 shall be located as shown in Fig. 37. In shower stalls 36 in by 36 in (915 mm by 915 mm), all controls, faucets, and the shower unit shall be mounted on the side wall opposite the seat.

4.21.6 SHOWER UNIT. A shower spray unit with a hose at least 60 in (1525 mm) long that can be used as a fixed shower head or as a hand-held shower shall be provided.

EXCEPTION: In unmonitored facilities where vandalism is a consideration, a fixed shower head mounted at 48 in (1220 mm) above the shower floor may be used in lieu of a hand-held shower head.

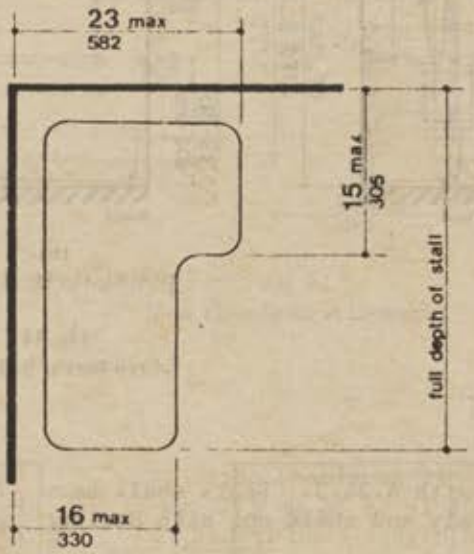
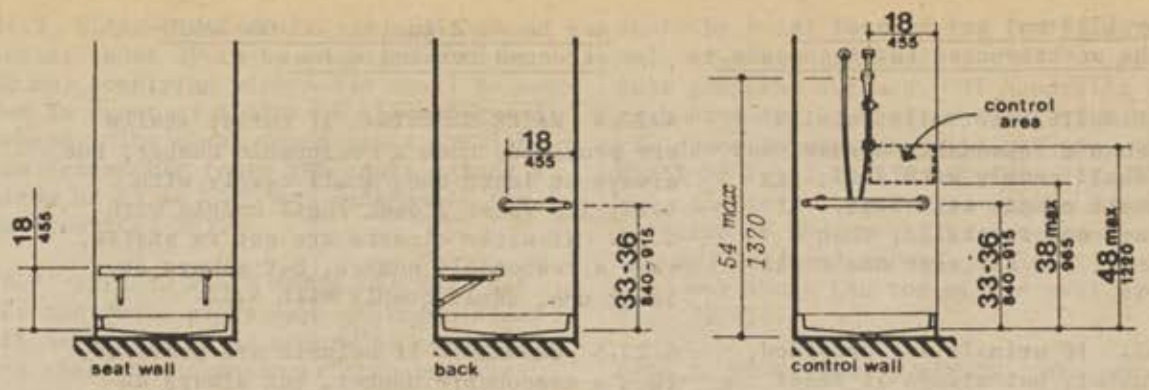
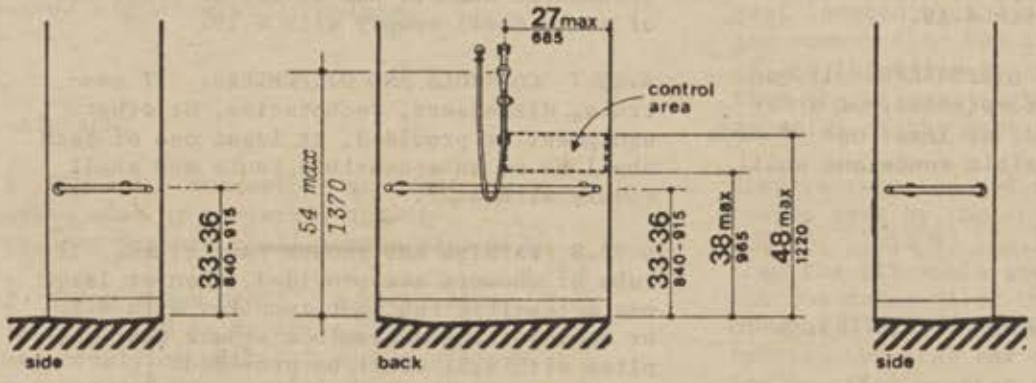


Fig. 36
Shower Seat Design



(a)
36-in by 36-in (915-mm by 915-mm) Stall



(b)
30-in by 60-in (760-mm by 1525-mm) Stall

Fig. 37
Grab Bars at Shower Stalls

4.21.7 CURBS. If provided, curbs in shower stalls 36 in by 36 in (915 mm by 915 mm) shall be no higher than 1/2 in (13 mm). Shower stalls that are 30 in by 60 in (760 mm by 1525 mm) shall not have curbs.

4.21.8 SHOWER ENCLOSURES. If provided, enclosures for shower stalls shall not obstruct controls or obstruct transfer from wheelchairs onto shower seats.

4.22 TOILET ROOMS.

4.22.1 MINIMUM NUMBER. If toilet facilities are provided, a reasonable number, but always at least one, of toilet rooms shall comply with 4.22. Accessible toilet rooms shall be on an accessible route.

4.22.2 DOORS. All doors to accessible toilet rooms shall comply with 4.13. Doors shall not swing into the clear floor space required for any fixture.

4.22.3 CLEAR FLOOR SPACE. The accessible fixtures and controls required in 4.22.4, 4.22.5, 4.22.6, and 4.22.7 shall be on an accessible route. An unobstructed turning space complying with 4.2.3 shall be provided within an accessible toilet room. The clear floor space at fixtures and controls, the accessible route, and the turning space may overlap.

EXCEPTION: In toilet rooms with only one water closet and one lavatory, a clear floor space of 30 in by 60 in

(815 mm by 1525 mm) may be used in lieu of the unobstructed turning space.

4.22.4 WATER CLOSETS. If toilet stalls are provided, then a reasonable number, but at least one, shall comply with 4.17; its water closet shall comply with 4.16. If water closets are not in stalls, then a reasonable number, but at least one shall comply with 4.16.

4.22.5 URINALS. If urinals are provided, a reasonable number, but always at least one shall comply with 4.18.

4.22.6 LAVATORIES AND MIRRORS. If lavatories and mirrors are provided, a reasonable number, but always at least one of each, shall comply with 4.19.

4.22.7 CONTROLS AND DISPENSERS. If controls, dispensers, receptacles, or other equipment is provided, at least one of each shall be on an accessible route and shall comply with 4.27.

4.23 BATHROOMS, BATHING FACILITIES, AND SHOWER ROOMS.

4.23.1 MINIMUM NUMBER. If bathrooms, bathing facilities, or shower rooms are provided, a reasonable number, but always at least one, shall comply with 4.23 and shall be on an accessible route. For adaptable bathrooms in accessible dwelling units, see 4.34.5.

4.23.2 DOORS. Doors to accessible bathrooms shall comply with 4.13. Doors shall not swing into the floor space required for any fixture.

4.23.3 CLEAR FLOOR SPACE. The accessible fixtures and controls required in 4.23.4, 4.23.5, 4.23.6, 4.23.7, 4.23.8, and 4.23.9 shall be on an accessible route. An unobstructed turning space complying with 4.2.3 shall be provided within an accessible bathroom. The clear floor spaces at fixtures and controls, the accessible route, and the turning space may overlap.

EXCEPTION: In bathrooms with only one water closet, one lavatory, and one bathtub or shower, a clear floor space of 30 in by 60 in (760 mm by 1525 mm) may be used in lieu of the unobstructed turning space.

4.23.4 WATER CLOSETS. If toilet stalls are provided, then a reasonable number, but always at least one, shall comply with 4.17; its water closet shall comply with 4.16. If water closets are not in stalls, then a reasonable number, but always at least one, shall comply with 4.16.

4.23.5 URINALS. If urinals are provided, then a reasonable number, but always at least one, shall comply with 4.18.

4.23.6 LAVATORIES AND MIRRORS. If lavatories and mirrors are provided, then a reasonable number, but always at least one of each, shall comply with 4.19.

4.23.7 CONTROLS AND DISPENSERS. If controls, dispensers, receptacles, or other equipment is provided, at least one of each shall be on an accessible route and shall comply with 4.27.

4.23.8 BATHING AND SHOWER FACILITIES. If tubs or showers are provided, then at least one accessible tub that complies with 4.20 or at least one accessible shower that complies with 4.21 shall be provided.

4.23.9* MEDICINE CABINETS. If medicine cabinets are provided, at least one shall be located with a usable shelf no higher than 44 in (1120 mm) above the floor space. The floor space shall comply with 4.2.4.

4.24 SINKS.

4.24.1 GENERAL. If accessible sinks are provided, they shall comply with 4.24. Sinks in kitchens of accessible dwelling units shall comply with 4.34.6.5.

4.24.2 HEIGHT. Sinks shall be mounted with the counter or rim no higher than 34 in (865 mm) from the floor.

4.24.3 KNEE CLEARANCE. Knee clearance that is at least 27 in (685 mm) high, 30 in (760 mm) wide, and 19 in (485 mm) deep shall be provided underneath sinks.

4.24.4 DEPTH. Each sink shall be a maximum of 6-1/2 in (165 mm) deep.

4.24.5 CLEAR FLOOR SPACE. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 shall be provided in front of a sink to allow forward approach. The clear floor space shall be on an accessible route and shall extend a maximum of 19 in (485 mm) underneath the sink (see Fig. 32).

4.26.6 EXPOSED PIPES AND SURFACES. Hot water and drain pipes exposed under sinks shall be insulated or otherwise covered. There shall be no sharp or abrasive surfaces under sinks.

4.24.7 FAUCETS. Faucets shall comply with 4.27.4. Lever-operated, push-type, touch-type, or electronically controlled mechanisms are acceptable designs.

4.25 STORAGE.

4.25.1 GENERAL. Accessible storage facilities such as cabinets, shelves, closets, and drawers shall comply with 4.25.

4.25.2 CLEAR FLOOR SPACE. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 that allows either a forward or parallel approach by a person using a wheelchair shall be provided at accessible storage facilities.

4.25.3 HEIGHT. Accessible storage spaces shall be within at least one of the reach ranges specified in 4.2.5 and 4.2.6. Clothes rods shall be a maximum of 54 in (1370 mm) from the floor (see Fig. 38).

4.25.4 HARDWARE. Hardware for accessible storage facilities shall comply with 4.27.4. Touch latches and U-shaped pulls are acceptable.

4.26 HANDRAILS, GRAB BARS, AND TUB AND SHOWER SEATS.

4.26.1* GENERAL. All handrails, grab bars, and tub and shower seats shall comply with 4.26.

4.26.2* SIZE AND SPACING OF GRAB BARS AND HANDRAILS. The diameter or width of the gripping surfaces of a handrail or grab bar shall be 1-1/4 in to 1-1/2 in (32 mm to 38 mm), or the shape shall provide an equivalent gripping surface. If handrails or grab bars are mounted adjacent to a wall, the space between the wall and the grab bar shall be 1-1/2 in (38 mm) (see Fig. 39(a), (b), and (c)). Handrails may be located in a recess if the recess is a maximum of 3 in (75 mm) deep and extends at least 18 in (455 mm) above the top of the rail (see Fig. 39(d)).

4.26.3 STRUCTURAL STRENGTH. The structural strength of grab bars, tub and shower seats, fasteners, and mounting devices shall meet the following specification:

(1) Bending stress in a grab bar or seat induced by the maximum bending moment from the application of 250 lbf (1112 N) shall be less than the allowable stress for the material of the grab bar or seat.

(2) Shear stress induced in a grab bar or seat by the application of 250 lbf (1112 N) shall be less than the allowable shear stress for the material of the grab bar or seat. If the connection between the grab bar or seat and its mounting bracket or other support is considered to be fully restrained, then direct and tor-

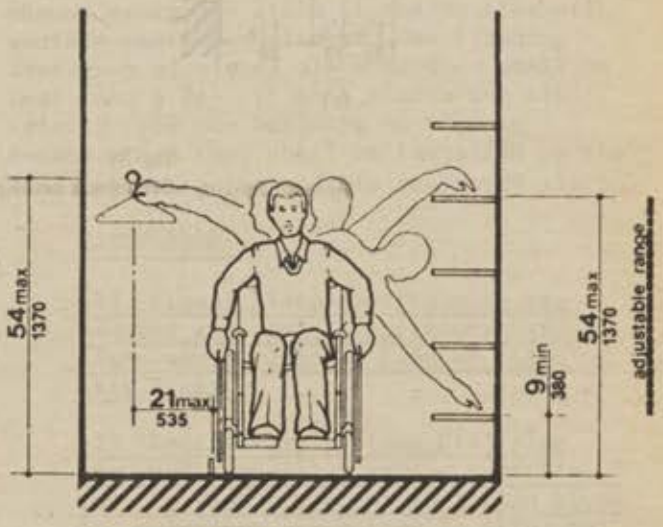


Fig. 38
Storage Shelves and Closets

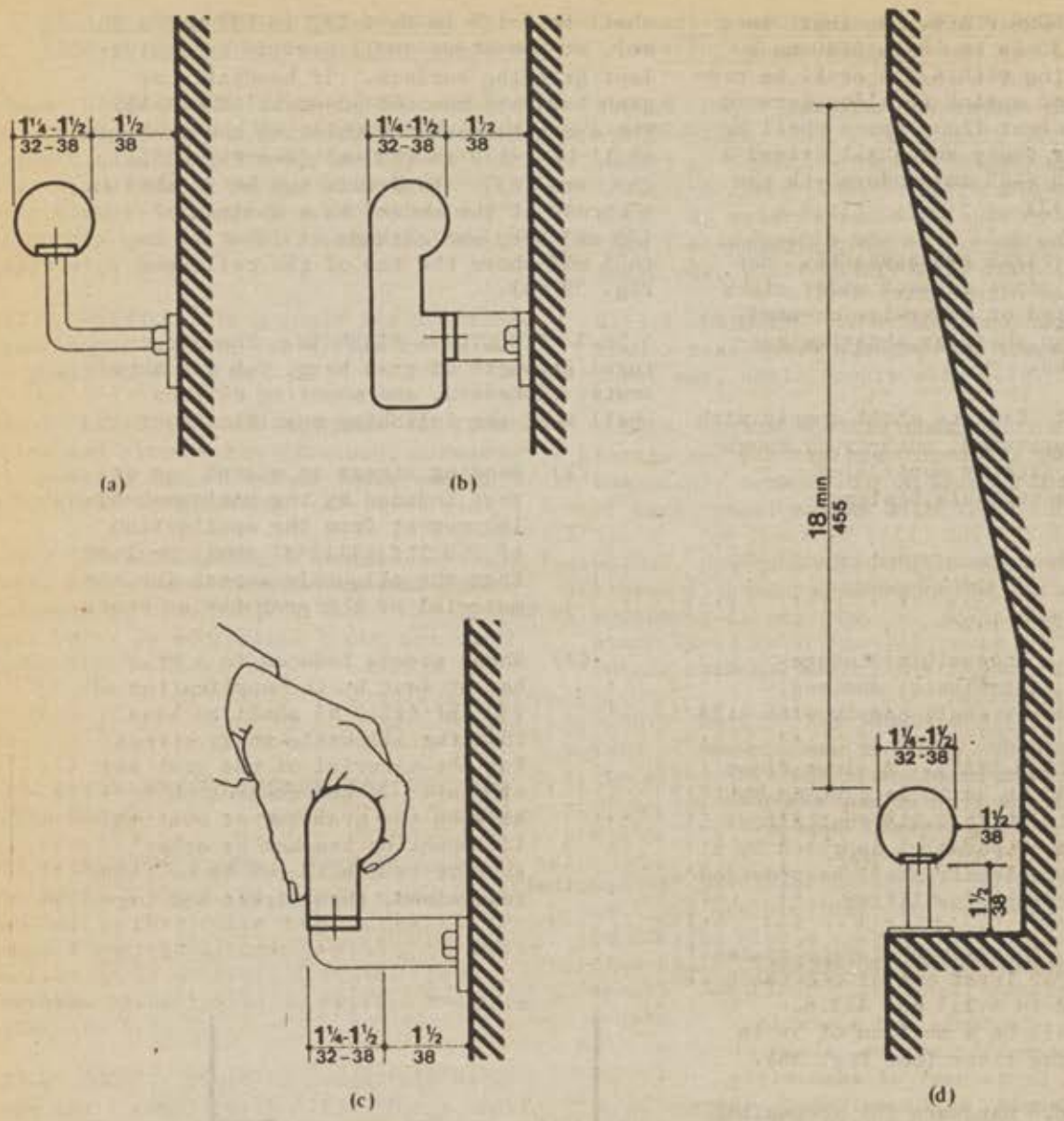


Fig. 39
Size and Spacing of Handrails and Grab Bars

sional shear stresses shall be totaled for the combined shear stress, which shall not exceed the allowable shear stress.

(3) Shear force induced in a fastener or mounting device from the application of 250 lbf (1112 N) shall be less than the allowable lateral load of either the fastener or mounting device or the supporting structure, whichever is the smaller allowable load.

(4) Tensile force induced in a fastener by a direct tension force of 250 lbf (1112 N) plus the maximum moment from the application of 250 lbf (1112 N) shall be less than the allowable withdrawal and the supporting structure.

(5) Grab bars shall not rotate within their fittings.

4.26.4 ELIMINATING HAZARDS. A handrail or grab bar and any wall or other surface adjacent to it shall be free of any sharp or abrasive elements. Edges shall have a minimum radius of 1/8 in (3.2 mm).

4.27 CONTROLS AND OPERATING MECHANISMS.

4.27.1 GENERAL. Controls and operating mechanisms in accessible spaces, along accessible routes, or as part of accessible elements (for example, light switches, dispenser controls) shall comply with 4.27.

4.27.2 CLEAR FLOOR SPACE. Clear floor space complying with 4.2.4 that allows a forward or a parallel approach by a person using a wheelchair shall be provided at controls, dispensers, receptacles, and other operable equipment.

4.27.3 HEIGHT. The highest operable part of all controls, dispensers, receptacles, and other operable equipment shall be placed within at least one of the reach ranges specified in 4.2.5 and 4.2.6. Except where the use of special equipment dictates otherwise, electrical and communications system receptacles on walls shall be mounted on less than 15 in (380 mm) above the floor.

4.27.4 OPERATION. Controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2 N).

4.28 ALARMS.

4.28.1 GENERAL. If emergency warning systems are provided, they shall include both audible alarms complying with 4.28.2 and visual alarms complying with 4.28.3. In facilities with sleeping accommodations, the sleeping accommodations shall have an auxiliary visual alarm system complying with 4.28.4.

4.28.2* AUDIBLE ALARMS. If provided, audible emergency alarms shall produce a sound that exceeds the prevailing equivalent sound level in the room or space by at least 15 decibels or exceeds any maximum sound level with a duration of 30 seconds by 5 decibels, whichever is louder. Sound levels for alarm signals shall not exceed 120 decibels.

4.28.3* VISUAL ALARMS. If provided, electrically powered internally illuminated emergency exit signs shall flash as a visual emergency alarm in conjunction with audible emergency alarms. The flashing frequency of visual alarm devices shall be less than 5 Hz. If such alarms use electricity from the building as a power source, then they shall be installed on the same system as the audible emergency alarms.

EXCEPTIONS:

(1) Visual alarm devices that are mounted adjacent to emergency exit signs may be used in lieu of flashing exit signs.

(2) Specialized systems utilizing advanced technology may be substituted for the visual systems specified above if equivalent protection is afforded handicapped users of the building or facility.

4.28.4* AUXILIARY ALARMS. Accessible sleeping accommodations shall have a visual alarm connected to the building emergency alarm system or shall have a standard 110-volt electrical receptacle into which such an alarm could be connected. Instructions for use of the auxiliary alarm or connection shall be provided.

4.29 TACTILE WARNINGS.

4.29.1 GENERAL. If tactile warnings are required, they shall comply with 4.29.

4.29.2* TACTILE WARNINGS ON WALKING SURFACES. Reserved.

4.29.3* TACTILE WARNINGS ON DOORS TO HAZARDOUS AREAS. Doors that lead to areas that might prove dangerous to a blind person (for example, doors to loading platforms, boiler rooms, stages, and the like) shall be made identifiable to the touch by a textured surface on the door handle, knob, pull, or other operating hardware. This textured surface may be made by knurling or roughing or by a material applied to the contact surface. Such textured surfaces shall not be provided for emergency exit doors or any doors other than those to hazardous areas.

4.29.4 TACTILE WARNINGS AT STAIRS. Reserved.

4.29.5* TACTILE WARNINGS AT HAZARDOUS VEHICULAR AREAS. Reserved.

4.29.6* TACTILE WARNINGS AT REFLECTING POOLS. Reserved.

4.29.7* STANDARDIZATION. Textured surfaces for tactile warnings shall be standard within a building, facility, site, or complex of buildings.

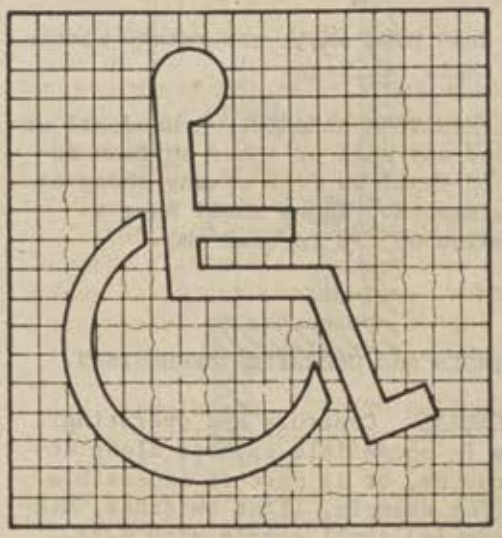
4.30 SIGNAGE.

4.30.1* GENERAL. All signage that provides emergency information or general circulation direction or identifies rooms and spaces shall comply with 4.30.2, 4.30.3, and 4.30.5. Tactile signage shall also comply with 4.30.4.

4.30.2* CHARACTER PROPORTION. Letters and numbers on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10.

4.30.3* COLOR CONTRAST. Characters and symbols shall contrast with their background - either light characters on a dark background or dark characters on a light background.

4.30.4* RAISED OR INDENTED CHARACTERS OR SYMBOLS. Letters and numbers on signs shall be raised or incised 1/32 in (0.8 mm) minimum and shall be sans serif characters. Raised characters or symbols shall be at least 5/8 in (16 mm) high, but no



(a)
Proportions

(b)
Display Conditions

Fig. 43
International Symbol of Accessibility

higher than 2 in (50 mm). Indented characters or symbols shall have a stroke width of at least 1/4 in (6 mm). Symbols or pictographs on signs shall be raised or indented 1/32 in (0.8 mm) minimum.

4.30.5 SYMBOLS OF ACCESSIBLITY. If accessible facilities are identified, then the international symbol of accessibility shall be used. The symbol shall be displayed as shown in Fig. 43.

4.30.6 MOUNTING LOCATION AND HEIGHT. Interior signage shall be located alongside the door on the latch side and shall be mounted at a height of between 54 in and 66 in (1370 mm and 1675 mm) above the finished floor.

4.31 TELEPHONES.

4.31.1 GENERAL. If public telephones are provided, then they shall comply with 4.31.

4.31.2 CLEAR FLOOR OR GROUND SPACE. A clear floor or ground space at least 30 in by 48 in (760 mm by 1220 mm) that allows either a forward or parallel approach by a person using a wheelchair shall be provided at telephones (see Fig 44). The clear floor or ground space shall comply with 4.2.4. Bases, enclosures, and fixed seats shall not impede approaches to telephones by people who use wheelchairs.

4.31.3 MOUNTING HEIGHT. The highest operable part of the telephone shall be within the reach ranges specified in 4.2.5 or 4.2.6. Telephones mounted diagonally in a corner that require wheelchair users to reach diagonally shall have the highest operable part no higher than 54 in (1370 mm) above the floor (see Fig. 44).

4.31.4 ENCLOSURES. If telephone enclosures are provided, they may overhang the clear floor space required in 4.31.2 within the following limits:

(1) Side reach possible: The overhang shall be no greater than 19 in (485 mm) (see Fig. 44(a)); the height of the lowest overhanging part shall be equal to or greater than 27 in (685 mm).

(2) Full-height enclosures: Entrances to full-height enclosures shall be 30 in (760 mm) clear minimum (see Fig. 44(b)).

(3) Forward reach required: If the overhang is greater than 12 in (305 mm), then the clear width of the enclosure shall be 30 in (760 mm) minimum; if the clear width of the enclosure is less than 30 in (760 mm), then the height of the lowest overhanging part shall be equal to or greater than 27 in (685 mm) (see Fig. 44(c)).

(4) Where telephone enclosures protrude into walls, halls, corridors, or aisles, they shall also comply with 4.4.

4.31.5* EQUIPMENT FOR HEARING IMPAIRED PEOPLE. Telephones shall be equipped with a receiver that generates a magnetic field in the area of the receiver cap. If banks of public telephones are provided, then a reasonable number, but always at least one, in a building or facility shall be equipped with a volume control.

4.31.6 CONTROLS. Telephones shall have pushbutton controls where service for such equipment is available.

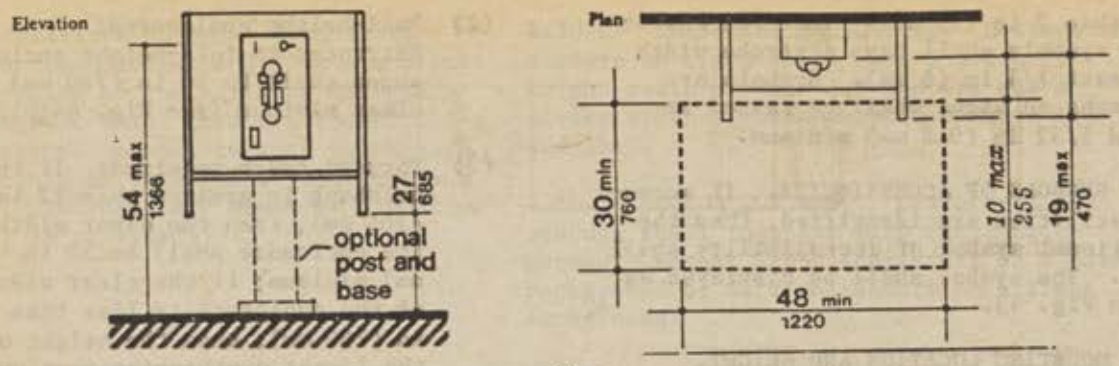
4.31.7 TELEPHONE BOOKS. Telephone books, if provided, shall be located so that they can be used by a person in a wheelchair.

4.31.8 CORD LENGTH. The cord from the telephone to the handset shall be at least 29 in (735 mm) long.

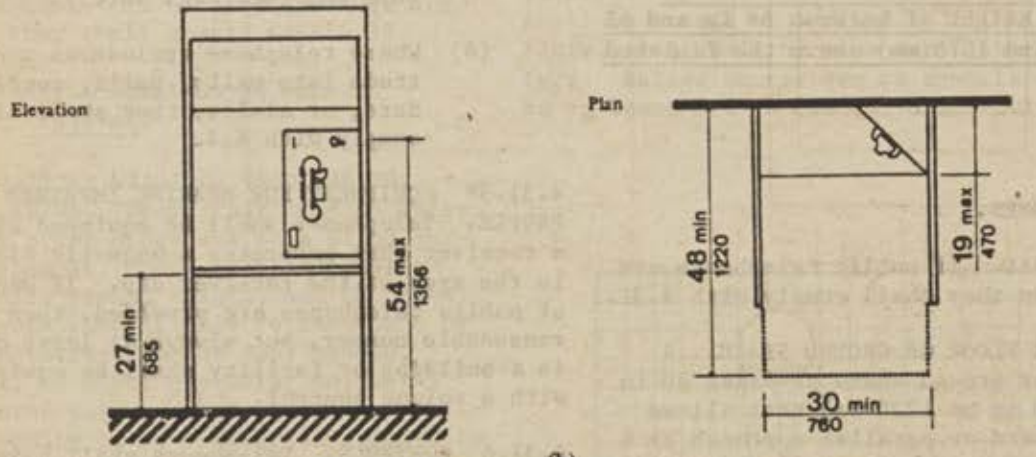
4.32 SEATING, TABLES, AND WORK SURFACES.

4.32.1 MINIMUM NUMBER. If fixed or built-in seating, tables, or work surfaces are provided in accessible spaces, a reasonable number, but always at least one, of seating spaces, tables, or work surfaces shall comply with 4.32.

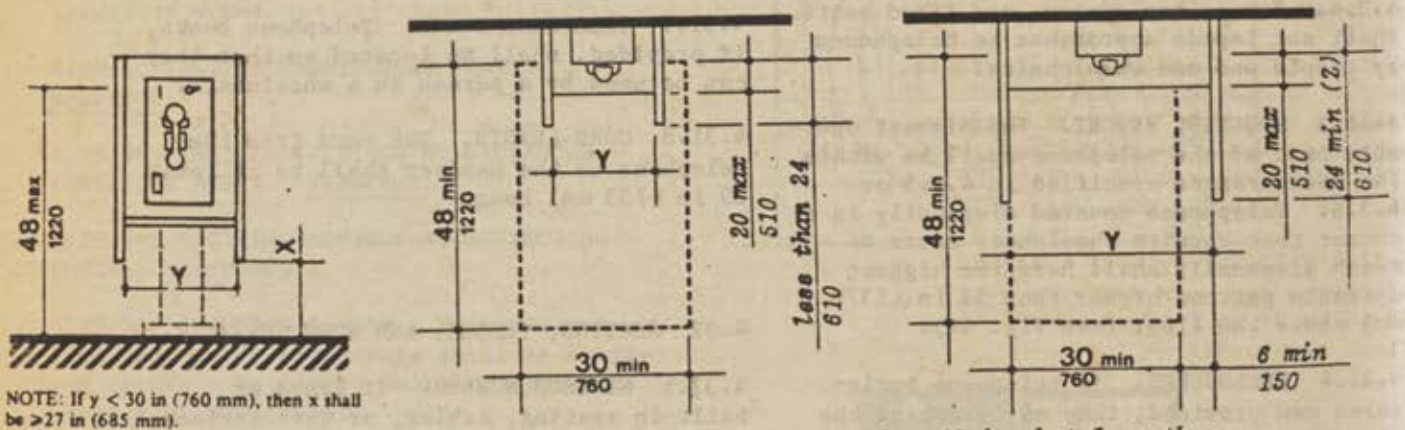
4.32.2 SEATING. If seating spaces for people in wheelchairs are provided at tables, counters, or work surfaces, clear floor space complying with 4.2.4 shall be



(a)
Side Reach Possible



(b)
Full Height Enclosure



NOTE: If y < 30 in (760 mm), then x shall be ≥27 in (685 mm).

(c)
Forward Reach Required

NOTE: If 2 is greater than 12 in, but less than 24 in, then Y shall be 30 in or greater. If 2 is greater than 24 in, then Y shall be 36 in or greater.

Fig. 44
Mounting Heights and Clearances for Telephones

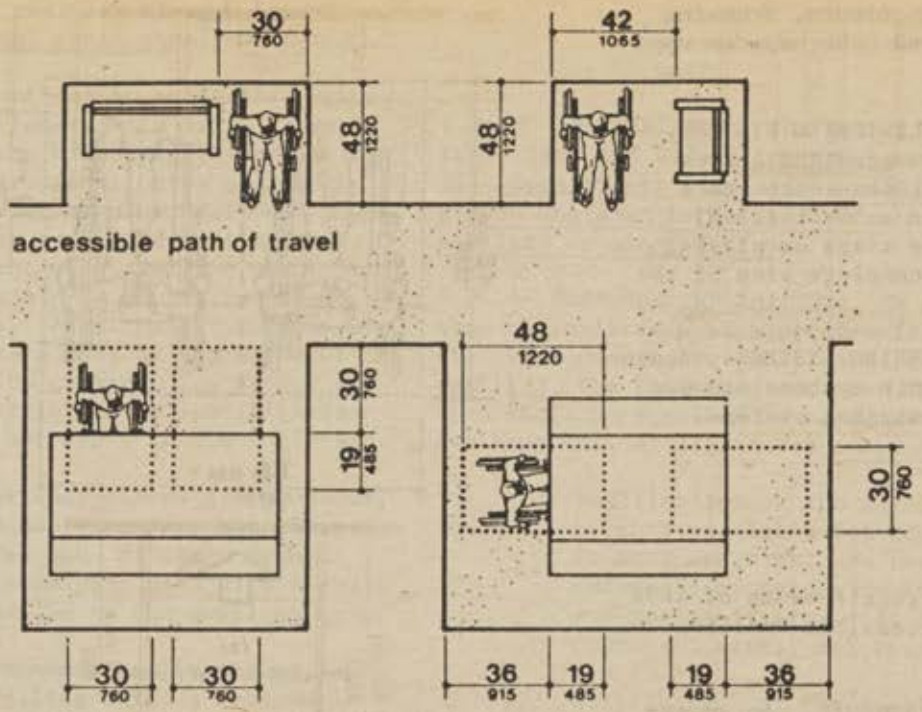


Fig. 45
Minimum Clearances for Seating and Tables

provided. Such clear floor space shall not overlap knee space by more than 19 in (485 mm) (see Fig. 45).

4.32.3 KNEE CLEARANCES. If seating for people in wheelchairs is provided at tables, counters, and work surfaces, knee spaces at least 27 in (685 mm) high, 30 in (760 mm) wide, and 19 in (485 mm) deep shall be provided (see Fig. 45).

4.32.4* HEIGHT OF WORK SURFACES. The tops of tables and work surfaces shall be from 28 in to 34 in (710 mm to 865 mm) from the floor or ground.

4.33 ASSEMBLY AREAS.

4.33.1 MINIMUM NUMBER. Assembly areas shall have a reasonable number, but no less than two, of locations for wheelchair users in each assembly area that complies with 4.33. Assembly areas with audio-amplification systems shall have a listening system complying with 4.33.6 and 4.33.7 to assist a reasonable number of people, but no fewer than two, with severe hearing loss in the appreciation of audio presentations.

4.33.2* SIZE OF WHEELCHAIR LOCATIONS. Each wheelchair location shall provide minimum clear ground or floor spaces as shown in Fig. 46.

4.33.3* PLACEMENT OF WHEELCHAIR LOCATIONS. Wheelchair areas shall be an integral part of any fixed seating plan and shall be dispersed throughout the seating area. They shall adjoin an accessible route that also serves as a means of egress in case of emergency and shall be located to provide lines of sight comparable to those for all viewing areas.

4.33.4 SURFACES. The ground or floor at wheelchair locations shall be level and shall comply with 4.5.

4.33.5 ACCESS TO PERFORMING AREAS. An accessible route shall connect wheelchair seating locations with performing areas,

including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers.

4.33.6* PLACEMENT OF LISTENING SYSTEMS. If the listening system provided serves individual fixed seats, then such seats shall be located within a 50 ft (15 m) viewing distance of the stage or playing area and shall have a complete view of the stage or playing area.

4.33.7* TYPES OF LISTENING SYSTEMS. Audio loops and radio frequency systems are two acceptable types of listening systems.

4.34 DWELLING UNITS.

4.34.1 GENERAL. The requirements of 4.34 apply to individual accessible dwelling units.

4.34.2* MINIMUM REQUIREMENTS. An accessible dwelling unit shall be on an accessible route. An accessible dwelling unit shall have the following accessible elements and spaces as a minimum:

(1) Common spaces and facilities serving individual accessible dwelling units (for example, entry walks, trash disposal facilities, and mail boxes) shall comply with 4.2 through 4.33.

(2) Accessible spaces shall have maneuvering space complying with 4.2.2 and 4.2.3 and surfaces complying with 4.5.

(3) At least one accessible route complying with 4.3 shall connect the accessible entrances with all accessible spaces and elements within the dwelling units.

(4) See 4.1.1(5)(d) - Parking.

(5) Removed and Reserved.

(6) Doors to and in accessible spaces that are intended for passage shall comply with 4.13.

(7) A reasonable number, but always at least one, of accessible entrances to the dwelling unit shall comply with 4.14.

(8) Storage in accessible spaces in dwelling units, including cabi-

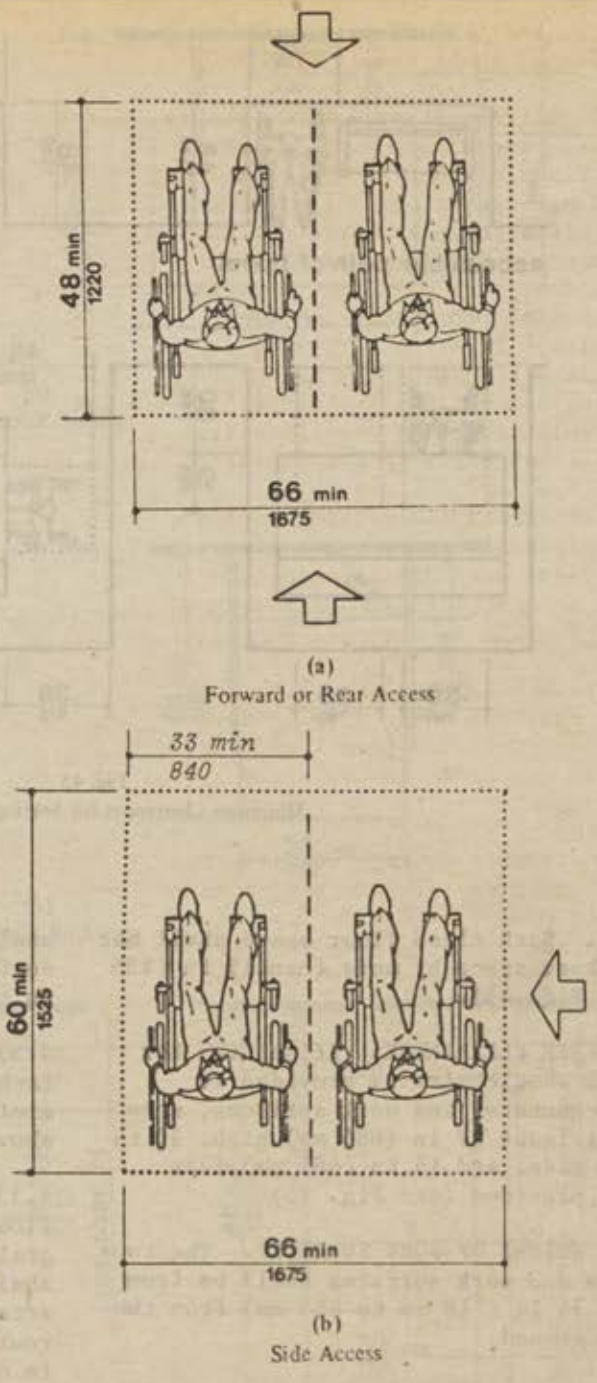


Fig. 46
Space Requirements for Wheelchair Seating Spaces in Series

nets, shelves, closets, and drawers, shall comply with 4.25.

(9) All controls in accessible spaces shall comply with 4.27. Those portions of heating, ventilating, and air-conditioning equipment requiring regular, periodic maintenance and adjustment by the resident of a dwelling shall be accessible to people in wheelchairs. If air distribution registers must be placed in or close to ceilings for proper air circulation, this specification shall not apply to the registers.

(10) If emergency alarms are provided, a reasonable number, but always at least one, of alarm connections complying with 4.28.4 shall be provided in the dwelling unit.

(11) If telephones are installed in the dwelling unit, a reasonable number, but always at least one, shall comply with 4.31.2 and 4.31.3.

(12) A reasonable number, but always at least one, of full bathrooms shall comply with 4.34.5. A full bathroom shall include a water closet, a lavatory, and a bathtub or a shower.

(13) The kitchen shall comply with 4.34.6.

(14) If laundry facilities are provided, they shall comply with 4.34.7.

(15) The following spaces shall be accessible and shall be on an accessible route:

(a) The living area.

(b) The dining area.

(c) The sleeping area, or the bedroom in one bedroom dwelling units, or at least two bedrooms or sleeping spaces in dwelling units with two or more bedrooms.

(d) Patios, terraces, balconies, carports, and garages, if provided with the dwelling unit.

4.34.3 ADAPTABILITY. The specifications for 4.34.5 and 4.34.6 include the concept of adaptability. Accessible dwelling units may be designed for either permanent accessibility or adaptability.

4.34.4 CONSUMER INFORMATION. To ensure that the existence of adaptable features will be known to the owner or occupant of a dwelling, the following consumer information shall be provided in each adaptable dwelling unit available for occupancy.

(1) Notification of the alternate heights available for the kitchen counter and sink, and the existence of removable cabinets and bases, if provided, under counters, sinks, and lavatories.

(2) Notification of the provisions for the installation of grab bars at toilets, bathtubs, and showers.

(3) Notification that the dwelling unit is equipped to have a visual emergency alarm installed.

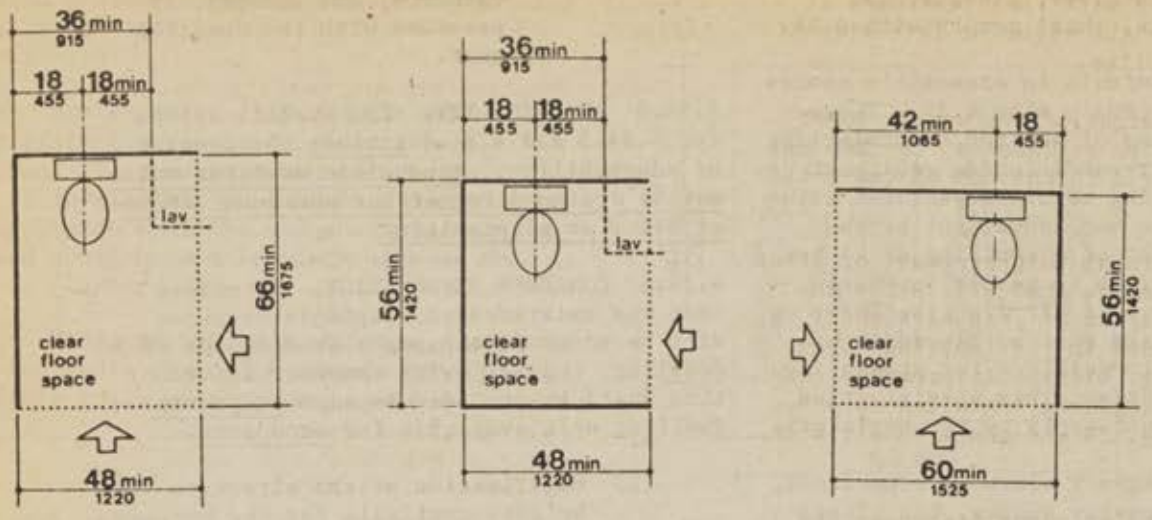
(4) Identification of the location where information and instructions are available for changing the height of counters, removing cabinets and bases, installing a visual emergency alarm system, and installing grab bars.

(5) Notification that the dwelling unit has been designed in accordance with this Uniform Federal Accessibility Standard.

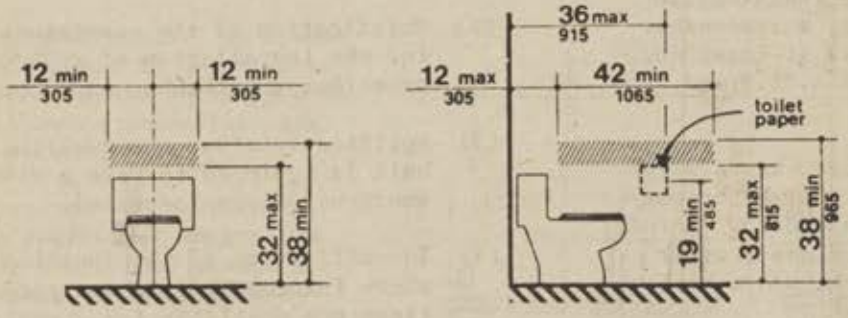
In addition, the occupants of adaptable dwelling units who will be responsible for making their own adaptations shall be provided with the following information:

(1) Instructions for adjusting or replacing kitchen counter and sink heights and for removing cabinets.

(2) A scale drawing showing metho's and locations for the installation of grab bars.



(a)
Clear Floor Space for Adaptable Bathrooms



NOTE: The hatched areas are reinforced to receive grab bars.

(b)
Reinforced Areas for Installation of Grab Bars

Fig. 47
Water Closets in Adaptable Bathrooms

(3) A scale drawing showing the location of adjustable or replaceable counter areas and removable cabinets.

(4) Identification of the location of any equipment and parts required for adjusting or replacing counter tops, cabinets, and sinks.

(5) Instructions for installing a visual emergency alarm system, if the dwelling unit is equipped for such an installation.

4.34.5* BATHROOMS. Accessible or adaptable bathrooms shall be on an accessible route and shall comply with the requirements of 4.34.5.

4.34.5.1 DOORS. Doors shall not swing into the clear floor space required for any fixture.

4.34.5.2 WATER CLOSETS.

(1) Clear floor space at the water closet shall be as shown in Fig. 47(a). The water closet may be

located with the clear area at either the right or left side of the toilet.

(2) The height of the water closet shall be at least 15 in (380 mm) measured to the top of the toilet seat.

(3) Structural reinforcement or other provisions that will allow installation of grab bars shall be provided in the locations shown in Fig. 47(b). If provided, grab bars shall be installed as shown in Fig. 29 and shall comply with 4.26.

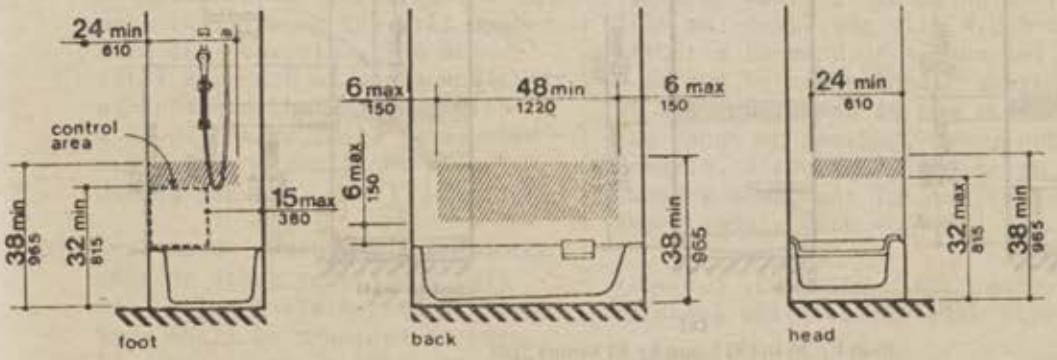
(4) The toilet paper dispenser shall be installed within reach as shown in Fig. 47(b).

4.34.5.3 LAVATORY, MIRRORS, AND MEDICINE CABINETS.

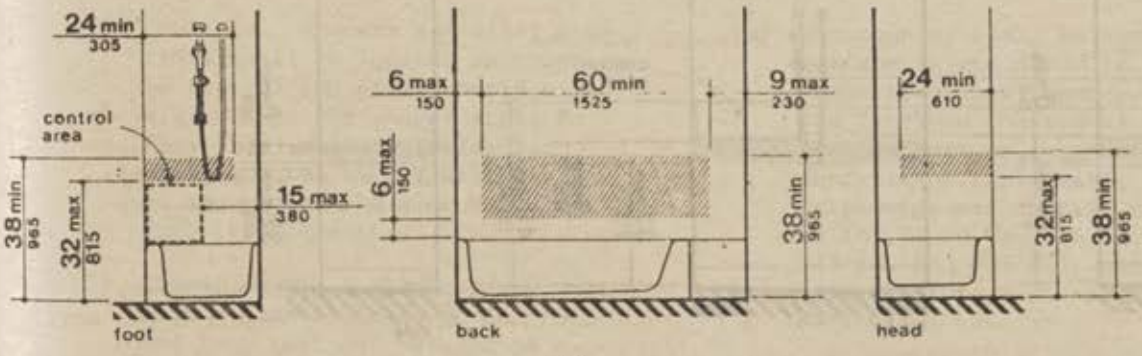
(1) The lavatory and mirrors shall comply with 4.22.7.

(2) If a cabinet is provided under the lavatory in adaptable bathrooms, then it shall be removable to provide the clearances specified in 4.22.7.

(3) If a medicine cabinet is provided above the lavatory, then the bottom of the medicine cabinet shall be located with a usable shelf no higher than 44 in (1120 mm) above the floor.



(a)
With Seat in Tub



(b)
With Seat at Head of Tub

NOTE: The hatched areas are reinforced to receive grab bars.

Fig. 48
Location of Grab Bars and Controls of Adaptable Bathtubs

4.34.5.4 BATHTUBS. If a bathtub is provided, then it shall have the following features:

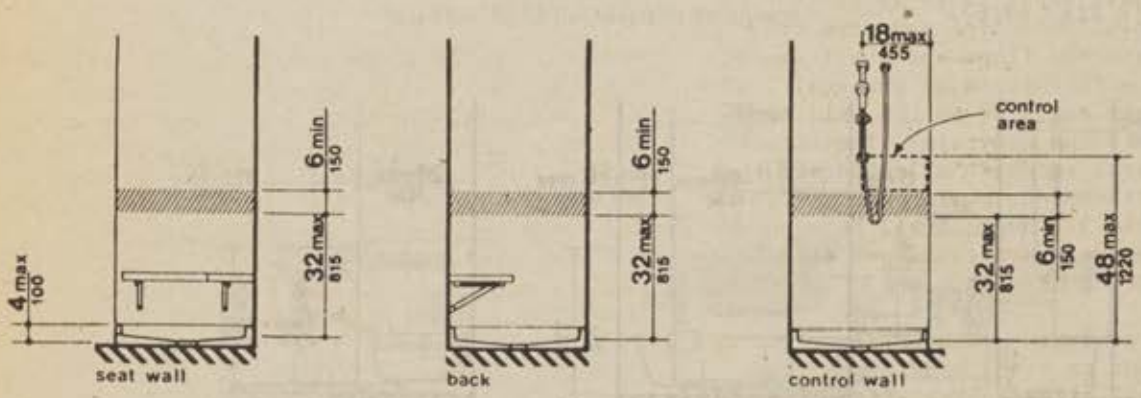
(1) Floor space. Clear floor space at bathtubs shall be as shown in Fig. 33.

(2) Seat. An in-tub seat or a seat at the head end of the tub shall be provided as shown in Figs. 33 and 34. The structural strength of seats and their attachments shall comply with 4.26.3. Seats shall be mounted securely and shall not slip during use.

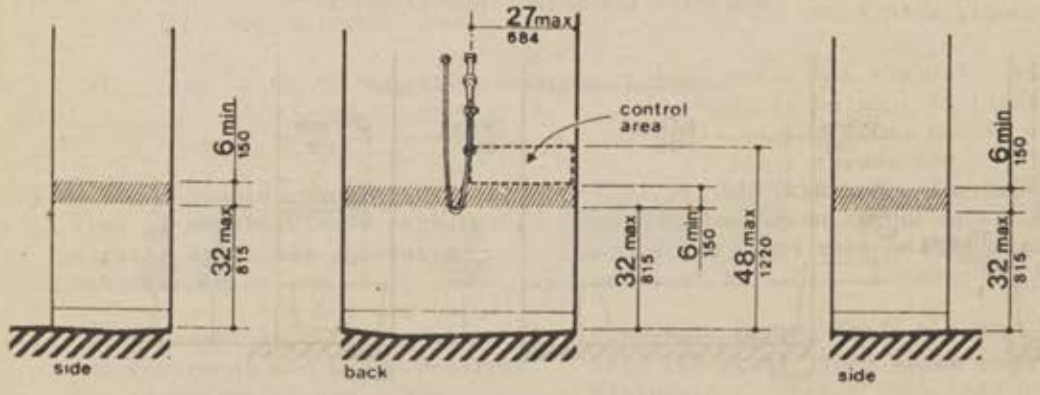
(3) Grab bars. Structural reinforcement or other provisions that will allow installation of grab bars shall be provided in the locations shown in Fig. 48. If provided, grab bars shall be installed as shown in Fig. 34 and shall comply with 4.26.

(4) Controls. Faucets and other controls shall be located as shown in Fig. 34 and shall comply with 4.27.4.

(5) Shower Unit. A shower spray unit with a hose at least 60 in (1525 mm) long that can be used as a



(a)
36-in by 36-in (915-mm by 915-mm) Stall



(b)
30-in by 60-in (750-mm by 1525-mm) Stall

NOTE: The hatched areas are reinforced to receive grab bars.

Fig. 49
Location of Grab Bars and Controls of Adaptable Showers

fixed shower head or as a hand-held shower shall be provided.

4.34.5.5 SHOWERS. If a shower is provided, it shall have the following features:

(1) Size and Clearances. Shower stall size and clear floor space shall comply with either Fig. 35(a) or (b). The shower stall in Fig. 35(a) shall be 36 in by 36 in (915 mm by 915 mm). The shower stall in Fig. 35(b) will fit into the same space as a standard 60 in (1525 mm) long bathtub.

(2) Seat. A seat shall be provided in the shower stall in Fig. 35(a) as shown in Fig. 36. The seat shall be 17 in to 19 in (430 mm to 485 mm) high measured from the bathroom floor and shall extend the full depth of the stall. The seat shall be on the wall opposite the controls. The structural strength of seats and their attachments shall comply with 4.26.3. Seats shall be mounted securely and shall not slip during use.

(3) Grab Bars. Structural reinforcement or other provisions that will allow installation of grab bars shall be provided in the locations shown in Fig. 49. If provided, grab bars shall be installed as shown in Fig. 37 and shall comply with 4.26.

(4) Controls. Faucets and other controls shall be located as shown in Fig. 37 and shall comply with 4.27.4. In the shower stall in Fig. 35(a), all controls, faucets, and the shower unit shall be mounted on the side wall opposite the seat.

(5) Shower Unit. A shower spray unit with a hose at least 60 in (1525 mm) long that can be used as a fixed shower head at various heights or as a hand-held shower shall be provided.

4.34.5.6 BATHTUB AND SHOWER ENCLOSURES. Enclosures for bathtubs or shower stalls shall not obstruct controls or transfer from wheelchairs onto shower or bathtub seats. Enclosures on bathtubs shall not have tracks mounted on their rims.

4.34.5.7 CLEAR FLOOR SPACE. Clear floor space at fixtures may overlap.

4.34.6 KITCHENS. Accessible or adaptable kitchens and their components shall be on an accessible route and shall comply with the requirements of 4.34.6.

4.34.6.1* CLEARANCE. Clearances between all opposing base cabinets, counter tops, appliances, or walls shall be 40 in (1015 mm) minimum, except in U-shaped kitchens, where such clearance shall be 60 in (1525 mm) minimum.

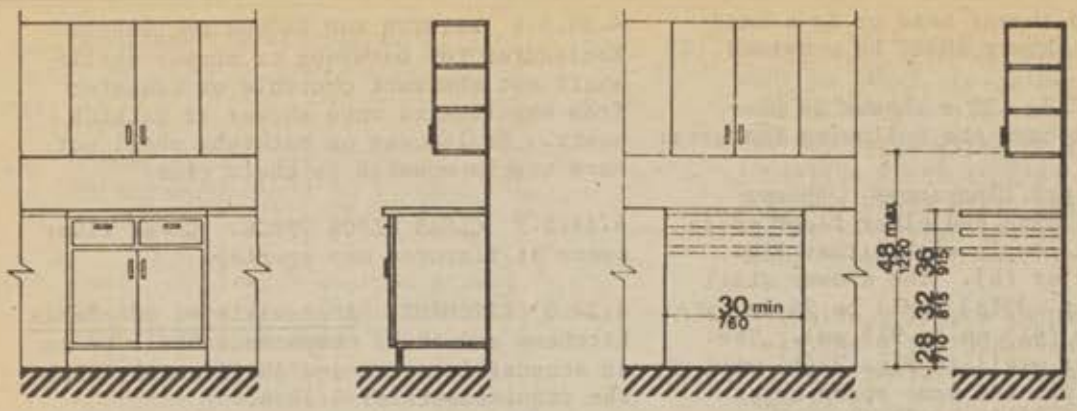
4.34.6.2 CLEAR FLOOR SPACE. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 that allows either a forward or a parallel approach by a person in a wheelchair shall be provided at all appliances in the kitchen, including the range or cooktop, oven, refrigerator/freezer, dishwasher, and trash compactor. Laundry equipment located in the kitchen shall comply with 4.34.7.

4.34.6.3 CONTROLS. All controls in kitchens shall comply with 4.27.

4.34.6.4 WORK SURFACES. At least one 30 in (760 mm) section of counter shall provide a work surface that complies with the following requirements (see Fig. 50):

(1) The counter shall be mounted at a maximum height of 34 in (865 mm) above the floor, measured from the floor to the top of the counter surface, or shall be adjustable or replaceable as a unit to provide alternative heights of 28 in, 32 in, and 36 in (710 mm, 815 mm, and 915 mm), measured from the top of the counter surface.

(2) Base cabinets, if provided, shall be removable under the full 30 in (760 mm) minimum frontage of the counter. The finished floor shall extend under the counter to the wall.



(a)
Before Removal of Cabinets and Base

(b)
Cabinets and Base Removed and Height Alternatives

Fig. 50
Counter Work Surface

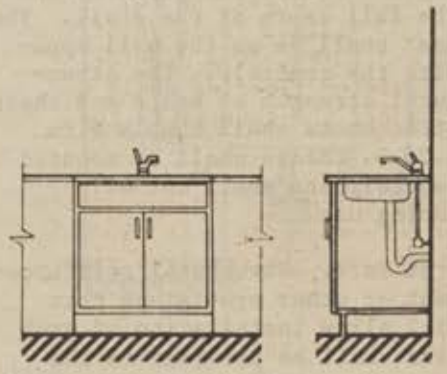
(3) Counter thickness and supporting structure shall be 2" (50 mm) maximum over the required clear area.

(4) A clear floor space 30 in by 48 in (760 mm by 1220 mm) shall allow a forward approach to the counter. Nineteen inches (485 mm) maximum of the clear floor space may extend underneath the counter. The knee space shall have a minimum clear width of 30 in (760 mm) and a minimum clear depth of 19 in (485 mm).

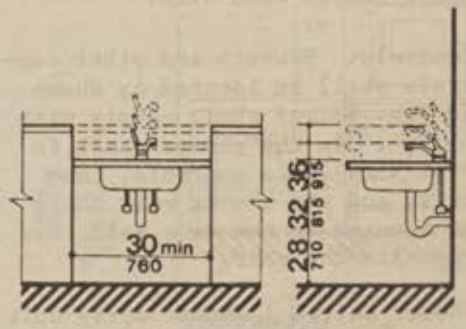
(5) There shall be no sharp and surrounding surfaces under such counters.

4.34.6.5* SINK. The sink and surrounding counter shall comply w'th the following requirements (see Fig. 51).

(1) The sink and surrounding counter shall be mounted at a maximum height of 34 in (865 mm) above the floor, measured from the floor to the top of the counter surface, or shall be adjustable or replaceable as a unit to provide alternative heights of 28 in, 32 in, and 36 in (710 mm, 815 mm, and 915 mm), measured from the floor to the top of the



(a)
Before Removal of Cabinets and Base



(b)
Cabinets and Base Removed
and Height Alternatives

Fig. 51
Kitchen Sink

counter surface or sink rim. The total width of sink and counter area shall be 30 in (760 mm).

(2) Rough-in plumbing shall be located to accept connections of supply and drain pipes for sinks mounted at the height of 28 in (710 mm).

(3) The depth of a sink bowl shall be no greater than 6-1/2 in (165 mm). Only one bowl of double- or triple-bowl sinks needs to meet this requirement.

(4) Faucets shall comply with 4.27.4. Lever-operated or push-type mechanisms are two acceptable designs.

(5) Base cabinets, if provided, shall be removable under the full 30 in (760 mm) minimum frontage of the sink and surrounding counter. The finished flooring shall extend under the counter to the wall.

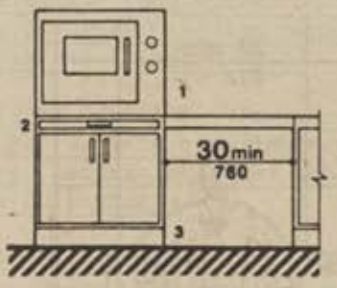
(6) Counter thickness and supporting structure shall be 2 in (50 mm) maximum over the required clear space.

(7) A clear floor space 30 in by 48 in (760 mm by 1220 mm) shall allow forward approach to the sink. Nineteen inches (485 mm) maximum of the clear floor space may extend underneath the sink. The knee space shall have a clear width of 30 in (760 mm) and a clear depth of 19 in (485 mm).

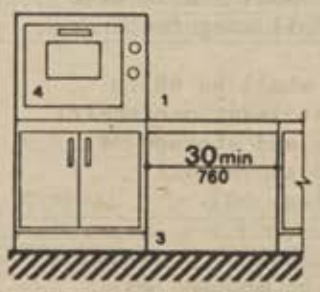
(8) There shall be no sharp or abrasive surfaces under sinks. Hot water and drain pipes under sinks shall be insulated or otherwise covered.

4.34.6.6* RANGES AND COOKTOPS. Ranges and cooktops shall comply with 4.34.6.2 and 4.34.6.3. If ovens or cooktops have knee spaces underneath, then they shall be insulated or otherwise protected on the exposed contact surfaces to prevent burns, abrasions, or electrical shock. The clear floor space may overlap the knee space, if provided, by 19 in (485 mm) maximum. The location of controls for ranges and cooktops shall not require reaching across burners. Ranges and cooktop heights shall not exceed 34 in (865 mm) in accessible kitchens.

4.34.6.7* OVENS. Ovens shall comply with 4.34.6.2 and 4.34.6.3. Ovens shall be of the self-cleaning type or be located adjacent to an adjustable height counter with knee space below (see Fig. 52). For side-opening ovens, the door latch side shall be



(a)
Side-Hinged Door



(b)
Bottom-Hinged Door

SYMBOL KEY:
1. Countertop or wall-mounted oven.
2. Pull-out board preferred with side-opening door.
3. Clear open space.
4. Bottom-hinged door.

Fig. 52
Ovens without Self-Cleaning Feature

next to the open counter space, and there shall be a pull-out shelf under the oven extending the full width of the oven and pulling out not less than 10 in (255 mm) when fully extended. Ovens shall have controls on front panels; they may be located on either side of the door.

4.34.6.8* REFRIGERATOR/FREEZERS. Refrigerator/freezers shall comply with 4.34.6.3. Refrigerators shall be:

(1) Of the vertical side-by-side refrigerator/freezer type; or

(2) Of the over-and-under type and meet the following requirements:

(a) Have at least 50 percent of the freezer space below 54 in (1370 mm) above the floor.

(b) Have 100 percent of the refrigerator space and controls below 54 in (1370 mm).

Freezers with less than 100 percent of the storage volume within the limits specified in 4.2.5 or 4.2.6 shall be the self-defrosting type.

4.34.6.9 DISHWASHERS. Dishwashers shall comply with 4.34.6.2 and 4.34.6.3. Dishwashers shall have all rack space accessible from the front of the machine for loading and unloading dishes.

4.34.6.10* KITCHEN STORAGE. Cabinets, drawers, and shelf areas shall comply with 4.25 and shall have the following features:

(1) Maximum height shall be 48 in (1220 mm) for at least one shelf of all cabinets and storage shelves mounted above work counters (see Fig. 50).

(2) Door pulls or handles for wall cabinets shall be mounted as close to the bottom of cabinet doors as possible. Door pulls or handles for base cabinets shall be mounted as close to the top of cabinet doors as possible.

4.34.7 LAUNDRY FACILITIES. If laundry equipment is provided within individual accessible dwelling units, or if separate laundry facilities serve one or more accessible dwelling units, then they shall meet the requirements of 4.34.7.1 through 4.34.7.3.

4.34.7.1 LOCATION. Laundry facilities and laundry equipment shall be on an accessible route.

4.34.7.2 WASHING MACHINES AND CLOTHES DRYERS. Washing machines and clothes dryers in common use laundry rooms shall be front loading.

4.34.7.3 CONTROLS. Laundry equipment shall comply with 4.27.

5. RESTAURANTS AND CAFETERIAS.

5.1 GENERAL. In addition to the requirements of Sections 4.1 to 4.33, the design of at least 5% of all fixed seating or tables in a restaurant or cafeteria shall comply with 4.32. Access aisles between tables shall comply with 4.3. Where practical, accessible tables should be distributed throughout the space or facility. In restaurants or cafeterias where there are mezzanine levels, loggias, or raised platforms, accessibility to all such spaces is not required providing that the same services and decorative character are provided in spaces located on accessible routes.

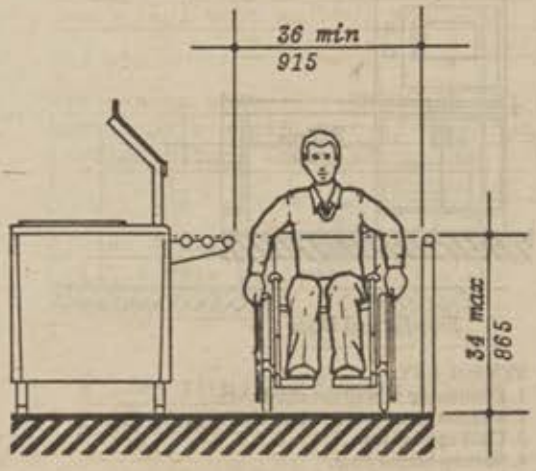


Fig. 53

Food Service Lines

5.2 FOOD SERVICE LINES. Food service lines shall have a minimum clear width of 36 in (915 mm), with a preferred clear width of 42 in (1065 mm) where pedestrian passage by a stopped wheelchair is desired. Tray slides shall be mounted no higher than 34 in (865 mm) above the floor. If food self-service shelves are provided, a reasonable portion must be within the ranges shown in Fig. 53.

5.3 TABLEWARE AREAS. Install tableware, dishware, condiment, food and beverage display shelves, and dispensing devices in compliance with 4.2 (see Fig. 54).

5.4 VENDING MACHINES. Install vending machines in compliance with 4.27.

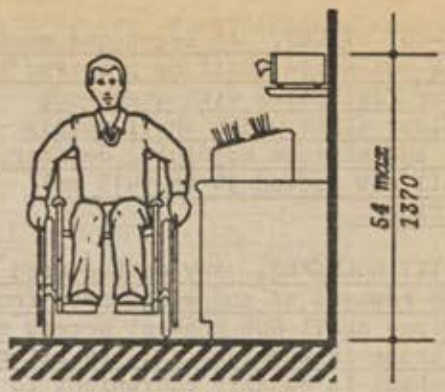


Fig. 54

Tableware Areas

6. TRANSPORTATION.

Transportation section reserved.

7. HEALTH CARE.

7.1 GENERAL. In addition to the requirements of Sections 4.1 to 4.33, Health Care buildings and facilities shall comply with 7.

7.2 ENTRANCES. At least one accessible entrance that complies with 4.14 shall be protected from the weather by canopy or roof overhang. Such entrances shall incorporate a passenger loading zone that complies with 4.6.5 (see 4.13.6).

7.3 PATIENT BEDROOMS. Provide accessible patient bedrooms in compliance with 4. Accessible patient bedrooms shall comply with the following:

(1) Each bedroom shall have a turning space that complies with 4.2.3, and preferably that is located near the entrance.

(2) Each one-bed room shall have a minimum clear floor space of 36 in (915 mm) along each side of the bed, and 42 in (1065 mm) between the foot of the bed and the wall.

(3) Each two-bed room shall have a minimum clear floor space of 42 in (1065 mm), preferably 48 in (1220 mm), between the foot of the bed and the wall; 36 in (915 mm) between the side of the bed and the wall; and 48 in (1220 mm) between beds.

(4) Each four-bed room shall have a minimum clear floor space of 48 in (1220 mm) from the foot of the bed to the foot of the opposing bed; 36 in (915 mm) between the side of the bed and the wall; and 48 in (1220 mm) between beds.

7.4 PATIENT TOILET ROOMS. Provide each patient bedroom that is required to be accessible with an accessible toilet room that complies with 4.22 or 4.23.

8. MERCANTILE.

8.1 GENERAL. In addition to the requirements of Sections 4.1 to 4.33, the design of all areas used for business transactions with the public shall comply with 8.

8.2 SERVICE COUNTERS. Where service counters exceeding 36 in (915 mm) in height are provided for standing sales or distribution of goods to the public, an auxiliary counter or a portion of the main counter shall be provided with a maximum height of between 28 in to 34 in (710 mm to 865 mm) above the floor in compliance with 4.32.4.

8.3 CHECK-OUT AISLES. At least one accessible check-out aisle shall be provided in buildings or facilities with check-out aisles. Clear aisle width shall comply with 4.2.1 and maximum adjoining counter height shall not exceed 36 in (915 mm) above the floor.

8.4 SECURITY BOLLARDS. Any device used to prevent the removal of shopping carts from store premises shall not prevent access or egress to those in wheelchairs. An alternate entry that is equally convenient to that provided for the ambulatory population is acceptable.

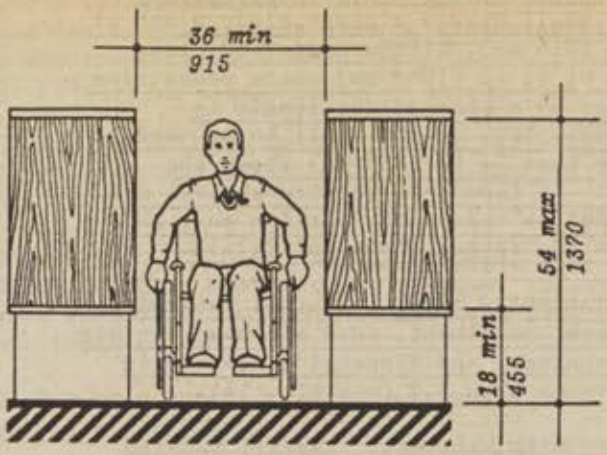


Fig. 55

Card Catalog

9. LIBRARIES.

9.1 GENERAL. In addition to the requirements of Sections 4.1 to 4.33, the design of all public areas of a library shall be accessible, including reading and study areas, stacks, reference rooms, reserve areas, special facilities or collections, etc. As provided, public toilet rooms, telephones, parking, etc., shall be accessible.

9.2 READING AND STUDY AREAS. At least 5% or a minimum of one of each element of seating, tables, or study carrels shall comply with 4.2 and 4.32. Clearances between accessible tables and study carrels shall comply with 4.3.

9.3 CHECK-OUT AREAS. At least one lane at each check-out area shall comply with 4.32. Any traffic control or book security gates or turnstiles shall comply with 4.13.

9.4 CARD CATALOGS. Minimum clear aisle space at card catalogs, magazine displays, or reference stacks shall comply with Fig. 55. Maximum reach height shall comply with 4.2, with a maximum height of 54 in (1370 mm) preferred, irrespective of reach allowed.

9.5 STACKS. Minimum clear aisle width between stacks shall comply with 4.3, with a minimum clear aisle width of 42 in (1065 mm) preferred where possible. Shelf height in stack areas is unrestricted (see Fig. 56).

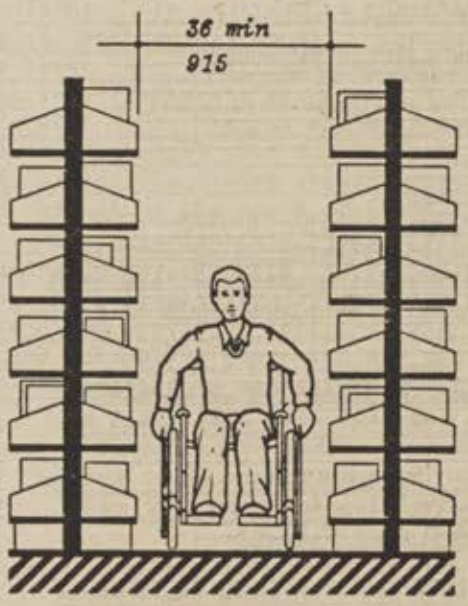


Fig. 56

Stacks

10. POSTAL FACILITIES.

10.1 GENERAL. The design of U.S. Postal Facilities shall comply with the requirements of Sections 4.1 to 4.33, and of this section, 10. In addition, employee toilet rooms, water fountains, lunchrooms, lounges, attendance-recording equipment, medical treatment rooms, emergency signals, and switches and controls shall be made

accessible or adaptable in accordance with the requirements of this standard.

10.2 POST OFFICE LOBBIES. Where writing desks or tables are provided, a minimum of at least one writing desk or table that complies with 4.32 must be provided. Clear passageways in front of customer service counters shall be not less than 48 in (1220 mm) clear width to permit maneuvering of a wheelchair. Letter drops shall be mounted at heights that comply with 4.2.

(1) All fixed partitions must be installed to withstand a 250-pound force applied at any point and from any direction. Avoid designs that call for, or may necessitate non-fixed partitions in circulation routes of handicapped people.

(2) Walls where handrails are provided for handicapped people must be capable of supporting handrails designed to support a 250-pound pull force in any direction.

10.3 SELF-SERVICE POSTAL CENTERS. Parcel post depositories, stamp vending machines, multi-commodity vending machines, and currency-coin changing machines shall be installed so that the operating mechanisms of all machines comply with 4.2 and 4.27. All mechanisms must be installed to permit close parallel approach by a wheelchair.

10.4 POST OFFICE BOXES. At least 5 percent of the post office boxes in a facility shall be accessible to wheelchair users. The total number of accessible post office boxes provided shall include a representative number of each of the standard sizes of USPS boxes. Currently being installed. Accessible post office boxes shall be located in the second or third set of modules from the floor, approximately 12 in to 36 in (305 mm to 915 mm) above the finished floor. Aisles between post office boxes shall be a minimum of 66 in (1675 mm) clear width.

10.5 LOCKER ROOMS. Lockers in easily accessible areas must be provided for use by handicapped people. When double-tier lockers are used, only the bottom row of lockers may be assigned for use by wheelchair users. When full length lockers are used, all hooks, shelves, etc., intended for use by people in wheelchairs shall be located no higher than 48 in (1220 mm) above the finished floor. Lockers intended for use by handicapped people shall be equipped with latches and latch handles that comply with 4.27. Unobstructed aisle space in front of lockers used by handicapped people shall be a minimum of 42 in (1065 mm) clear width.

10.6 ATTENDANCE-RECORDING EQUIPMENT. Time clocks, card racks, log books, and other work assignment or attendance-recording equipment used by people in wheelchairs must be installed at a height no more than 48 in (1220 mm) above the finished floor. Counter space at check-in areas must be no more than 36 in (915 mm) above the finished floor.

11. HISTORIC PRESERVATION.

11.1 APPLICABILITY.

(1) The accessibility provisions of part 4 shall be applied to qualified historical buildings and facilities unless it is determined that strict compliance with such provisions will destroy the historic significance of the building or facility. If the historic significance is threatened, then the alternate provisions of 11 may be used to modify applicable provisions of Part 4.

(2) Buildings and facilities that are listed or that are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate state or local governmental body, qualify for use of 11.

11.2 CLASSES OF HISTORIC PRESERVATION.

(1) Restoration and Reconstruction: Those buildings and facilities

that are rehabilitated to maintain a restored or reconstructed exterior or altered to achieve a contemporary, adaptive use of interior spaces, shall comply with Parts 4 and 5 for those areas of altered use and shall comply with 11.3 for those areas of restored or reconstructed use.

11.3 HISTORIC PRESERVATION - MINIMUM ACCESSIBLITY. Historic preservation projects that will be open to the public shall comply with the following:

(1) At least one accessible route complying with 4.3 from a site access point to an accessible entrance shall be provided.

EXCEPTION: A ramp with a slope no greater than 1:6 for a run not to exceed 2 ft. (610 mm) may be used as part of an accessible route at an entrance.

(2) At least one accessible entrance which is used by the public complying with 4.14 shall be provided.

EXCEPTION: If the above is impractical, access at any entrance not used by the general public but open (unlocked) with directional signs at the primary entrance may be used.

(3) If toilets are provided, then at least one toilet facility complying with 4.22 and 12.1 shall be provided along an accessible route that complies with 4.3. Such toilet facility may be "unisex" in design.

(4) If parking is provided, then accessible parking spaces complying with 4.6 shall be provided.

(5) Accessible routes from an accessible entrance to all publicly used spaces on at least the level of the accessible entrance shall be provided. Access should be provided to all levels of a building or facility in compliance with 4.1 and 12.1 whenever practicable.

(6) Displays and written information documents, etc., shall be located where they can be seen by a seated person. Exhibits and signage displayed horizontally, e.g., books, shall be no higher than 44 in (1120 mm) above the floor surface.

12. ALTERATIONS.

12.1 GENERAL.

(1) Whenever feasible, the alteration of existing buildings or facilities shall comply with the provisions of Section 4. Where strict application of the provision of Section 4 would not be feasible because of extreme cost or structural impracticability, the provisions of Section 12 may be used in lieu of corresponding provisions in Section 4.

(2) No alteration of an existing element, space, or area of a building or facility shall impose a requirement for greater accessibility than that which would be required for new construction. For example, if the elevators and stairs in a building are being altered and the elevators are in turn being made accessible, no accessibility modifications are required to the stairs connecting levels connected by an elevator.

12.2 RAMPS. Curb ramps and ramps to be constructed on existing sites or in existing buildings or facilities may have slopes and rises as shown in Table 2 if space limitations prohibit the use of a 1:12 slope or less.

12.3 STAIRS. Full extension of stair handrails shall not be required in alterations where such extensions would be hazardous or impossible due to plan configuration.

12.4 ELEVATORS.

(1) If a safety door edge is provided in existing automatic elevators, then the automatic door reopening devices may be omitted (see 4.10.6).

(2) The maximum mounting height requirement for the highest elevator control in existing elevators may be omitted if the existing control panel is not altered.

(3) Where existing shaft or structural elements prohibit strict compliance with 4.10.9, then the minimum floor area dimensions may be reduced by the minimum amount necessary, but in no case shall they be less than 48 in by 48 in (1220 mm by 1220 mm).

12.5 DOORS. If existing door clearances or hardware preclude strict compliance with Section 4.13, then one, but only one, of the following exceptions may be utilized at any particular doorway:

(1) Where existing elements prohibit strict compliance with the clearance requirements of 4.13.5, a projection of 5/8 in (16 mm) maximum will be permitted of the latch side door stop.

(2) If existing door clearances provide at least 36 in (915 mm) clearance, perpendicular to the plane of the door in the closed position, then additional clearances are not required.

(3) If existing thresholds measure 3/4 in (19 mm) high or less, and are beveled or modified to provide a beveled edge on each side, then they may be retained.

12.6 ENTRANCES. If there are stairs leading to all principal entrances and space is so limited on a site that a ramp or a platform cannot be provided, then a secondary entrance may be used as the only accessible entrance.

12.7 TOILET ROOMS. Where alterations to existing facilities make strict compliance with 4.22 and 4.23 structurally impracticable, the addition of one "unisex" toilet per floor containing one water closet that complies with 4.16 and one lavatory that complies with 4.19, located adjacent to existing facilities will be acceptable in lieu of making existing toilet facilities for each sex accessible.

12.8 ASSEMBLY AREAS.

(1) In alterations where it is structurally impracticable to disperse seating throughout the assembly area, seating may be located in collected areas as structurally feasible. Seating must also adjoin an accessible route that also serves as a means of emergency egress.

Table 2
Allowable Ramp Dimensions for Construction in Existing Sites, Buildings, and Facilities

	Maximum Rise		Maximum Run	
Slope*	in	mm	ft	m
Steeper than 1:10 but no steeper than 1:8	3	75	2	0.6
Steeper than 1:12 but no steeper than 1:10	6	150	5	1.5

*A slope steeper than 1:8 not allowed.

This appendix contains additional information that should help the designer to understand the minimum requirements of the standard or to design buildings or facilities for greater accessibility. The paragraph numbers correspond to the sections or paragraphs of the standard to which the material relates and are therefore not consecutive (for example, A4.2.1 contains additional information relevant to 4.2.1). Sections for which additional material appears in this appendix have been indicated by an asterisk.

A4.2 SPACE ALLOWANCES AND REACH RANGES.

A4.2.1 WHEELCHAIR PASSAGE WIDTH

(1) Space requirements for wheelchairs. Most wheelchair users need a 30 in (760 mm) clear opening width for doorways, gates, and the like, when the latter are entered head-on. If the wheelchair user is unfamiliar with a building, if competing traffic is heavy, if sudden or frequent movements are needed, or if the wheelchair must be turned at an opening, then greater clear widths are needed. For most situations, the addition of an inch of leeway on either side is sufficient. Thus, a minimum clear width of 32 inches (815 mm) will provide adequate clearance. However, when an opening or a restriction in a passageway is more than 24-inches (610 mm) long, it is essentially a passageway and must be at least 36 inches (915 mm) wide.

(2) Space Requirements for Use of Walking Aids. Although people who use walking aids can maneuver through clear width openings of 32 inches (815 mm), they need 36 in (915 mm) wide passageways and walks for comfortable gaits. Crutch tips, often extending down at a wide angle, are a hazard in narrow passageways where they might not be seen by other pedestrians. Thus, the 36 in (915 mm) width provides a safety allowance both for the disabled person and for others.

(3) Space Requirements for Passing. Able-bodied people in winter clothing, walking straight ahead with arms swinging, need 32 in (815 mm) of width, which includes 2 in (50 mm) on either side for sway, and another 1 in (25 mm) tolerance on either side for clearing nearby objects or other pedestrians. Almost all wheelchair users and those who use walking aids can also manage within this 32 in (815 mm) width for short distances. Thus, two streams of traffic can pass in 64 in (1625 mm) in a comfortable flow. Sixty inches (1525 mm) provides a minimum width for a somewhat more restricted flow. If the clear width is less than 60 in (1525 mm) two wheelchair users will not be able to pass but will have to seek a wider place for passing. Forty-eight inches (1220 mm) is the minimum width needed for an ambulatory person to pass a nonambulatory or semiambulatory person. Within this 48 in (1220 mm) width, the ambulatory person will have to twist to pass a wheelchair user, a person with a seeing eye dog, or a semiambulatory person. There will be little leeway for swaying or missteps (see Fig. A1).

A4.2.3 Wheelchair Turning Space. This standard specifies a minimum space of 60 in (1525 mm) diameter for a pivoting 180-degree turn of a wheelchair. This space is usually satisfactory for turning

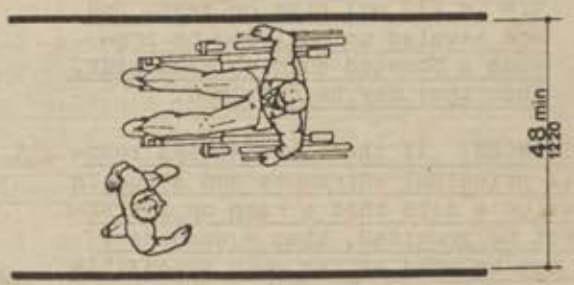


Fig. A1
Minimum Passage Width for One Wheelchair and One Ambulatory Person

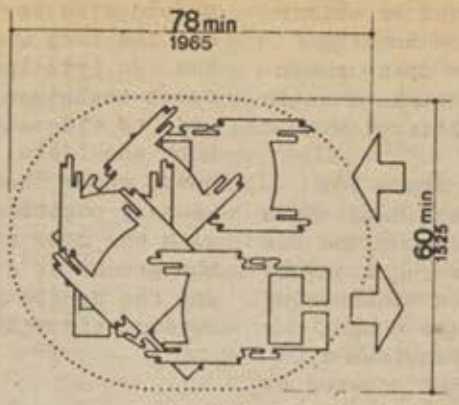
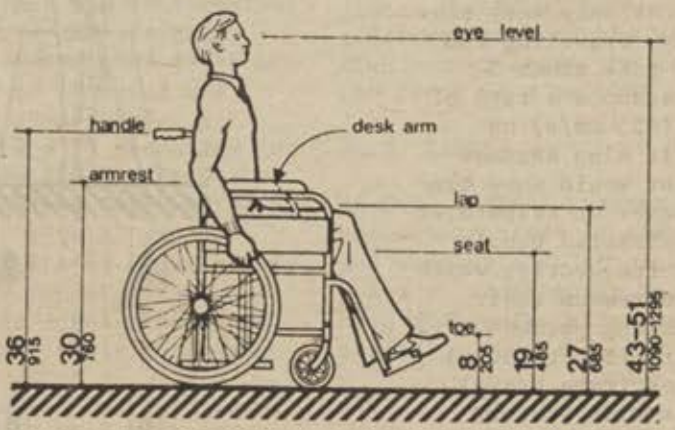
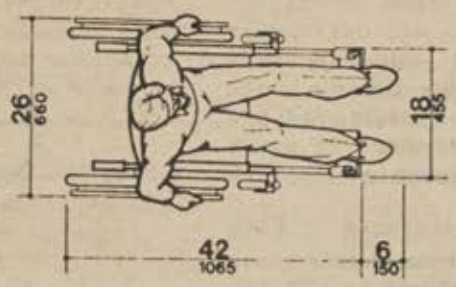


Fig. A2
Space Needed for Smooth U-Turn in a Wheelchair





NOTE: Footrests may extend further for very large people.

Fig. A3
Dimensions of Adult-Sized Wheelchairs

around, but many people will not be able to turn without repeated tries and bumping into surrounding objects. The space shown in Fig. A2 will allow most wheelchair users to complete U-turns without difficulty.

A4.2.4 Clear Floor or Ground Space for Wheelchairs. The wheelchair and user shown in Fig. A3 represent typical dimensions for a large adult male. The space requirements in this standard are based upon maneuvering clearances that will accommodate most larger wheelchairs. Fig. A3 provides a uniform reference for design not covered by this standard.

A4.3 ACCESSIBLE ROUTE.

A4.3.1 GENERAL.

(1) Travel Distances. Many disabled people can move at only very slow speeds; for many, traveling 200 ft (61 m) coult take about 2 minutes. This assumes a rate of about 1.5 ft/s (455 mm/s) on level ground. It also assumes that the traveler would move continuously. However on trips over 100 ft (30 m), disabled people are apt to rest frequently, which substantially increases their trip times. Resting periods of 2 minutes for every 100 ft (30 m) can be used to estimate travel times for people with severly limited stamina. In inclement weather, slow progress and resting can greatly increase a disabled person's exposure to the elements.

(2) Sites. Level, indirect routes or those with running slopes lower than 1:20 can sometimes provide more convenience than direct routes with maximum allowable slopes or with ramps.

A4.3.10 EGRESS. In buildings where physically handicapped people are regularly employed or are residents, an emergency management plan for their evacuation also plays an essential role in fire safety.

A4.4 PROTRUDING OPJECTS.

A4.4.1 GENERAL. Guide dogs are trained to recognize and avoid hazards. However, most people with severe impairments of vision use the long cane as an aid to mobility. The two principal cane techniques are the touch technique, where the cane arcs from side to side and touches points outside both shoulders; and the diagonal techniques, where the cane is held in a stationary position diagonally across the body with the cane tip touching or just above the ground at a point outside one shoulder and the handle or grip extending to a point outside the other shoulder. The touch

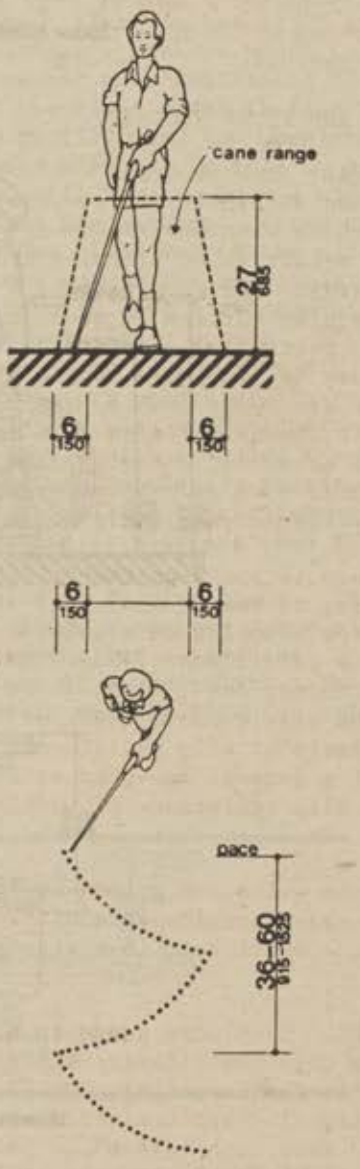


Fig. A4
Cane Technique

technique is used primarily in uncontrolled areas, while the diagonal technique is used primarily in certain limited, controlled, and familiar environments. Cane users are often trained to use both techniques.

Potential hazardous objects are noticed only if they fall within the detection range of canes (see Fig. A4). Visually impaired people walking toward an object can detect an overhang if its lowest surface is not higher than 27 in (685 mm). When walking alongside projecting objects, they cannot detect overhangs. Since proper cane and guide dog techniques keep people away from the edge of a path or from walks, a slight overhang of no more than 4 in (100 mm) is not hazardous.

A4.5 GROUND AND FLOOR SURFACES.

A4.5.1 GENERAL. Ambulant and semiambulant people who have difficulty maintaining balance and those with restricted gaits are particularly sensitive to slipping and tripping hazards. For such people, a stable and regular surface is necessary for safe walking, particularly on stairs. Wheelchairs can be propelled most easily on surfaces that are hard, stable, and regular. Soft, loose surfaces such as shag carpet, loose sand, and wet clay, and irregular surfaces such as cobblestone, can significantly impede wheelchair movement.

Slip resistance is based on the frictional force necessary to keep a shoe heel or crutch tip from slipping on a walking surface under the conditions of use likely to be found on the surface. Although it is known that the static coefficient of friction is the basis of slip resistance, there is not as yet a general accepted method to evaluate the slip resistance of walking surfaces.

Cross slopes on walks and ground or floor surfaces can cause considerable difficulty in propelling a wheelchair in a straight line.

A4.5.3 CARPET. Much more needs to be done in developing both quantitative and qualitative criteria for carpeting. However, certain functional characteristics are well established. When both carpet and padding are used, it is desirable to have minimum movement (preferably none) between the floor and the pad and the pad and the carpet, which would allow the carpet to hump or warp. In heavily trafficked areas a thick, soft (plush) pad or cushion, particularly in combination with long carpet pile, makes it difficult for individuals in wheelchairs and those with other ambulatory disabilities to get about. This should not preclude their use in specific areas where traffic is light. Firm carpeting can be achieved through proper selection and combination of pad and carpet, sometimes with the elimination of the pad or cushion, and with proper installation.

A4.6.3 PARKING SPACES. High-top vans, which disabled people or transportation services often use, require higher clearances in parking garages than automobiles.

A4.6.4 SIGNAGE. Signs designating parking places for disabled people can be seen from a drivers seat if the signs are mounted high enough above the ground and located at the front of a parking space.

A4.8 RAMPS.

A4.8.1 GENERAL. Ramps are essential for wheelchair users if elevators or lifts are not available to connect different levels. However, some people who use walking aids have difficulty with ramps and prefer stairs.

A4.8.2 SLOPE AND RISE. The ability to manage an incline is related to both its slope and its length. Wheelchair users with disabilities affecting arms or with low stamina have serious difficulty using inclines. Most ambulatory people and most people who use wheelchairs can manage a slope of 1:16. Many people cannot manage a slope of 1:12 for 30 ft (9 m). Many people who have difficulty negotiating very long ramps at relatively shallow slopes can manage very short ramps at steeper slopes.

A4.8.5 HANDRAILS. The requirements for stair and ramp handrails in this standard are for adults. When children are principal users in a building or facility, a second set of handrails at an appropriate height can assist them and aid in preventing accidents.

A4.10 ELEVATORS.

A4.10.6 DOOR PROTECTIVE AND REOPENING DEVICE. The required door reopening device would hold the door open for 20 seconds if the doorway remains unobstructed. After 20 seconds, the door may begin to close. However, if designed in accordance with ANSI A17.1-1978, the door closing movement could still be stopped if a person or object exerts sufficient force at any point on the door edge.

A4.10.7 DOOR AND SIGNAL TIMING FOR HALL CALLS. This paragraph allows variation in the location of call buttons, advance time for warning signals, and the door holding period used to meet the time requirement.

A4.10.12 CAR CONTROLS. Industry-wide standardization of elevator control panel design would make all elevators significantly more convenient for use by people with severe visual impairments.

In many cases, it will be possible to locate the highest control on elevator panels within 48 in (1220 mm) from the floor.

A4.10.13 CAR POSITION INDICATORS. A special button may be provided that would activate the audible signal within the given elevator only for the desired trip, rather than maintaining the audible signal in constant operation.

A4.10.14 EMERGENCY COMMUNICATIONS. A device that requires no handset is easier to use by people who have difficulty reaching.

A4.11 PLATFORM LIFTS.

Platform lifts include porch lifts and other devices used for short-distance, vertical transportation of people in wheelchairs. At the present time, generally recognized safety standards for such lifts have not been developed. Care should be taken in selecting and installing lifts to ensure that they are free from hazards to users or to other individuals who may be in the vicinity where they are being operated.

A4.13 DOORS.

A4.13.8 THRESHOLDS AT DOORWAYS. Thresholds and surface height changes in doorways are particularly inconvenient for wheelchair users who also have low stamina or restrictions in arm movement, because complex maneuvering is required to get over the level change while operating the door.

A4.13.9 DOOR HARDWARE. Some disabled persons must push against a door with their chair or walker to open it. Applied kickplates on doors with closers can reduce required maintenance by withstanding abuse from wheelchairs and canes. To be effective, they should cover the door width, less approximately 2 in (51 mm), up to a height of 16 in (405 mm) from its bottom edge and be centered across the top.

A4.13.10 DOOR CLOSERS. Closers with delayed action features give a person more time to maneuver through doorways. They are particularly useful on frequently used interior doors such as entrances to toilet rooms.

A4.13.11 DOOR OPENING FORCE. Although most people with disabilities can exert at least 5 lbf (22.2 n), both pushing and pulling from a stationary position, a few people with severe disabilities cannot exert even 3 lbf (13.3 N). Although some people cannot manage the allowable forces in this standard and many others have difficulty, door closers must have certain minimum closing forces to close doors satisfactorily. Forces for pushing or pulling doors open are measured with a push-pull scale under the following conditions:

(1) Hinged Doors: Force applied perpendicular to the door at the door opener or 30 in (760 mm) from the hinged side, whichever is farther from the hinge.

(2) Sliding or Folding Doors: Force applied parallel to the door at the door pull or latch.

(3) Application of Force: Apply force gradually so that the applied force does not exceed the resistance of the door.

In high-rise buildings, air-pressure differentials may require a modification of this specification in order to meet the functional intent.

A4.13.12 AUTOMATIC DOORS AND POWER-ASSISTED DOORS. Sliding automatic doors do not need guard rails and are more convenient for wheelchair users and visually impaired people to use. If slowly opening automatic doors can be reactuated before their closing cycle is completed, they will be more convenient in busy doorways.

A4.15 DRINKING FOUNTAINS AND WATER COOLERS

A4.15.2 Drinking fountains with two spouts can assist both handicapped people and those people who find it difficult to bend over.

A4.16 WATER CLOSETS.

A4.16.3 HEIGHT. Preferences for toilet seat heights vary considerably among disabled people. Higher seat heights may be an advantage to some ambulatory disabled people but a disadvantage for wheelchair users and others. Toilet seats 18 in (455 mm) high seem to be a reasonable compromise. Thick seats and filler rings are available to adapt standard fixtures to these requirements.

A4.16.4 GRAB BARS. Fig. A5(a) and (b) show the diagonal and side approaches most commonly used to transfer from a wheelchair to a water closet. Some wheelchair users can transfer from the front of the toilet, while others use a 90-degree approach. Most people who use the two additional approaches can also use either the diagonal approach or the side approach.

A4.16.5 FLUSH CONTROLS. Flush valves and related plumbing can be located behind walls or to the side of the toilet, or a toilet seat lid can be provided if plumbing fittings are directly behind the toilet seat. Such designs reduce the chance of injury and imbalance caused by leaning back against the fittings. Flush controls for tank-type toilets have a standardized mounting location on the left side of the tank (facing the tank). Tanks can be obtained by special order with controls mounted on the right side. If administrative authorities require flush controls for flush valves to be located in a position that conflicts with the location of the rear grab bar, then that bar may be split or shifted toward the wide side of the toilet area.

A4.17 TOILET STALLS

A4.17.5 DOORS. To make it easier for wheelchair users to close toilet stall doors, doors can be provided with closers, spring hinges, or a pull bar mounted on the inside surface of the door near the hinge side.

A4.19 LAVATORIES AND MIRRORS.

A4.19.6 MIRRORS. If mirrors are to be used by both ambulatory people and wheelchair users, then they must be at least 74 in (1880 mm) high at their topmost edge. A single full length mirror can accommodate all people, including children.

A4.21 SHOWER STALLS

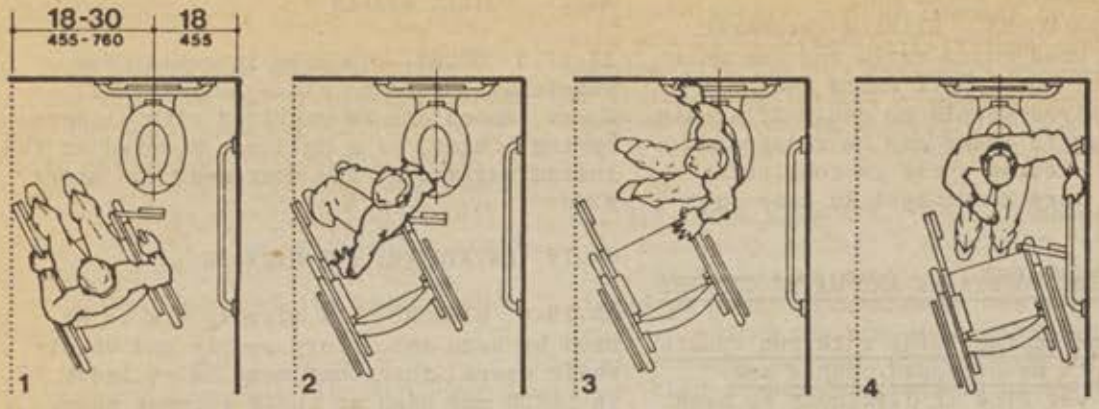
A4.21.1 GENERAL. Shower stalls that are 36 in by 36 in (915 mm by 915 mm) wide provide additional safety to people who have difficulty maintaining balance because all grab bars and walls are within easy reach. Seated people use the walls of 36 in by 36 in (915 mm by 915 mm) showers for back support. Shower stalls that are 60 in (1525 mm) wide and have no curb may increase usability of a bathroom by wheelchair users because the shower area provides additional maneuvering space.

A4.23 BATHROOMS, BATHING FACILITIES, AND SHOWER ROOMS.

A4.23.9 MEDICINE CABINETS. Other alternatives for storing medical and personal care items are very useful to disabled people. Shelves, drawers, and floor-mounted cabinets can be provided within the reach ranges of disabled people.

A4.26 HANDRAILS, GRAB BARS, AND TUB AND SHOWER SEATS.

A4.26.1 GENERAL. Many disabled people rely heavily upon grab bars and handrails to maintain balance and prevent serious falls. Many people brace their forearms between supports and walls to give them more leverage and stability in maintaining balance or for lifting. The maximum grab bar clearance of 1-1/2 in (38 mm) required in this standard is a safety clearance to prevent injuries from arms slipping through the opening. It also provides adequate gripping room.



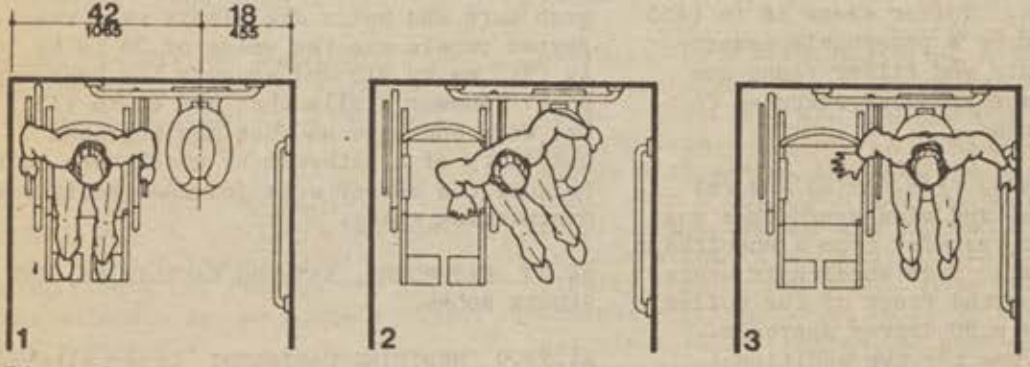
Takes transfer position, swings footrest out of the way, sets brakes.

Removes armrest, transfers.

Moves wheelchair out of the way, changes position (some people fold chair or pivot it 90° to the toilet).

Positions on toilet, releases brake.

(a)
Diagonal Approach



Takes transfer position, removes armrest, sets brakes.

Transfers.

Positions on toilet.

(b)
Side Approach

Fig. A5
Wheelchair Transfers

A4.26.2 SIZE AND SPACING OF GRAB BARS AND HANDRAILS. This specification allows for alternate shapes of handrails as long as they allow an opposing grip similar to that provided by a circular section of 1-1/4 in to 1-1/2 in (32 mm to 38 mm).

A4.28 ALARMS.

A4.28.2 AUDIBLE ALARMS. Audible emergency signals must have an intensity and frequency that can attract the attention of individuals who have partial hearing loss. People over 60 years of age generally have difficulty perceiving frequencies higher than 10,000 Hz.

A4.28.3 VISUAL ALARMS. Locating visual emergency alarms in rooms where deaf individuals may work or reside alone can ensure that they will always be warned when a emergency alarm is activated. To be effective, such devices must be located and oriented so that they will spread signals and reflections throughout a space or raise the overall light level sharply. The amount and type of light necessary to wake a deaf person from a sound sleep in a dark room will vary depending on a number of factors, including the size and configuration of the room, the distance between the source and the person, whether or not the light flashes, and the cycle of flashing. A 150-watt flashing bulb can be effective under some conditions. Certain devices currently available are designed specifically as visual alarms for deaf people. Deaf people may not need accessibility features other than the emergency alarm connections and communications devices. Thus rooms in addition to those accessible for wheelchair users should also equipped with emergency visual alarms or connections.

A4.29 TACTILE WARNINGS.

A4.29.2 TACTILE WARNINGS ON WALKING SURFACES. Reserved.

A4.29.3 TACTILE WARNINGS ON DOORS TO HAZARDOUS AREAS. Tactile signals for hand reception are useful if it is certain that the signals will be touched.

A4.29.5 TACTILE WARNINGS AT HAZARDOUS VEHICULAR AREAS. Reserved.

A4.29.6 TACTILE WARNINGS AT REFLECTING POOLS. Reserved.

A4.29.7 STANDARDIZATION. Too many tactile warnings or lack of standardization weakens their usefulness. Tactile signals can also be visual signals to guide dogs, since dogs can be trained to respond to a large variety of visual cues.

A4.30 SIGNAGE.

A4.30.1 GENERAL. In building complexes where finding locations independently on a routine basis may be a necessity (for example, college campuses), tactile maps or prerecorded instructions can be very helpful to visually impaired people. Several maps and auditory instructions have been developed and tested for specific applications. The type of map or instructions used must be based on the information to be communicated, which depends highly on the type of buildings or users.

Landmarks that can easily be distinguished by visually impaired individuals are useful as orientation cues. Such cues include changes in illumination level, bright colors, unique patterns, wall murals, location of special equipment, or other architectural features (for example, an exterior view).

Many people with disabilities have limitations in movement of their head and reduced peripheral vision. Thus, signage positioned perpendicular to the path of travel is easiest for them to notice. People can generally distinguish signage within an angle of 30 degrees to either side of the centerline of their face without moving their head.

A4.30.2 CHARACTER PROPORTION. The legibility of printed characters is a function of the viewing distance, character height, the ratio of the stroke width to the height of the character, the contrast of color between character and background, and print font. The size of characters must be based upon the intended viewing distance. A severely nearsighted person may have to be much closer to see a character of a given size accurately than a person with normal visual acuity.

A4.30.3 COLOR CONTRAST. The greatest

readibility is usually achieved through the use of light colored characters or symbols on a dark background.

A4.30.4 RAISED OR INDENTED CHARACTERS OR SYMBOLS. Signs with descriptive materials about public buildings, monuments, and objects of cultural interest can be raised or incised letters. However, a sighted guide or audio-tape device is often a more effective way to present such information. Raised characters are easier to feel at small sizes and are not suspectible to maintenance problems as are indented characters, which can fill with dirt, cleaning compounds, and the like.

Braille characters can be used in addition to standard alphabet characters and numbers. Placing braille characters to the left of standard characters makes them more convenient to read. Standard dot sizing and spacing as used in braille publications are acceptable. Raised borders around raised characters can make them confusing to read unless the border is set far away from the characters.

A4.31 TELEPHONES.

A4.31.3 MOUNTING HEIGHT. In localities where the dial-tone first system is in operation, calls can be placed at a coin telephone through the operator without inserting coins. The operator button is located at a height of 46 in (1170 mm) if the coin slot of the telephone is at 54 in (1370 mm).

A generally available public telephone with a coin slot mounted lower on the equipment would allow universal installation of telephones at a height of 48 in (1220 mm) or less to all operable parts.

A4.31.5 EQUIPMENT FOR HEARING IMPAIRED PEOPLE. Other aids for people with hearing impairments are telephones, teleprinter, and other telephonic devices that can be used to transmit printed messages through telephone lines to a teletype printer or television monitor.

A4.32 SEATING, TABLES, AND WORK SURFACES.

A4.32.4 HEIGHT OF WORK SURFACES. Different types of work require different work surface heights for comfort and optimal performance. Light detailed work such as writing requires a work surface close to elbow height for a standing person. Heavy manual work such as rolling dough requires a work surface height about 10 in (255 mm) below elbow height for a standing person. The principle of a high work surface height for light detailed work and a low work surface for heavy manual work also applies for seated persons; however, the limiting condition for seated manual work is clearance under the work surface.

Table A1 shows convenient work surface heights for seated persons. The great variety of heights for comfort and optimal performance indicates a need for alternatives or a compromise in height if people who stand and people who sit will be using the same counter area.

A4.33 ASSEMBLY AREAS.

A4.33.2 SIZE OF WHEELCHAIR LOCATIONS. Spaces large enough for two wheelchairs allow people who are coming to a performance together to sit together.

A4.33.3 PLACEMENT OF WHEELCHAIR LOCATIONS. The location of wheelchair areas can be planned so that a variety of positions within the seating are provided. This will allow choice in viewing and price categories.

A4.33.6 PLACEMENT OF LISTENING SYSTEMS. A distance of 50 ft (15 m) allows a person to distinguish performers' facial expressions.

A4.33.7 TYPES OF LISTENING SYSTEMS. A listening system that can be used from any seat in a seating area is the most flexible way to meet this specification. Earphone jacks with variable volume controls can benefit only people who have slight hearing losses and do not help people with hearing aids. At the present time, audio loops are the most feasible type of listening system for people who use hearing aids, but people without hearing aids or those with hearing aids not equipped with inductive pickups cannot use them. Loops can be portable and move to various locations within a room. Moreover, for little cost, they can serve a large area within a seating area. Radio frequency systems can be extremely effective and inexpensive. People without hearing aids can use them, but people with

Table A1
Convenient Heights of
Work Surfaces for Seated People*

Conditions of Use	Short Women		Tall Men	
	in	mm	in	mm
Seated in a wheelchair:				
Manual work:				
Desk or removable armrests	26	660	30	760
Fixed, full-size armrests†	32‡	815	32‡	815
Light, detailed work:				
Desk or removable armrests	29	735	34	865
Fixed, full-size armrests†	32‡	815	34	865
Seated in a 16-in (405-mm) -high chair:				
Manual work	26	660	27	685
Light, detailed work	28	710	31	785

*All dimensions are based on a work-surface thickness of 1-1/2 in (38 mm) and a clearance of 1-1/2 in (38 mm) between legs and the underside of a work surface.

†This type of wheelchair arm does not interfere with the positioning of a wheelchair under a work surface.

‡This dimension is limited by the height of the armrests; a lower height would be preferable. Some people in this group prefer lower work surfaces, which require positioning the wheelchair back from the edge of the counter.

hearing aids need custom-designed equipment to use them as they are presently designed. If hearing aids had a jack to allow a by-pass of microphones, then radio frequency systems would be suitable for people with and without hearing aids. Some listening systems may be subject to interference from other equipment and feedback from hearing aids of people who are using the systems. Such interference can be controlled by careful engineering design that anticipates feedback and sources of interference in the surrounding area.

A4.34 DWELLING UNITS.

A4.34.2 MINIMUM REQUIREMENTS. Handicapped people who live in accessible dwelling units of multi-family buildings or housing projects will want to participate in all on-site social activities, including visiting neighbors in their dwelling units. Hence, any circulation paths among all dwelling units and among all on-site facilities should be as accessible as possible. an accessible second exit to dwelling units provides an extra margin of safety in a fire.

A4.34.5 ADAPTABLE BATHROOMS. Although not required by these specifications, it is important to install grab bars at toilets, bathtubs, and showers if it is known that a dwelling unit will be occupied by elderly or severely disabled people.

A4.34.6 ADAPTABLE KITCHENS.

A4.34.6.1 CLEARANCE. The minimum clearances provide satisfactory maneuvering spaces for wheelchairs only if cabinets are moved at the sink.

A4.34.6.5 SINK. Installing a sink with a drain at the rear so that plumbing is as close to the wall as possible can provide additional clear knee space for wheelchair users.

A4.34.6.6 RANGES AND COOKTOPS. Although not required for minimum accessibility, countertop range units in a counter with adjustable heights can be an added convenience for wheelchair users.

A4.34.6.7 OVENS. Countertop or wall-mounted ovens with side-opening doors are easier for people in wheelchairs to use. Clear spaces at least 30 in (760 mm) wide under counters at the side of ovens are an added convenience. The pullout board or fixed shelf under side-opening oven doors provides a resting place for heavy items being moved from the oven to a counter.

A4.34.6.8 REFRIGERATOR/FREEZERS. Side-by-side refrigerator/freezers provide the most usable freezer compartments. Locating refrigerators so that their doors can swing back 180 degrees is more convenience for wheelchair users.

A4.34.6.10 KITCHEN STORAGE. Full height cabinets or tall cabinets can be provided rather than cabinets mounted over work counters. Additional storage space located conveniently adjacent to kitchens can be provided to make up for space lost when cabinets under counters are removed.

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). 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
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Note: The Office of the Federal Register proposes to terminate the formal program of agency publication on assigned days of the week. See 48 FR 19283, April 28, 1983.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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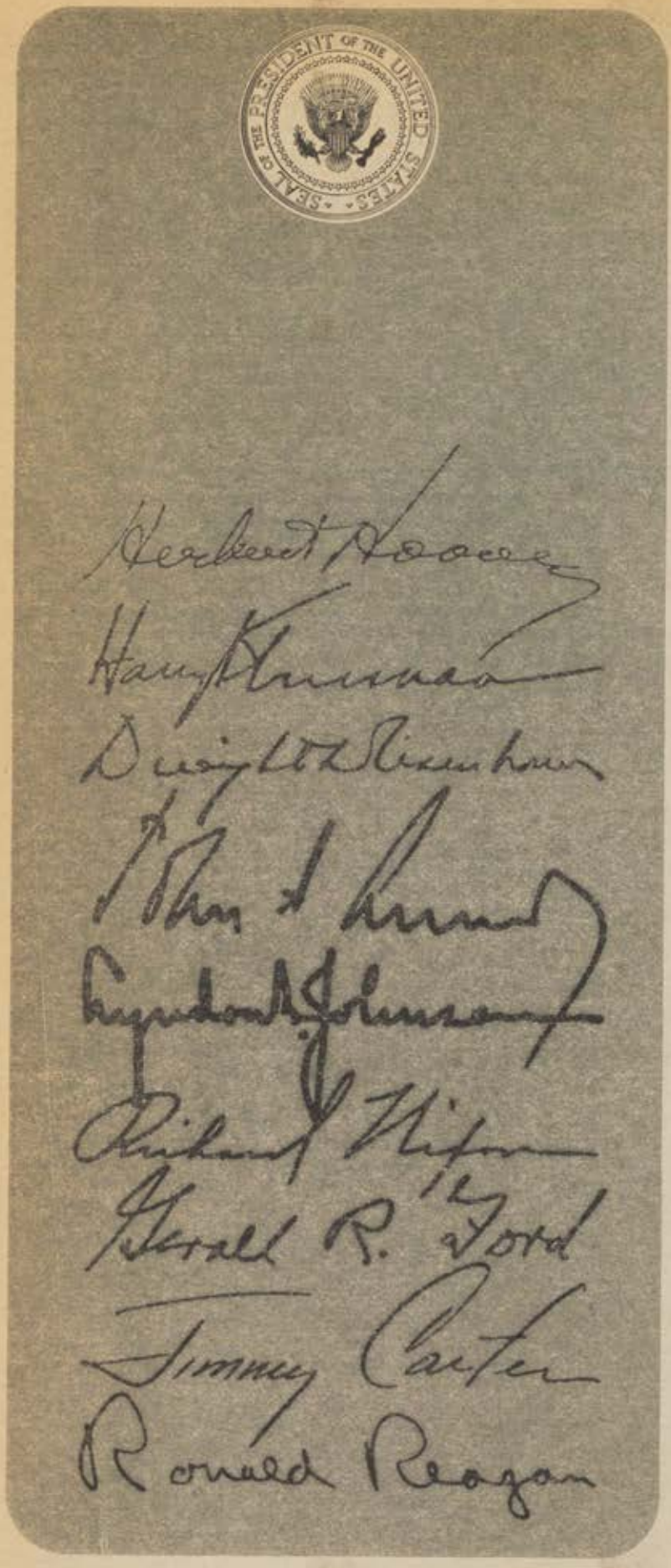

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